

# CORRUPTION PREVENTION GUIDE ON GOVERNANCE AND INTERNAL CONTROL FOR NON-GOVERNMENTAL ORGANISATIONS







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## FOREWORD

Non-governmental Organisations (NGOs) in Hong Kong have a long history of providing a wide range of welfare services to people in need. With the change of socioeconomic environment and development of the civil society in Hong Kong, there is a growing demand for welfare services to cater for people with more diversified need. To ensure the sustainability in the provision of welfare services and support the continuous enhancement in the services provided, NGOs receive recurrent subventions or subsidies on a project basis from the Government and other sponsoring organisations as well as donations from the public.

While NGOs, regardless of their scale, have their own missions and governance structure, they have to meet various funding and service requirements when setting performance targets and quality standards in the delivery of services, and when drawing up internal controls for other major functions, such as procurement. There are also high expectations of the service users, donors and general public on NGOs' conducting of operations in a fair, transparent and accountable manner.

The Corruption Prevention Department (CPD) of the Independent Commission Against Corruption (ICAC) has therefore developed this **Corruption Prevention Guide on Governance and Internal Control for NGOs (the Guide)** for reference by the Board members and senior management of NGOs in Hong Kong with a view to –

- (a) ensuring the compliance of NGOs, their Board members, staff and agents with the Prevention of Bribery Ordinance (POBO) (Cap. 201), and entrenching a culture of integrity in individual NGOs and the social welfare sector as a whole;
- (b) enhancing their awareness and knowledge of corruption risks and practices (with case studies, red flags, etc.) so that they may stay alert and vigilant against the risks; and
- (c) provide them with practical guidance on anti-corruption policy, system, management and control measures, so as to establish and strengthen corruption prevention capabilities in their operations (covering financial management, provision of welfare services, procurement, and management of works and maintenance contracts).

Without losing sight of the funding and service requirements, NGOs are advised to adapt and adopt the internal control measures and good practices recommended in this Guide to suit their operational needs and resource capabilities<sup>1</sup>. The **Corruption Prevention Advisory Service** of the CPD will provide tailor-made advice on request.

*1 For the recommended measures and practices for NGOs, while this Guide is primarily targeted at NGOs receiving government subvention in delivering welfare services, those NGOs in other sectors (e.g. medical and healthcare services) and other non-profit making organisations with sponsorships and donations as their major funding sources, being accountable to their sponsoring bodies, are strongly encouraged to make reference to it to strengthen their governance and internal control systems.*

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## ACKNOWLEDGEMENT

The CPD has consulted the Social Welfare Department, the Hong Kong Council of Social Service<sup>2</sup> and a number of NGOs and industry practitioners in the development of the Guide. Their input and efforts are gratefully acknowledged.

**[This Corruption Prevention Guide on Governance and Internal Control in NGOs  
is for reference only]**

<sup>2</sup> The Hong Kong Council of Social Service has received funding support from the Social Welfare Department to develop a learning platform on NGO governance and management. Through its connection, CPD has collected views of NGOs in the social welfare sector for development of the Guide.

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## HOW TO USE THIS GUIDE

For quick and easy reference, users will find the following icons throughout this Guide which lead them to the following information –



### Case Studies

hypothetical case scenarios in perspective



### Corruption Prevention Safeguards

useful tips for corruption prevention



### Corruption Risks

major corruption risks and malpractice



### Frequently Asked Questions

frequently asked questions with corresponding guidance given



### Pointers

cross references to other Chapters / Sections of the Guide



### Red Flags

indicators of areas where management oversight is required to safeguard against possible corruption and fraud



### Sample Documents

sample documents and forms for easy adoption where applicable

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## FROM THE EDITORIAL BOARD

Descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance (Cap. 201) and other relevant ordinances / laws in this publication are necessarily general and abbreviated for ease of understanding. Users of this publication are advised to refer to the original text of the relevant ordinances / laws or seek legal advice on particular issues where necessary. The ICAC will not accept any responsibility, legal or otherwise, for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Case scenarios are used in this publication to illustrate the legal requirements and corruption risks. These case scenarios should be taken as hypothetical and not referring to any particular real case or any particular organisation or person. Moreover, the advice and recommendations given in this publication are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or contractual requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities, and adopt the appropriate measures that best suit the operational needs and risk exposure of their organisations. The information contained in this publication is updated as at the last revision date shown.

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

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# 1

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## LEGISLATION

1.1 Introduction

1.2 Prevention of Bribery Ordinance (Cap. 201)

1.3 Other Major Legal Concerns

# 1 LEGISLATION

## 1.1 INTRODUCTION

NGOs should comply with the law, adhere to a high standard of integrity and avoid pitfalls of corruption in carrying out their businesses. In this connection, Board members and staff of NGOs and other stakeholders (e.g. donors, volunteers) should have a clear and adequate understanding of the relevant legal requirements. This Chapter provides an overview of the anti-bribery law (i.e. the Prevention of Bribery Ordinance (POBO) (Cap. 201)) in Hong Kong, and highlights other major legislation governing NGOs' integrity management and prudent operation.

## 1.2 PREVENTION OF BRIBERY ORDINANCE (CAP. 201)

The POBO is enforced by the Independent Commission Against Corruption (ICAC) to combat bribery and corrupt transactions in both the private and public sectors. The following is a gist of the relevant sections of the POBO (an extract of the POBO is at **Annex 1 of Appendix 1**). Full text of the POBO can be found in the Hong Kong e-Legislation of the Department of Justice: [www.elegislation.gov.hk/hk/cap201](http://www.elegislation.gov.hk/hk/cap201)



### 1.2.1 SECTIONS 9(1) & (2) – CORRUPT TRANSACTIONS WITH AGENTS

- **Section 9(1)** – It is an offence for any agent (e.g. employee) (👉 **See definition at page 17**) to, without the permission of his principal (e.g. employer), solicit or accept any advantage as an inducement to or reward for his doing or forbearing to do any act in relation to his principal's affairs or business.
- **Section 9(2)** – Any person who offers an advantage to an agent under the above circumstances also commits an offence.

The maximum penalty is a fine of \$500,000 and seven years' imprisonment.

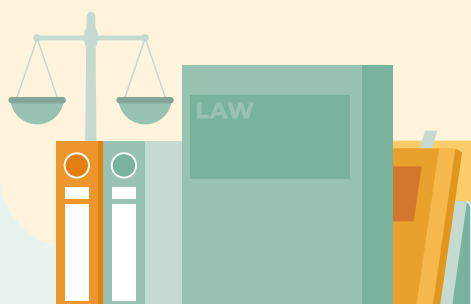




## Case Study 1 – Offering / Accepting Advantages in relation to Provision of Services

**1** Ms Chan's mother is a resident of an elderly home. During Lunar New Year, Ms Chan gave "lai sees", each containing three \$100-banknotes, to two care workers of the elderly home and asked them to take better care of her mother.

**2** Although the elderly home has issued guidelines to all staff on the prohibition of acceptance of any advantage by its staff in performing the elderly home's duties, the two care workers accepted the "lai sees" and promised to take better care of Ms Chan's mother.



The two care workers and Ms Chan contravened Sections 9(1) and 9(2) of the POBO respectively.

### Analysis and Points to Note –

- ▣ **Principal** – The principal of an organisation generally refers to the employer (i.e. the owner or the board of directors (the Board) of the organisation) or any person authorised to act on the employer's behalf. In general, the principal of a Board member / staff member of an NGO usually refers to the NGO which appoints / employs him.
- ▣ **Agent** – An agent is a person acting for, or employed by, the principal. If an organisation appoints a person to act for it in business dealings, that person becomes the organisation's agent irrespective of whether the appointment is full-time or part-time, and whether or not the agent receives a salary or a fee from the organisation. For example, a Board member or an employee of an NGO is the NGO's agent.
- ▣ **Advantage** – An advantage refers to anything that is of value such as money, gift, discount, commission, loan, employment, service or favour (except entertainment).



**Is there a value threshold (e.g. \$500) for an “advantage” in the POBO?**



No. Some people misunderstand that the POBO sets out a limit on the value of the advantage below which acceptance is statutorily permissible. In fact, the POBO has **not** specified any threshold or ceiling of allowable advantages. The recipient / offeror may commit an offence if he accepts / offers an advantage of any value in relation to the organisation’s affairs or business without the permission of the organisation as set out in the POBO (➡ **See definition at page 19**).

An NGO may permit its staff to accept advantages from other persons related to the organisation’s business up to a specified limit and under certain circumstances. This is the NGO’s internal policy and must not be confused with the provisions of the POBO.

In this regard, NGOs should issue clear internal policy (e.g. Code of Conduct) on solicitation / acceptance of advantages, and specify the circumstances where acceptance of advantage / gift may be allowed, including the threshold and handling procedures (e.g. seek approval from the appropriate authority, require proper documentation / registration), and communicate the policy to their staff (➡ **Sections 2.3 and 2.4**).

- **Entertainment** – Entertainment, defined as the provision of food or drink (e.g. a meal) provided for consumption on the occasion when it is provided and of other entertainment connected with, or provided at the same time as, such provisions (e.g. a show provided at the venue where the meal is provided), is not an advantage under the POBO.
- **Purpose of Bribery Being Not Carried Out** – The offeror and the recipient of a bribe will be guilty irrespective of whether or not the purpose of bribery has actually been carried out. It is not a defence for the recipient to claim that “the act requested to be done was not actually carried out” (Section 11 of the POBO). As in the above scenario, the offeror (i.e. Ms Chan) and the recipients (i.e. the two care workers) still commit an offence even if the latter do not actually have the power, right or

opportunity to favour the former (i.e. by taking better care of Ms Chan's mother) when providing the services.

- **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, and NOT the offeror's principal. In case where an advantage has been accepted without prior permission, the agent must apply for his principal's approval as soon as possible afterwards.



**When should I obtain my principal's permission with regard to the acceptance of advantages?**



According to Section 9(5) of the POBO, one should obtain his principal's permission before the acceptance of an advantage. In any case where an advantage has been accepted without prior permission, one should apply for a permission **as soon as reasonably possible** after such acceptance. For such permission to be effective, the principal shall, before giving such permission, have regard to the circumstances in which it is sought.



**Can I accept a gift without obtaining principal's permission if the acceptance of gifts is customary in my industry?**



No. According to Section 19 of the POBO, it is **not** a defence to claim that an advantage accepted or offered is customary in any profession, trade, vocation or calling.

- If an NGO allows its Board members and staff to accept advantages (e.g. business gifts, "lai sees") from persons having business dealings with the organisation under certain circumstances (e.g. during festive seasons), while such permission can be given on a case by case basis, it is advisable to also lay down the organisation's policy and rules / restrictions in its Code of Conduct (📄 **Sections 2.3 and 2.4**).

## 1.2.2 SECTION 9(3) – USE OF MISLEADING / FALSE / DEFECTIVE DOCUMENT TO DECEIVE PRINCIPAL

- **Section 9(3)** – It is an offence for any agent to, with an intent to deceive his principal, use any receipt, account or other document which contains any statement which is misleading, false or defective in any material particular in respect of which the principal is interested.

The maximum penalty is a fine of \$500,000 and seven years' imprisonment.



### Case Study 2 – Using False Attendance Record to Deceive NGO



Ms Lee

Ms Wong

**1** Ms Lee and Ms Wong were part-time child care workers of a child care centre operated by an NGO. They were required to work for a specified number of hours every week and record their on and off duty time using an electronic clocking machine for wage calculation and performance monitoring by the NGO.

**2** Noting that their supervisor would not conduct any surprise checks on their attendance, Ms Lee and Ms Wong showed up late to work and left the child care centre early on various occasions. To conceal the malpractice, they clocked in / out for each other to falsely purport their on / off duty time meeting the specified working hours.



Ms Lee and Ms Wong using false attendance record with an intent to deceive the NGO committed Section 9(3) of the POBO.

## Analysis and Points to Note –

- **No Necessity for Offering and/or Acceptance of Advantage** – Section 9(3) of the POBO does not require the element of offering and/or acceptance of advantage. In general, if an agent (e.g. an NGO employee), with an intent to deceive his principal (i.e. the NGO), uses any receipt, account or other document which contains any statement which is misleading, false or defective in any material particular in respect of which the principal is interested (e.g. false expenses claim forms, bogus invoices, false attendance sheets), an offence is committed under the section.
- **Relevant Best Practice Checklist** – NGOs should ensure that adequate corruption prevention controls are in place in their staff administration systems, covering recruitment, supervision and promotion of staff, appraisal of performance, hiring of temporary staff and handling of staff complaints. Reference could be made to the Best Practice Checklist on Staff Administration published by the ICAC which is available at the following webpage:



[cpas.icac.hk/EN/Info/Lib\\_List?cate\\_id=3&id=220](https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=220)

### 1.2.3 POBO PROVISIONS GOVERNING PUBLIC SERVANTS AND PERSONS HAVING DEALINGS WITH PUBLIC SERVANTS

- Employees of the Government or public bodies are public servants and are subject to the relevant provisions of the POBO, in particular Sections 4, 5 and 8. The provisions prevent public servants from abusing official authority for private gain and safeguard the interest of public bodies and the community at large. In this regard, NGOs and their staff and other agents should avoid breaching or being involved in the breach of these provisions in the course of undertaking any business dealings with the Government and public bodies.
- **Section 4(1)** – It is an offence for any person, in Hong Kong or elsewhere and without lawful authority or reasonable excuse, to offer any advantage to the public servant as an inducement to or reward for that public servant's performing or abstaining from performing any act in his capacity as a public servant.
- **Section 4(2)** – It is an offence for a public servant, in Hong Kong or elsewhere and without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for his performing or abstaining from performing any act in his capacity as a public servant.

The maximum penalty for the above offences is a fine of \$500,000 and seven years' imprisonment.

■ **Section 5(1)** – It is an offence for any person, without lawful authority or reasonable excuse, to offer any advantage to a public servant as an inducement to or reward for that public servant's giving assistance or using influence in regard to contracts with the public body concerned.

■ **Section 5(2)** – It is an offence for any public servant, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for his giving assistance or using influence in regard to contracts with the public body concerned.

The maximum penalty for the above offences is a fine of \$500,000 and 10 years' imprisonment.

■ **Section 8** – It is an offence for any person, without lawful authority or reasonable excuse, to offer any advantage to a public servant while having dealings of any kind with the government department or public body in which the public servant is employed.

The maximum penalty for the above offence is a fine of \$500,000 and seven years' imprisonment.



### Case Study 3 – Offering Gifts to Public Servants While Having Business Dealings



Ms Wong



Mr Lee

**1** A public body administers a funding scheme for NGOs on a project basis. Ms Wong, a fund administration officer of the public body (i.e. public servant) is responsible for processing NGOs' applications under the funding scheme.

**2** During the application processes, Mr Lee, a project manager of an NGO, sent boxes of mooncakes to Ms Wong's office as gift to Ms Wong during Mid-Autumn Festival.

As Mr Lee offered the advantage to a public servant, i.e. the fund administration officer, while having dealings with the public body, he contravened Section 8 of the POBO.



## Analysis and Points to Note –

- **Need for Raising Anti-bribery Awareness** – NGOs might have official dealings / business relationship with government departments or public bodies. They should be well aware that public servants are governed by relevant legal provisions or administrative rules on acceptance of advantages and entertainment. In particular, they should, as a general rule, avoid offering gifts or other advantages to a public servant if they have any dealing with the government department or public body in which the public servant is employed.
- **Committing Offence even without Bribery Intent** – As in the above case scenario, unlike bribery (e.g. Section 4 of the POBO as explained in **Section 1.2.3** above) which often involves a reciprocal performance of duties (or refrain from performance of duties) by a public servant being offered an advantage, Section 8 of the POBO does not require the proof that the advantage is offered in return for any favour. The offeror (i.e. Mr Lee) under the above scenario still commits an offence even he has made no request for favourable treatment from the staff member (i.e. the fund administration officer) of the public body.
- **Managing Relationship with Public Servants** – To obtain a basic understanding of the relevant legal provisions and administrative rules / regulations governing the integrity of interaction between public servants and persons having business dealings with them, organisations can make reference to the Integrity and Corruption Prevention Guide on Managing Relationship with Public Servants published by the ICAC which is available at the following webpage:



[cpas.icac.hk/EN/Info/Lib\\_List?cate\\_id=3&id=226](https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=226)

## 1.3 OTHER MAJOR LEGAL CONCERNS

### 1.3.1 FRAUD, SECTION 16A OF THE THEFT ORDINANCE (CAP. 210)

- It is an offence for any person, by any deceit and with intent to defraud, to induce another person to commit an act or make an omission, which results in benefiting any person, or in prejudice or a substantial risk of prejudice to any person.

### | 1.3.2 PERSONAL DATA (PRIVACY) ORDINANCE (CAP. 486)

- This Ordinance protects privacy with respect to personal data. As NGO staff often collect and maintain a large amount of service recipients' personal data which may have commercial value to other parties, they should observe the restrictions in using such personal data and resist any corrupt or undue requests for the data.

### | 1.3.3 EXTRA-TERRITORIAL LEGAL OBLIGATIONS

- Organisations having business operations outside Hong Kong should also observe the anti-corruption laws and regulations in the respective jurisdictions, in particular those anti-corruption legislations having extra-territorial effect.









# 2 STANDARDS OF BEHAVIOUR AND INTEGRITY MANAGEMENT

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2.1 Introduction

2.2 Fostering a Culture of Integrity

2.3 Essential Probity Requirements in a  
Code of Conduct

2.4 Other Sample Guidelines in a Code  
of Conduct

2.5 ICAC Service and Other Assistance

# 2 STANDARDS OF BEHAVIOUR AND INTEGRITY MANAGEMENT

## 2.1 INTRODUCTION

NGOs, in particular those receive subventions from the Government / other sponsoring organisations or public donations for provision of services in the community are placed in a position of trust by the latter. Upholding a culture of integrity within the organisation is thus of paramount importance for NGOs which helps ensure ethical operations in achieving their missions and meeting the rising expectations of their stakeholders, including the service users, Government or other sponsoring organisations, and to a larger extent, the entire society. This Chapter highlights the steps to foster an anti-corruption culture in NGOs, and introduces the key probity elements in a Code of Conduct which are fundamental in building a clean and ethical culture and conducive to the adoption of good practices.

## 2.2 FOSTERING A CULTURE OF INTEGRITY

Compliance with the legal requirements aside, NGOs should foster a culture of integrity by demonstrating zero-tolerance of corruption or other illegal behaviour / misconduct and setting the right tone at the top. The essential elements are highlighted below –

- Develop **ethical leadership**, i.e. top-level commitment to integrity, with leaders being role models in anti-corruption practices.
- Promote **culture of integrity in the organisation** by –
  - issuing a **Code of Conduct** endorsed by the Management Board<sup>3</sup> (hereafter referred to as the “Board”) to all Board members and staff respectively (📄 a set of Sample Codes of Conduct for Board members and staff of NGOs and other sample guidelines for incorporating in the Codes are at **Appendices 1 to 3**) setting out the probity standards and requirements, updating the relevant probity guidelines and circulating them periodically, especially before major festivals to

<sup>3</sup> The governing body of some NGOs may also be referred to as “Executive Committee”, “Management Committee”, “Council”, etc.

remind Board members and staff rules relating to acceptance of advantages (e.g. “lai sees”) from persons having official dealings with the organisation, and uploading the Codes at the organisation’s intranet for easy reference; and

- organising **integrity and corruption prevention training / workshops** for Board members and staff to ensure the latter have adequate understanding and knowledge on the anti-bribery law, integrity management issues, corruption prevention controls, etc. (📄 **Section 3.4.5**)

■ Commit **business partners to clean business practices** – Business partners (e.g. suppliers, contractors, professional fund-raisers) acting on the organisation’s behalf may be exposed to corruption risks, and the organisation may also be exposed to similar risks resulting from corruption of its business partners when doing business with them. It is therefore advisable for an NGO to commit its business partners to clean business practices by informing them of its anti-corruption policy. As far as practicable, for major contracts and partnering arrangements, the NGO should include suitable anti-corruption and probity requirements in the agreements with the business partners as below –

- the requirement that the business partner should not, and should procure that its directors, employees, agents and subcontractors who are involved in the contract (i.e. the relevant personnel) should not offer, solicit or accept any advantage as defined in the POBO in relation to the business of the NGO;
- the need to ensure that all the relevant personnel are made aware of the anti-corruption requirements, such as through a Code, probity guidelines and training;
- the need to report any suspected corruption / fraud to the relevant law enforcement agency; and
- the right for the NGO to terminate the contract with the business partner if the latter or its director or staff member has breached the anti-corruption requirements.

■ Enhance **transparency of policies to external parties** – Inform service users and business partners of the organisation’s anti-bribery policies and rules on acceptance and offering of advantages and declaration / avoidance of conflict of interest.

■ Designate a senior staff member as **Ethics Officer** to coordinate, monitor and review periodically the implementation of the above policies and practices to ensure effectiveness and compliance.

## 2.3 ESSENTIAL PROBITY REQUIREMENTS IN A CODE OF CONDUCT

To cultivate a culture of integrity, it is necessary for an NGO, regardless of its nature and scale, to commit the Board members and staff to the essential probity requirements. The Codes for Board members and staff should contain the following requirements –

### 2.3.1 ETHICAL COMMITMENT

- To provide a clear direction to all Board members and staff, the Code should spell out the NGO's firm commitment to clean business practices and prohibition against any bribery and corrupt practices in carrying out the organisation's business.

### 2.3.2 PROHIBITION OF BRIBERY

- The Code should clearly prohibit all forms of bribery or corruption and require compliance with the POBO in carrying out business for the organisation. Board members and staff should be prohibited from –
  - soliciting or accepting any advantage from others as a reward for or inducement to doing any act in relation to the organisation's business;
  - offering any advantage to an agent of another as a reward for or inducement to doing any act in relation to the latter's principal's business; and
  - offering any advantage to any government officer or public servant as a reward for or inducement to performing any act in his official capacity, or while having official dealings with the government or public body he belongs to.

### 2.3.3 ACCEPTANCE OF ADVANTAGES

- To maintain a high standard of integrity among the NGO's personnel, the Code should –
  - prohibit Board members and staff from soliciting or accepting advantages from persons having official dealings with the organisation (e.g. suppliers), except accepting certain advantages within specified permissible natures, values and under specified circumstances or occasions (e.g. souvenir of a nominal value) with no improper influence involved; and

- prohibit Board members from soliciting and accepting advantages from staff whom they may have an influence and staff from soliciting and accepting advantages from subordinates.

## ACCEPTANCE OF SPONSORSHIP

■ Sponsorship, such as attending local / overseas conferences, conventions and product trial activities which may comprise passage, accommodation, or other fees, is a form of advantage under the POBO (📄 **Section 1.2.1**). As Board members and staff may be offered sponsorship in their official or personal capacity, the Code should include following guidelines to uphold the propriety in their acceptance of sponsorship –

- sponsorship offered to Board members and staff for official purposes should be regarded as sponsorship offered to the NGO and referred to the latter for consideration of acceptance, based on operational need, and assignment of the Board member / staff to attend the sponsored activity, based on suitability (📄 **Annex 3 of Appendices 1 and 2**); and
- for sponsorship offered to Board members and staff due to their personal expertise or professional membership by a party having official dealings with the NGO and the former's duty is related to, or could potentially or seen to be influenced by, the content or result of the sponsorship, Board members and staff should ensure that their conduct and activities would not bring them or the NGO into disrepute or lead to any actual or perceived conflict of interest (📄 **Section 2.3.6**).

## 2.3.4 OFFER OF ADVANTAGES

■ While the offering of advantages to or exchange of gifts with others having official dealing may sometimes be seen as a business custom, it may also give rise to the risk of corruption. To protect the NGO and its Board members and staff from perception or allegations of impropriety, the Code should –

- prohibit Board members and staff from offering of advantages to agents of others (e.g. a director or staff member of another organisation) to improperly influence them in official dealings; and

- where bestowing gifts / souvenirs is unavoidable due to operational, protocol or other reasons, remind Board members and staff that the gifts / souvenirs to be bestowed should not be lavish or extravagant, and be kept to a minimum in quantity and the exchange of gifts / souvenirs should be made from organisation to organisation.

### 2.3.5 ACCEPTANCE OF ENTERTAINMENT

■ Entertainment (📍 **Section 1.2.1**) is an acceptable social activity, but extravagant or frequent entertainment offered to the Board members or staff from persons having official dealings with the NGO may have or be seen to have a sweetening effect which may lead to corrupt behaviour in future. The Code should include guidelines on entertainment, advising them to avoid accepting entertainment that may be regarded as –

- **excessive** – taking into account its value, substance, frequency and nature;
- **inappropriate** – taking into account the relationship between the Board member / staff member and the offeror; or
- **undesirable** – taking into account the character or reputation of the host or known attendees,

and may require them to report or seek approval for acceptance of such entertainment.



**As a manager of an NGO, I am responsible for monitoring the performance of the NGO's contractors who sometimes invite me for lunch / dinner. Is it proper if I accept free lunch / dinner from them?**



Entertainment (e.g. lunch or dinner) is defined in the POBO as 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. Although the POBO does not prohibit the acceptance of entertainment, lavish or frequent treats may be a prelude to corruption. Some unscrupulous contractors may make use of the entertainment as a sweetener or make the recipients feel obliged to pay back (e.g. laxity in supervision or even connivance at the contractor's underperformance).



Therefore, while entertainment might be a common business practice in the commercial sector, an NGO should lay down policy and/or guidelines on the acceptance of entertainment. In principle, NGO staff should not accept lavish, or unreasonably generous or frequent entertainment, or indeed any entertainment that is likely to give rise to any potential or real conflict of interest, put the staff in an obligatory position in the discharge of their duties (e.g. from contractors whom they have a monitoring role), compromise their impartiality and judgement, or bring them or the NGO into disrepute bearing in mind public perception.

## | 2.3.6 CONFLICT OF INTEREST

### DEFINITION OF CONFLICT OF INTEREST

- A conflict of interest situation arises when the “private interests” of a Board member or staff member compete or conflict with the interests of the NGO or the Board member’s or staff member’s official duties.
- Private interests include financial and other interests of –
  - the Board member / staff member himself;
  - his family and other relations;
  - his personal friends;
  - the clubs and associations to which he belongs;
  - any other groups of people with whom he has personal or social ties; or
  - any person to whom he owes a favour or to whom he may be obligated in any way.
- Some common examples of conflict of interest are provided at ***Annex 4 of Appendices 1 and 2.***

## MECHANISM TO MANAGE CONFLICT OF INTEREST

- NGOs should adopt a “three-step mechanism” in managing conflict of interest –
  - **Avoid** – All Board members and staff should remain alert to and avoid any actual, potential or perceived conflict of interest situation;
  - **Declare** – If the conflict is unavoidable, the Board member or staff member should report it to the designated approving authority once he becomes aware of the conflict; and
  - **Mitigate** – The designated approving authority, after assessing the impact of the conflict and the risk of impropriety, should take appropriate mitigating measure as early as possible.
- The mitigating measure to be taken would depend on the circumstances of individual cases and the level of mitigation should commensurate with the severity of the conflict.
- Proper documentation of the declaration, the rationale for the decisions made and the course of mitigating measure taken should be maintained for audit and future reference. The sample forms for making the declaration, recording the decision made and the mitigating measure taken by Board members and staff are at **Annex 6 of Appendix 1** and **Annex 5 of Appendix 2** respectively for reference.
- As a matter of principle, Board members should avoid entering into any business contract (e.g. for the supply of goods or services) with the NGO in their personal capacity to prevent the public perception of Board members using their capacity to obtain financial gains from the organisation. Where this is unavoidable, the NGO should set out guidelines on managing possible conflict of interest in bidding for the organisation’s business contracts (**Annex 8 of Appendix 1**) for compliance by Board members.
- Depending on the operational needs and circumstances, the NGO may require a staff member who participates in tender exercises or projects / exercises involving sensitive issues / information, or with public concerns to **declare if they have or do not have any conflict of interest** on the matter in order to protect the public interest and the interest of the NGO.



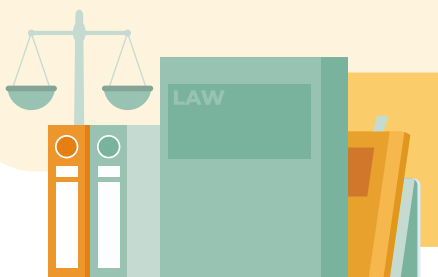
## Case Study 1 – Concealing Conflict of Interest in Property Transaction with the NGO

- 1 Ms Lee was a member of the Board of an NGO and assisted the NGO in purchasing a property for expansion of service, including identification of suitable property and negotiation of the purchase price.



- 2 Ms Lee recommended the NGO to purchase a property owned by her close friend and, although at market price, did not make disclosure of the conflict of interest situation arisen therein.

- 3 The NGO purchased the property based on Ms Lee's recommendation. Ms Lee's close friend shared some profits with her as a reward for making the property transaction.



Ms Lee and her close friend contravened Sections 9(1) and 9(2) of the POBO respectively.



## Case Study 2 – False Declaration in a Procurement Exercise



Mr Fong

1 Mr Fong was the manager of a day care centre for the elderly operated by an NGO. He was responsible for sourcing physiotherapy service providers for the centre, receiving and handling quotations, and making recommendation to his manager for contract award.



Mr Fong's sister

2 Mr Fong's sister was the owner of a company providing physiotherapy services, which was also one of the bidders in that procurement exercise.



3 The NGO required all staff involved in procurement exercises to declare if they had any actual or potential conflict of interest with the bidders. While knowing that his sister's company had submitted quotation, Mr Fong declared that he had no conflict of interest in the procurement exercise. Subsequently, the contract was awarded to his sister's company.

4 Being aware of the relationship between Mr Fong and his sister, an unsuccessful bidder lodged a complaint to the NGO, alleging that the bidding process was unfair.



Mr Fong using false declaration with an intent to deceive his principal committed Section 9(3) of the POBO.



**I work for an NGO which requires staff members to declare any conflict of interest situation when it arises. I was deployed to sit in the interview panel in a recruitment exercise where I found out that one of the interviewees was my classmate from secondary school. Do I still need to make such a declaration if I can uphold impartiality in carrying out my official duties (i.e. assess the performance of all interviewees fairly in the case) despite the conflict of interest situation?**



Yes. A conflict of interest could be actual, potential or perceived. It does not only exist when a staff member has actually put his private interest over official interest or abused his office to further his or his related party's interest, but is present as soon as the staff member is in a position where he possesses conflicting interests. It is the staff members' responsibility to avoid and disclose any conflict of interest.

With regard to the circumstance in question, if the staff member fails to disclose such a conflict of interest, the NGO could not take appropriate measure to mitigate the risk arising from the conflict (e.g. redeploying another officer with no conflict of interest to take up the duties of interview panel member) and even worse, giving rise to allegation of bias and unfairness, and putting the NGO into disrepute. Moreover, such failure of declaring the conflict as required would cast doubt on the staff member's integrity and might even constitute misconduct on the staff member concerned.

### | 2.3.7 MISUSE OF OFFICIAL POSITION

- The Code should prohibit Board members and staff from misusing their official position in the NGO for personal gains nor accord preferential treatment to organisations or persons with whom they have connections.

### | 2.3.8 CONFIDENTIALITY OF INFORMATION

- The Code should remind Board members and staff to safeguard any classified or proprietary information (e.g. personal data of service users) of the NGO, and not to disclose them without authorisation.

### | 2.3.9 HANDLING OF RECORDS, ACCOUNTS AND OTHER DOCUMENTS

- The Code should require Board members and staff to ensure that all records, receipts, accounts, etc. they submit to the NGO give a true representation of the events or transactions reported in the documents.

### | 2.3.10 REPORTING OF SUSPECTED IRREGULARITIES AND CRIMINAL OFFENCES

- The Code should clearly state the NGO's policy on handling reports of misconduct and criminal offences including corruption, and encourage Board members and staff to report instances of crime or suspected crime discovered in the course of their work to the appropriate authority or law enforcement agency at the first practicable opportunity. The Code should also require Board members and staff to avoid making any enquiries or taking any action that may hinder or frustrate subsequent investigation by the law enforcement authority concerned.

### | 2.3.11 COMPLIANCE WITH THE CODE OF CONDUCT

- To uphold Board members' and staff's awareness of their responsibility to adhere to the NGO's probity requirements and the consequence of non-compliance, the Code should stipulate that any Board member or staff member in breach of the Code would be subject to disciplinary actions including termination of appointment, and that suspected corruption or other criminal offences will be reported to the appropriate law enforcement agencies.



### **Should volunteers also be subject to the NGO's Code of Conduct for staff?**



To foster an ethical culture in the organisation, NGOs are encouraged to promote integrity and ethical practice of their volunteers. Yet, given to the different roles and responsibilities between volunteers and staff, not all provisions provided in the NGO's Code of Conduct for staff would be applicable to volunteers (e.g. acceptance of sponsorship). If an NGO wishes to raise the integrity awareness of volunteers, it may, having regard to their operational needs, issue the same Code of Conduct or separate probity guidelines to them as appropriate.

## **2.4 OTHER SAMPLE GUIDELINES IN A CODE OF CONDUCT**

Having regard to the values and operational needs of the organisations, NGOs may also incorporate in their Codes the following guidelines for compliance by Board members and staff –

### **| 2.4.1 USE OF THE ORGANISATION'S FUNDS, ASSETS AND RESOURCES**

- NGOs are entrusted by the Government, sponsoring organisations and donors for making the best use of the funds and resources in achieving their missions and providing services to the people in need. To ensure that the organisation's funds are used in a prudent and responsible manner, the Code should –
  - require Board members and senior management / designated staff (e.g. approving authority) to only approve funds for any project / activity / expenditure item which falls within the ambit of the funds and can achieve the purpose of the funds;
  - require Board members and staff to particularly ensure that an open, fair and competitive mechanism is adopted for the procurement of goods / services / assets, sale of assets, etc. (➡ **Chapter 5**); and

- require Board members and staff having access to the NGO's assets to make the best use of them economically and effectively, and solely for the purpose of conducting the organisation's business.

## **| 2.4.2 OUTSIDE WORK OF STAFF**

- While it may not be uncommon for a staff member to engage in outside employment / service, such outside work may impair the performance of his duties, distract his attention from them or even give rise to a conflict of interest (e.g. part-time employment with a supplier). The Code should –
  - require all staff to seek prior approval of the designated authority before taking up any outside employment / service; and
  - remind the approving authority to consider whether the outside employment / service would pose a conflict of interest with the staff member's duties in the organisation.

## **| 2.4.3 MANAGING RELATIONSHIP WITH PERSONS HAVING OFFICIAL DEALINGS**

- To uphold Board members' and staff's impartiality in discharging their official duties and handling their relationship with persons having official dealings, the Code should remind them to –
  - avoid engaging in gambling activities with persons having official dealings with the NGO (e.g. suppliers);
  - avoid accepting loans from, or with the assistance of, any person having official dealings with the NGO (except from normal bank loans); and
  - avoid allowing themselves to get into a position where any debts they may have become unmanageable and other financial embarrassment which may bring the NGO into disrepute.

## **| 2.4.4 SUPERVISORY ACCOUNTABILITY**

- All staff who have a responsibility to supervise and direct subordinates should embrace a two-fold responsibility, namely –
  - the satisfactory discharge of his own duties; and
  - his duties as a supervisor.



- To exercise the level of leadership, management and supervision required of his position as a supervisor, a staff member should –
  - provide adequate guidance, advice, counselling and training for staff;
  - monitor the conduct and performance of staff to ensure that they meet the standards required;
  - be alert to signs of malpractice in the workplace (e.g. unauthorised absence from work); and
  - take prompt and decisive action to handle misconduct and poor performance.

## **2.5** ICAC SERVICE AND OTHER ASSISTANCE

- The “**Corruption Prevention Advisory Service**” (CPAS) of the Corruption Prevention Department (CPD) of the ICAC could offer assistance to NGOs in drawing up the respective Codes for their Board members and staff. Information on the corruption prevention advisory and education services that the ICAC may provide on request is at **Appendix 4**.





# 3 GOVERNANCE AND INTERNAL CONTROL

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3.1 Introduction

3.2 Governance Structure

3.3 Proceedings of Board and  
Functional Committees

3.4 Key Elements of Internal Control

# 3 GOVERNANCE AND INTERNAL CONTROL

## 3.1 INTRODUCTION

Good governance and internal controls are the main pillars for ensuring the efficiency and sustainability of an NGO and effective tools to prevent corruption and deter other malpractice (e.g. fraud). Through the setting of the NGO's values, standards and requirements, good governance instigates transparency, accountability and ethical decision-making, while an effective internal control system encompasses the policies and procedures adopted to ensure compliance with them. To establish good governance and foster sound internal controls, the NGO's leadership, including the Board and senior management, needs to demonstrate strong and visible commitment to anti-corruption practices. All personnel in the NGO also play vital roles in helping the organisation to adopt anti-corruption policy and controls. This Chapter covers the roles and responsibilities of respective personnel within the NGO's governance structure and proceedings, and the key elements of an effective internal control mechanism.

## 3.2 GOVERNANCE STRUCTURE

The responsibilities of respective parties within the governance structure of an NGO and their roles in enhancing / implementing the organisation's anti-corruption policy and controls as recommended by CPD are set out below. Please note that the recommended practices below are by no means exhaustive and that individual NGOs may consider adopting them, among others, taking into account their governance structure, operational scale and needs, etc. while adhering to the principles of the recommended measures.

### 3.2.1 BOARD

- The Board, under the leadership of the Chairman, assumes the responsibility of leadership and overall monitoring of the NGO. It should comprise a suitable number of members with sufficient knowledge and relevant experience / expertise that enable it to carry out its functions effectively and efficiently. To ensure that the Board can guide the NGO and oversee its activities effectively, it should –
  - lay down the mission of the NGO, including a statement of commitment to ethical practices in the conduct of all businesses and activities of the NGO;
  - draw up the terms of reference of the Board, including its accountability to members for the proper running of the NGO;
  - define clearly the respective roles and responsibilities of the chairman, members, co-opt members, and the key posts of the executive arm (e.g. the secretary and treasurer);
  - determine the number of Board members, having regard to the size and nature of the NGO, providing a way for the expansion of the Board membership when necessary;
  - formulate a policy on the mix of the Board membership (e.g. percentage of members with different professional or industry background or other expertise, such as community service experience);
  - formulate a policy on the maximum term of office of the chairman, members, and the key post holders to provide for the admission of new talents into the Board;
  - segregate the roles and responsibilities of the Board and the executive function of the NGO, the former should only be responsible for providing leadership, setting strategic directions and monitoring implementation of the laid-down policies and strategies; and
  - appoint different persons to be the Board Chairman and the Chief Executive Officer or Executive Secretary to maintain checks and balances.

- The Board and its members should demonstrate a visible and strong commitment to anti-corruption objective and strategies, and oversee to ensure that an effective anti-corruption policy is established, maintained, consistently followed and regularly reviewed. Board members should lead and be the role model of a performing individual in accordance with the NGO's governance policy including the anti-corruption policy / controls.

### 3.2.2 FUNCTIONAL COMMITTEES

- While the Board has the ultimate responsibility for setting the objectives and strategies, functional committees can deal with specific tasks (e.g. overseeing major functions such as finance and audit) for which they have been delegated by the former. They play pivotal roles in ensuring that high standards of governance are maintained throughout the NGO and met as specified in their respective terms of reference. To ensure that functional committees could discharge their duties properly, NGOs should –
  - establish committees to oversee major functions (e.g. finance and audit), specifying the membership, terms of reference and procedures for nominating members (→ **Section 3.3.1**);
  - lay down the number and expertise required of the co-opt members and the nomination procedures if appointment of such members to individual committees is required; and
  - require the committees to report back to the Board, and the latter to review the delegated committees regularly to ascertain members of the committees collectively and individually remain effective in discharging their duties and responsibilities.
- To enhance effective implementation of the anti-corruption policy / controls of the NGO, the Board could delegate / designate a relevant committee such as Audit Committee with suitable knowledge and expertise to ensure accountability and effective oversight of the implementation of the anti-corruption policy / controls, taking into account the organisational structure of individual NGOs.



**What are the common functional committees in NGOs?  
What are the additional advice for establishing these functional committees?**



While individual NGOs can establish functional committees based on their organisational structure and operations and where resources permit, some common functional committees are Audit Committee, Nomination Committee, Finance Committee, and Remuneration Committee. For NGOs where the establishment of such functional committees is not practical (e.g. due to small scale), they may put in place adequate control mechanisms (e.g. closer monitoring by the Board, forming taskforces / working groups to oversee specific areas, engaging external advisors to provide advice on specific areas) to oversee the major functions of the NGOs. The additional advice for NGOs in establishing committees are set out below –

#### **Audit Committee**

- The Committee oversees all internal and external auditing activities. NGOs should appoint an independent Board member who is not the chairman of the Board or other functional committees as the Audit Committee's chairman, and at least one member with accounting or auditing knowledge to join the Audit Committee.

#### **Finance Committee**

- The Committee oversees the NGO's financial planning, management and reporting matters, including the use of sponsorship / donations. It also makes recommendations and delivers reports for the Board's approval / information in respect of the NGO's finance and accounts including, among others, annual budget and audited accounts, budgets and financial reports of fund-raising activities, and appointment of auditors.

## Remuneration Committee

- The Committee considers the NGO's remuneration policy, the levels of remuneration for individual senior executives (e.g. taking into account their performance in meeting the organisation's objectives), and the pay scale for other staff. To avoid conflict of interest, the Remuneration Committee should only comprise non-executive board members (i.e. those non-remunerated members).
- Alternatively, small NGOs should devise an effective mechanism (e.g. forming taskforce / working group to consider remuneration matters as and when necessary) for considering the above remuneration-related matters for the organisation.

### 3.2.3 HONORARY MEMBERSHIP

- From time to time, an NGO may consider appointing retired Board members as honorary members (e.g. honorary chairmen and patrons) in recognition of their contribution and to retain their valuable expertise. For example, it may invite the honorary members with the relevant expertise and experience to attend meetings of the Board or committees as advisors if warranted. In this connection, honorary members should assume the same responsibility as other Board or committee members in overseeing the implementation of the anti-corruption policy / controls in the NGO.


### 3.2.4 SENIOR MANAGEMENT

- Senior management, led by the Chief Executive Officer or Executive Secretary, is accountable for carrying out the day-to-day operations and implementing systems and controls in accordance with the culture and strategies as set out by the NGO, and answerable to the Board through appropriate reporting lines to facilitate the Board's oversight of the management of the NGO.



- The senior management should be responsible for designing and formulating the anti-corruption controls / measures in the NGO and ensuring that adequate resources and expertise are in place for the effective implementation. They should review the anti-corruption system regularly and report to the Board, including among others, recommendations to address areas of concern and enhance effectiveness of the system.

### | 3.2.5 STAFF IN GENERAL

- Staff at all levels should resist corruption and help the NGO to uphold ethical practices. As a crucial part in the implementation of good governance in the NGO, they should familiarise themselves with the requirements of the anti-bribery laws (i.e. the POBO) in Hong Kong ( **Section 1.2**), have good understanding of the corruption risks in their working environment and the proper controls / measures they should adopt. They should also be alert of the requirement to promptly bring to the attention of the management or appropriate reporting channel of any corruption or practices conducive to corruption. In case of suspected crimes, they should also render full assistance to law enforcement agencies in the investigation of criminal offences.

## 3.3 PROCEEDINGS OF BOARD AND FUNCTIONAL COMMITTEES

- To establish strong governance, it is advisable for NGOs to incorporate in their Memorandum and Articles of Association (for NGOs registered under the Companies Ordinance, Cap. 622), Constitution (for those registered under the Societies Ordinance, Cap. 151), other constitutional documents or relevant legislation / ordinances, as appropriate, the key elements of the governance structure and proceedings (e.g. methods for election of Board members, terms of office, meeting arrangements and rules governing declaration of conflict of interest).

### | 3.3.1 NOMINATION AND ELECTION OF BOARD AND FUNCTIONAL COMMITTEE MEMBERS

- Establish a mechanism for all Board members and voting members to nominate candidates for Board membership, in addition to those identified by the Nomination Committee.

- Elect members of the functional committees from those Board members who have expressed interest, and avoid appointing members by a single person.
- Adopt an election procedure with adequate checks and balances to ensure fairness and transparency in the process (e.g. by requiring members to declare their relationship with the persons they are going to nominate and reminding members not to unduly influence other members' nomination or election decisions).

### 3.3.2 CONDUCT OF MEETINGS

- Lay down the rules of proceedings at meetings of the Board and functional committees, including –
  - frequency of meetings;
  - the quorum of a meeting (e.g. not less than three members or one-third of the membership, whichever is higher); and
  - specify a minimum attendance rate required of members at the Board and functional committee meetings.
- Lay down the rules and procedures for conducting Annual and Extraordinary General Meetings, such as the notification of meetings, preparation of agenda, quorum, etc.
- Give sufficient advance notice of a regular Board or functional committee meeting (e.g. 14 days) to ensure that all members could find time to attend.
- Include in the agenda of the meeting the discussion items (e.g. proposed resolutions), the place, date and time of meeting, enclosing any discussion papers for members' prior reading.
- Accurately record in minutes the discussion and any resolutions passed, including any dissenting views of individual members raised at the meeting.



**Are anti-corruption controls / programme important to an NGO?**



Corruption, fraud and other malpractice erode profits, damage the NGO's reputation and jeopardise its operation in the long run. To enhance the detection and deterrence against



corruption, an NGO, irrespective of its size / scale, should instigate an anti-corruption programme as early as possible, taking into account the requirements of all applicable laws, in particular the POBO. An effective anti-corruption programme should include the following essential elements –

- an anti-corruption policy;
- ethical standard and anti-corruption guidance for all personnel, including Board members and staff, through a Code of Conduct (📄 **Sections 2.3 and 2.4**);
- a mechanism for the identification and assessment of corruption risk (📄 Major corruption risks and red flags at **Chapters 4 to 6**);
- anti-corruption controls (📄 Internal controls at **Section 3.4** and corruption prevention safeguards at **Chapters 4 to 6**); and
- training and communication (📄 Information of ICAC corruption prevention and education services at **Appendix 4**).



**Can small NGOs implement internal controls despite their resources limitation?**



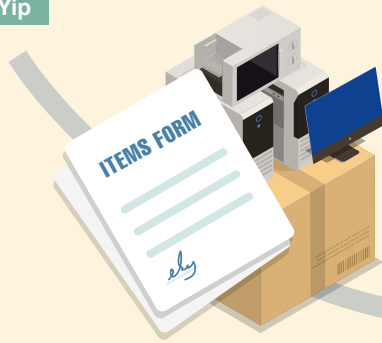
NGOs can adopt corruption prevention measures that are suitable for their operational needs, with regard to their scale, resources, risk exposure, etc. In view of their resources constraints, small NGOs may need to adopt a flexible approach in setting up their own internal control system, while adhering to the principles of the recommended best practices. The Corruption Prevention Advisory Service (CPAS) of CPD (📄 **Appendix 4**) will provide free, confidential and tailor-made corruption prevention advice on request.



## Case Study 1 – Lax Supervisory Monitoring Giving Rise to Misappropriation of In-kind Donations



Mr Yip



1

An NGO provides onsite collection of used computers and related equipment from donors for refurbishment and donation to the needy. Upon receipt of the donation form, Mr Yip, the Project Manager of the NGO, confirms the collection date and time with the donor.



Mr Lau

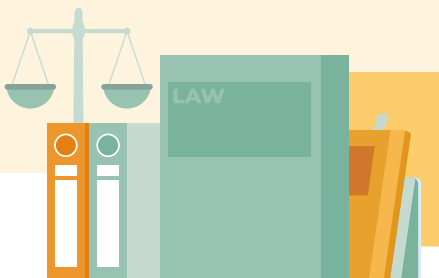
2

Mr Lau, a Project Assistant of the NGO, was responsible for collecting the items from donors where the latter would be asked to sign on the collection form to confirm the number of donated items collected.



3

Noting that Mr Yip neither checked the signed collection forms nor inspected the collected items, Mr Lau amended the number of donated items on the forms to conceal the fact that he sold some computers / related equipment collected to a recycle dealer and pocketed the money.



Mr Lau using a document with an intent to deceive his principal contravened Section 9(3) of the POBO.



## Case Study 2 – False Claims Detected by Internal Audit

**1** Mr Chan worked for an NGO and was deployed to organise a community event which included a dance performance by the NGO's volunteers and service users.

**2** Mr Chan made petty cash purchases to buy the costumes and props for the dance performance and submitted the invoices to the NGO for reimbursement on different occasions.



**3** An internal audit on the community event revealed that Mr Chan fabricated the invoices purportedly issued by a supplier to make the claims. In fact, none of the costumes nor props were procured from the supplier.

Mr Chan using false invoices with an intent to deceive his principal contravened Section 9(3) of the POBO.



## 3.4 KEY ELEMENTS OF INTERNAL CONTROL

- Effective internal control is important for an organisation as it provides the framework for plugging the loopholes for corruption and other malpractice from the outset. The Board should review the internal control system from time to time to ensure that it is commensurate with the nature and scale of the relevant NGO's operation. The key elements of an effective internal control system are highlighted below –

### 3.4.1 CLEAR POLICIES, WORK PROCEDURES AND GUIDELINES

- Lay down clear policies, procedures and guidelines for the NGO's major functions, such as financial management, provision of services and procurement for staff compliance and implementation.
- Where committees are established, clearly define their mandates, appropriate authority, and ensure appropriate independence and objectivity to carry out their functions.
- Stipulate the roles and responsibilities of each level of staff or post and the authorities for making decisions in various functions, with clear lines of reporting with requirements of accountability.

### 3.4.2 CHECKS AND BALANCES

- Implement segregation of duties in important processes as far as practicable (e.g. assigning different persons to source suppliers and to draw up the requirements in procurement).
- Institute policies and procedures such as cross-checking of documents, dual control of assets and conduct of random, risk-based and independent checks on important processes (particularly those performed by a single staff member) to detect and deter possible malpractice.
- Put in place staff administration measures such as job rotation and assignment of a second / backup officer where practicable for functions with high risks of corruption or malpractice.

- Make transparent key information in relation to the NGO's operations (e.g. service availability, eligibility criteria and application details, performance pledges and major financial information including financial statements and use of donations) through the NGO's website, annual reports, and pamphlets, etc. to help mitigate the risk of corruption arising from the lack of transparency of information, and facilitate external monitoring.

### | 3.4.3 RECORD KEEPING AND INFORMATION SECURITY

- Put in place a record keeping system and require staff to keep proper record of the activities carried out (e.g. approval and making of payments) in the form of written and/or digital / electronic data etc. for future audits and deterrence of malpractice. Document decisions / actions for important or exceptional cases with justifications.
- Lay down the policy and rules on classification and handling of information (e.g. limit access to restricted / sensitive information to authorised staff only on a need-to-know basis and require them to protect the information from leakage).
- Build in security safeguards to protect both hardcopy and record / data in the computer system from tampering or destruction (e.g. require staff to lock up confidential documents when not in use, build in audit trail function, generation of management reports for identification and follow up of abnormalities).
- Remind staff that unauthorised disclosure of or tampering with records could constitute a breach of the NGO's rules or even a criminal offence, and disclosure in return for advantages may amount to bribery.

### | 3.4.4 SUPERVISORY MONITORING AND ACCOUNTABILITY

- Remind supervisors to remain vigilant at all times to potential risk of corruption or other malpractice (🚩 red flags in **Chapters 4 to 6**).
- Provide relevant information (e.g. financial statements, budgets, statistics, legislation) to enable supervisors to fulfil their responsibility effectively.
- Require supervisors (e.g. unit heads) to devise measures to deter or detect malpractice (e.g. conduct routine and/or risk-based spot checks on operations and activities, generate management / exceptional reports to facilitate monitoring of important operations), and make thorough enquiries into suspected irregularities and/or report to appropriate authorities.

- Require supervisors (e.g. unit heads) to make regular reports on the major activities in progress and on completion to the senior management to facilitate monitoring, including statistical analysis, deliverables and matters of concern, if any.

### **| 3.4.5 TRAINING AND COMMUNICATION**

- Ensure the NGO's guidelines including the Code are well understood by Board members and staff and where appropriate, other business partners through circulars, briefings or training sessions.
- Equip a newly appointed Board member or senior staff member with suitable induction to enable them to discharge their duties properly. Include anti-bribery knowledge (e.g. the POBO, key corruption risk indicators, common corruption risks and safeguards as well as integrity challenges the NGO needs to handle) in the training.
- For other staff, apart from operational training, provide them with training on anti-bribery laws, corruption risks and related measures for specific function(s), pitfalls relating to integrity issues (e.g. conflict of interest) the staff may face in their operations, and guidance on how to properly deal with them.
- Ensure effectiveness of the training by adopting different formats (e.g. e-training, simple quiz) with content reviewed, updated and enhanced from time to time, conducting periodic reviews and providing information on available training and resources.
- Issue periodic reminders of the NGO's anti-corruption policy such as before festivals when gifts are customarily offered or exchanged.

### **| 3.4.6 COMPLAINT AND REPORTING CHANNELS**

- Provide user-friendly survey or hotline to collect service users' feedback on the services provided by staff and encourage service users to reflect their opinions frankly.
- Develop procedures and guidelines for the proper handling of enquiries / complaints / reports. In particular, for complaint handling, the procedures should include accessibility, record keeping, time frame and monitoring, etc. to ensure all complaints are properly handled with appropriate reporting mechanism to the Board and senior management.



- Establish a system for reporting of corruption and violations, which covers the following –
  - state the organisation's anti-corruption policy and provide suitable channels for reporting corruption and violations of the policy;
  - require all personnel of the organisation to report promptly any corruption to the ICAC or through the reporting channels provided as appropriate;
  - encourage business partners (e.g. suppliers, contractors) to report corruption or corruption attempts by any of the organisation's personnel;
  - provide assurance of confidentiality, prompt handling and non-retaliation to the staff who make a report in good faith;
  - reiterate the zero-tolerance policy towards any corrupt behaviour detected, which will result in reporting to the relevant law enforcement agency and disciplinary action such as termination of appointment / employment (in the case of Board members and staff) or termination of contract and exclusion from future bidding (in the case of suppliers / contractors); and
  - inform the Board regularly on the reports received and handled (e.g. number, type, handling of complaints).

### **3.4.7 CORRUPTION RISK ASSESSMENT AND MANAGEMENT**

- Include corruption risks as an integral part of the NGO's risk management system and accord them an equally high priority as other operational risks, and establish mechanisms to prevent and mitigate the corruption risks with continuous monitoring / review.
- Recognise the serious damage of corruption to the NGO when devising the risk management policy, and hence adopt the lowest level of acceptance for corruption risks that the NGO is willing and able to take.
- Designate a team of suitable staff (which could be within the internal audit function) to perform the corruption risk management function, which should have direct reporting line to the Board (or designated committee, e.g. Audit Committee) to ensure its independent assessment and their role should be distinct from other executive functions to avoid conflict of interest in carrying out the functions.

- Ensure that the risk assessment and management framework is able to help identify operations, processes and practices that are prone to corruption or weaknesses that give rise to corruption risks, and put in place anti-corruption measures to prevent and mitigate the risks identified with continuous monitoring / review.

### 3.4.8 REVIEWS AND AUDITS

- Put in place ongoing audit function of a nature and scope appropriate to the nature and scale of the NGO's operation, including external audit as well as internal audit to independently evaluate the effectiveness of risk management, control and governance processes, and ensure compliance with all applicable policies and procedures.
- Ensure that the internal audit function –
  - is independent from operation under audit, sufficiently staffed by auditors of appropriate qualification and training, has unfettered access to all records, assets, personnel and premises, and to obtain such information and explanations as and when considered necessary;
  - develops an audit programme setting out the auditing assignments to be performed and conducts regular reviews of the programme taking into account the risk of key business processes; and
  - reports directly to the Audit Committee, if established, or the senior management and draws their immediate attention to any significant irregularities detected in the course of audit review.
- Conduct regular or random independent audits on operations / processes / transactions that are exposed to risks of corruption or malpractice to detect and deter irregularities. Deploy management / exception reports and computer-aided audit tools to facilitate the audit.
- Require the Board to give due consideration to the opinions and findings of both the internal and external auditors, and take timely actions on the recommendations, as well as monitoring the progress in redressing any problems raised by the auditors. Document the Board's views in case they are different from the auditor(s)' opinion.
- Regularly review the NGO's policies, procedures and practices as well as monitor and review the associated risks and corresponding controls, and update / improve the policies, procedures and controls where necessary to ensure they are sufficient and appropriate for the NGO's operation.

### | 3.4.9 CONTROL THROUGH DIGITALISATION

- Review the NGO's operations with a view to identifying work processes which should benefit from digitalisation and where resources permit, so as to strengthen process control, enhance efficiency and monitoring, and reduce manual handling, etc. and in turn help prevent corruption and malpractices.
- When developing the computer systems, identify and build in functionalities or innovation and technological solutions that serve to enhance corruption prevention in the process (e.g. cyber security, data protection, system and information integrity, and auditing / analytics).
- Foster a change in culture for digitalisation through issuing clear policies, providing adequate training and communications to educate staff on the benefits of digital transformation for them and the NGO.
- Conduct periodic monitoring and assessment on systems to ensure effectiveness of risk management and security controls after the launch of the systems.





# 4 FINANCIAL MANAGEMENT AND PROVISION OF WELFARE SERVICES

- 4.1 Introduction
- 4.2 Key Processes
- 4.3 Major Corruption Risks and Red Flags
- 4.4 Case Studies
- 4.5 Corruption Prevention Safeguards for Financial Management
- 4.6 Corruption Prevention Safeguards for Provision of Welfare Services

# 4 FINANCIAL MANAGEMENT AND PROVISION OF WELFARE SERVICES

## 4.1 INTRODUCTION

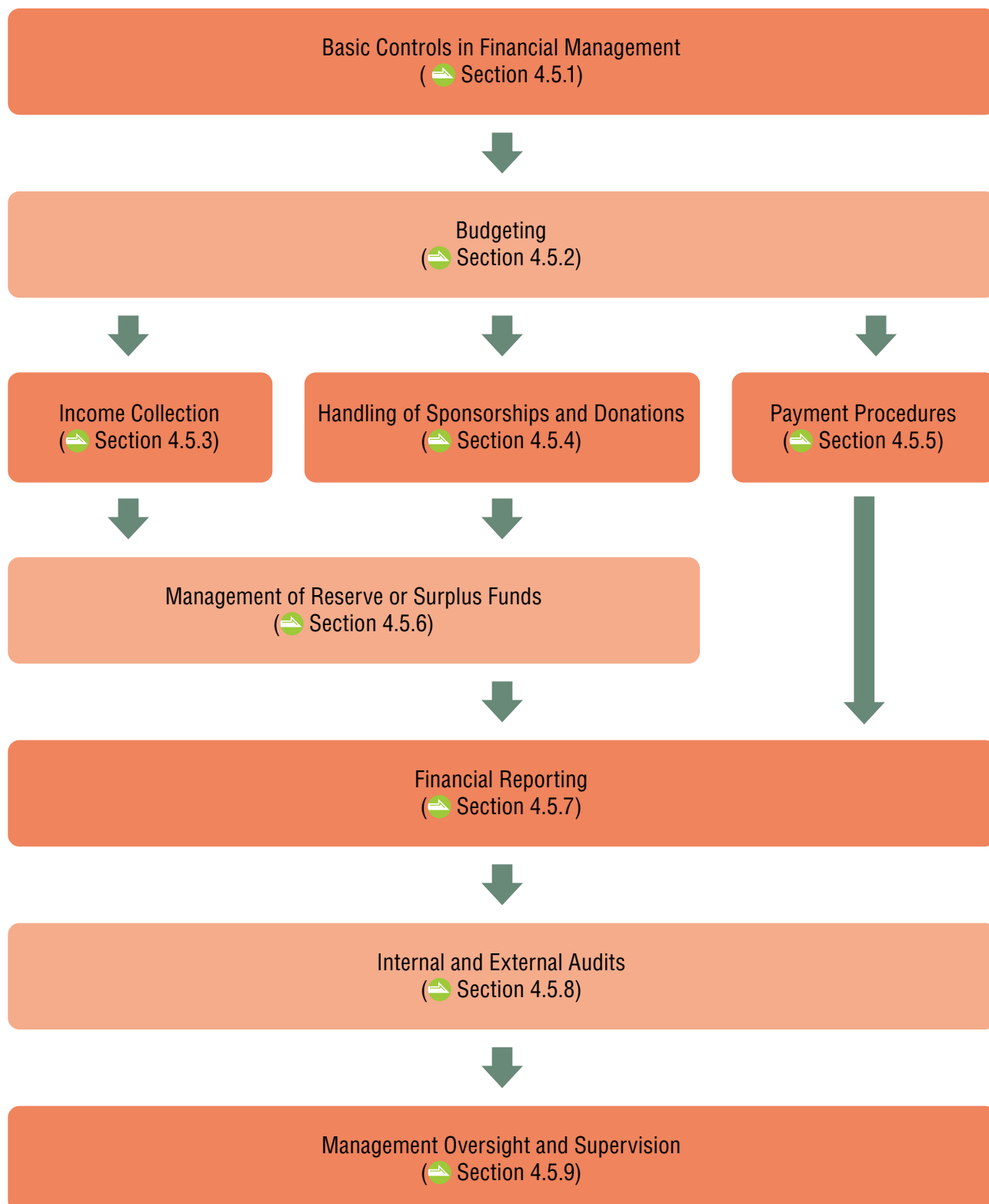
By leveraging Government subventions, sponsorships and public donations, NGOs fulfil their core mission of delivering various kinds of social welfare services to those in need, such as elderly and child care services, assistance for people in adversity and rehabilitation service for persons with disabilities. To ensure that the funds are properly managed and accounted for, it is important for NGOs to put in place a sound financial control system. Moreover, given the high demand but limited resources, there is often keen competition among prospective service users, giving rise to opportunities for corrupt practices (e.g. ineligible applicants submitting false documents to obtain the services, eligible applicants jumping queue on the waiting list). NGOs should put in place adequate safeguards to uphold integrity in the delivery of welfare services.

This Chapter highlights the major risks and introduces control measures in the financial management (covering budgeting, income collection and payment procedures, management of reserve or surplus funds, financial reporting, audits) and provision of welfare services (covering invitation and processing of applications for services, delivery of services to the public, and management oversight) to ensure integrity of the processes.

## 4.2 KEY PROCESSES

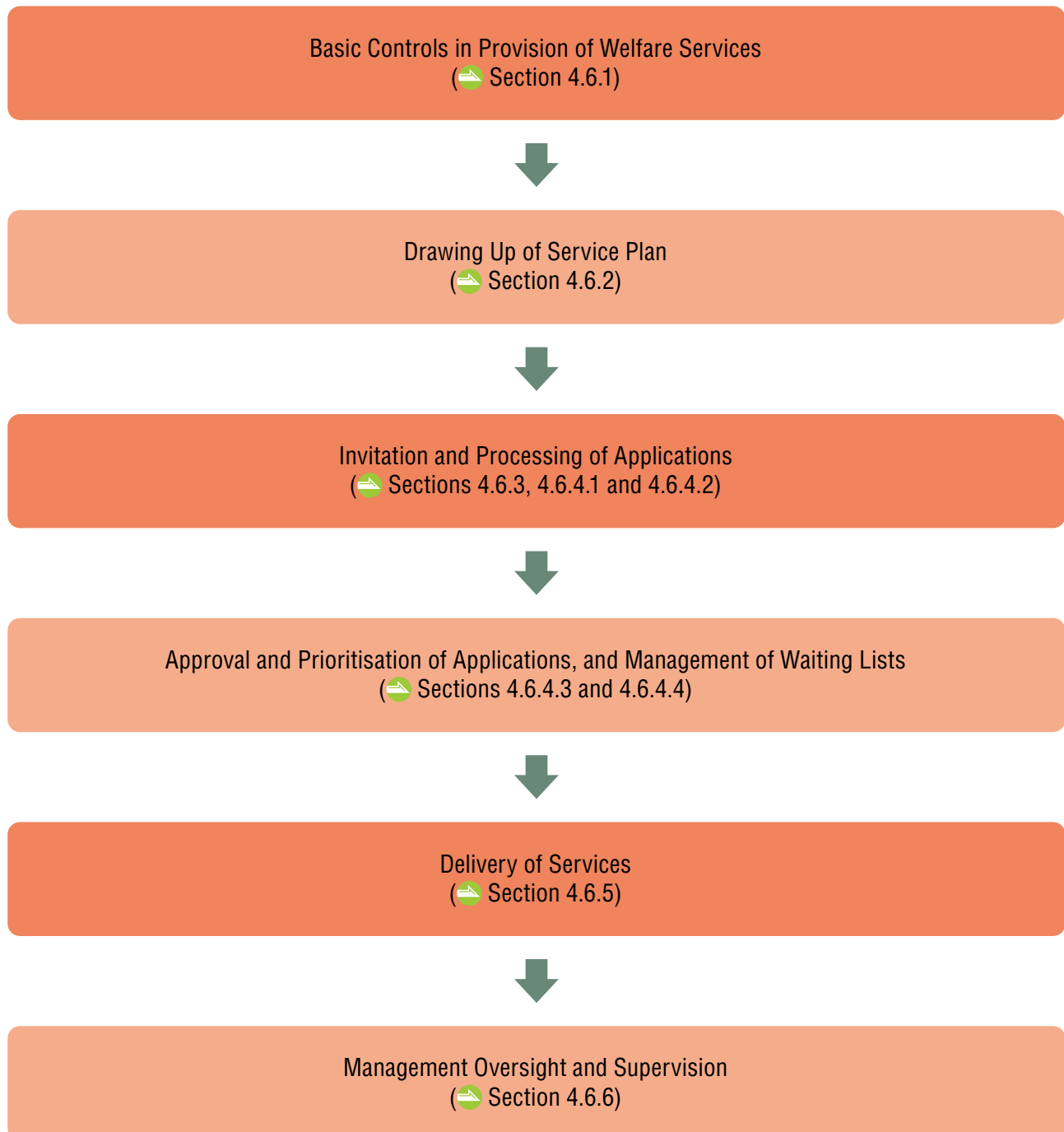
### 4.2.1 FINANCIAL MANAGEMENT

The following flow chart illustrates the key processes in financial management –



## 4.2.2 PROVISION OF WELFARE SERVICES

The following flow chart illustrates the key processes in provision of welfare services –





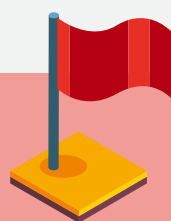
## 4.3 MAJOR CORRUPTION RISKS AND RED FLAGS

### 4.3.1 FINANCIAL MANAGEMENT



#### MAJOR CORRUPTION RISKS

- 🔥 Corrupt staff manipulating budgetary allocations to divert the NGO's funds or cover up financial mismanagement.
- 🔥 Colluded staff submitting false invoices or receipts for claiming petty cash reimbursement.
- 🔥 Dishonest staff embezzling the donations from the collection boxes.
- 🔥 Compromised staff tampering with the donation records to cover up the dubious sources of donations, so as to conceal the illicit incomes with corrupt intentions.
- 🔥 Unscrupulous staff falsifying transactions / accounting records to conceal misappropriation of funds for personal gain.
- 🔥 Corrupt staff offering advantages to the auditor in return for the latter's assistance in conniving at the misappropriation of funds.



#### RED FLAGS OF MALPRACTICE IN FINANCIAL MANAGEMENT

- **Absence of adequate documentation** – Unable to provide original receipts / invoices to support payment claims or reimbursement of expenses, such as petty cash purchase and expenditure incurred in organising events.
- **Ambiguities in accounting** – Ambiguous transactions (e.g. “other expenses” and “miscellaneous items”) are frequently found in the accounting records.
- **Unjustified expenses** – Unnecessary or excessive expenses that are not justified by the needs of the NGO are incurred.

## | 4.3.2 PROVISION OF WELFARE SERVICES

### 4.3.2.1 PROCESSING OF APPLICATIONS FOR WELFARE SERVICES



## MAJOR CORRUPTION RISKS

- 💣 Anxious applicants resorting to corrupt means to obtain insider information to increase the chance of success in their applications (e.g. detailed assessment and/or scoring criteria).
- 💣 Staff having conflict of interest with applicants (e.g. personal relationship) failing to declare the conflict to the appropriate authorities, or accepting advantages from anxious applicants for assisting them in obtaining / securing the services by illicit means, such as –
  - expediting the processing of their applications;
  - making unauthorised amendments to the applications in favour of the colluded applicants;
  - conniving at applicants' submission of false documents to deceive the NGO;
  - manipulating the assessment process to –
    - approve applications from ineligible applicants;
    - accord the applicants with a higher priority on the waiting list for receipt of service without valid justifications; or
    - waive or charge a lower amount of service fees for favoured applicants which are not justified based on the pre-determined criteria;
  - allocating services to applicants with a lower priority on the waiting list before those with a higher priority; and

- circumventing the mechanism for allocating services to recipients (e.g. while balloting is required, colluded staff directly assigns the applicants' preferred transitional housing units to them).



## RED FLAGS OF MALPRACTICE IN PROCESSING OF APPLICATIONS

- **Suspicious supporting documents** – Applicants submitting suspicious supporting documents to prove their eligibility for the service (e.g. outdated or blurred bank statements in support of individual / household income).
- **Queue-jumping of applicants** – Cases handled by a particular staff member often involve queue-jumping of applicants.
- **Inadequate documentation of the application process** – Staff have not maintained adequate documentation or records on the handling and approval of applications as required (e.g. vetting on supporting documents, approval of special cases), or are unable to provide the relevant documents / records for supervisory checks upon request.



## MAJOR CORRUPTION RISKS

- 💣 Dishonest service users offering advantages to staff in return for the latter's –
  - connivance at the users' non-compliance with the service conditions / requirements (e.g. subletting a transitional housing unit, re-selling the food coupons obtained from food assistance service); or
  - assistance in extending the service period (e.g. granting extension of tenancy period of short-term accommodation) without valid reasons or proper approval.
- 💣 Unscrupulous staff offering advantages to supervisors / peers as a reward for the latter to harbour their misconduct in delivery of services (e.g. abusing children under their care).



## RED FLAGS OF MALPRACTICE IN SERVICE DELIVERY

- **Increase in complaints against service delivery** – Repeated complaints on provision of services are received (e.g. allegation of not treating all service users fairly or some service users always get higher priority in receiving the services).
- **Anomaly in service monitoring** – Records of site visits conducted for monitoring the service are incomplete or not maintained as required.

## 4.4 CASE STUDIES



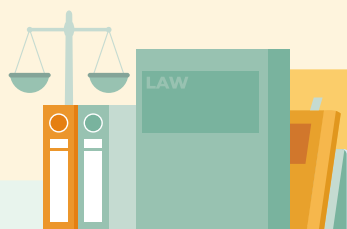
### Case Study 1 – Concealing Misappropriation of Funds with False Accounting Records

**1** Mr Ho was an accounting manager of an NGO. He was responsible for processing payment requests from service units. The NGO set different authorised levels for approving payments and signing of cheques and Mr Ho was entrusted by the NGO as one of the authorised signatories for payment amount below a prescribed limit.



**2** Upon checking the payment requests and the supporting documents, Mr Ho prepared and signed the cheques for settling the payment if the amount fell under his authorised limit.

**3** As Mr Ho was in financial difficulties, he made multiple payments to his own bank accounts by issuing cheques on behalf of the NGO and covered up the misappropriation by tampering with the accounting records to create false payment requests.



Mr Ho falsifying the accounting records with an intent to deceive his principal committed Section 9(3) of the POBO.

### Analysis

In the given case scenario, Mr Ho misappropriated the NGO's funds by preparing and signing a number of cheques each with a value within his authorised limit. As there was a lack of proper segregation of duties, Mr Ho had control over the entire payment process which in turn created room for his embezzling of the funds with falsified account records. The absence of checks and balances allowed him to misuse his official position for personal gain without being noticed.

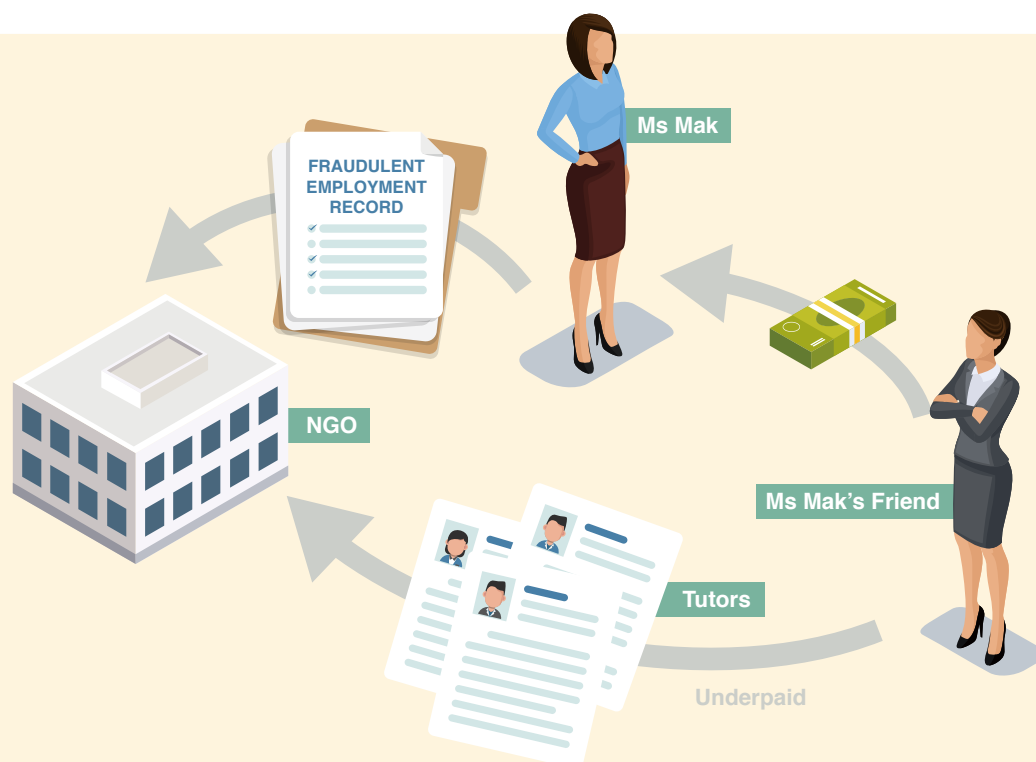
In order to detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Sections 4.5.1 and 4.5.5.



## Case Study 2 – Deceive Subsidies for Provision of Services

- 1 Ms Mak was a Training Manager of an NGO, which hired part-time tutors for delivering various after-school activities for children from low-income families. The activities were sponsored by the Government, where the NGO should comply with the approved budgets including the wages of the tutors, and submission of relevant documents for disbursement of subsidies.





- 2** Ms Mak engaged her friend's company for providing part-time tutors. However, the part-time tutors were paid below the approved wages, and Ms Mak's friend shared the difference with Ms Mak as a reward for the contract. To cover up, Ms Mak also used fraudulent employment records to deceive the NGO and the Government.



Ms Mak and her friend committed Sections 9(1) and 9(2) of the POBO respectively. Ms Mak also contravened Section 9(3) of the POBO.

## Analysis

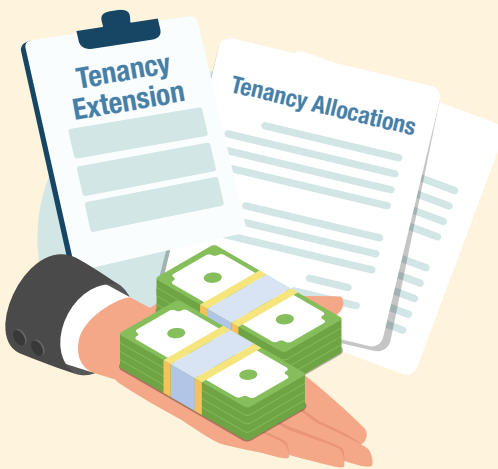
Ms Mak abused her official power by accepting bribes from her friend for awarding the contract to the latter, and covering up the non-compliance with the approved wages. There might also be failure of Ms Mak to disclose the conflict of interest involved so as to manipulate the contract letting and administration. In addition to the integrity issue of Ms Mak, the case scenario also revealed potential deficiencies in the NGO's mechanism to ensure compliance with funding requirements and monitor the delivery of service by a third party organisation (e.g. lack of supervisory check against the employment records submitted). The NGO would suffer reputational damage and a loss of trust from the public due to Ms Mak's corrupt practices.

In order to detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Section 4.6.5.



## Case Study 3 – Preferential Treatment in Delivery of Services

- 1 An NGO operated a hostel providing short-term accommodation for needy persons meeting the eligibility requirements. Mr Kwok, a manager of the hostel, was responsible for processing applications, allocating units to eligible applicants and handling requests for extension of the tenancy by existing tenants.



- 2 In allocating units to eligible applicants, the NGO relied on Mr Kwok to inform the applicants on the waiting list of units availability as the list of vacant units was not made available to the applicants. The NGO also relied on Mr Kwok to assess requests for tenancy extension and make recommendation on a case-by-case basis given the lack of pre-determined factors.

- 3 Knowing the NGO did not conduct random checks or audits on the tenancy management, Mr Kwok assisted colluded applicants and tenants in unit allocations and tenancy extension and accepted bribes as reward for the preferential treatment.



Mr Kwok committed an offence under Section 9(1) of the POBO while the colluded applicants and tenants committed an offence under Section 9(2) of the POBO.

### Analysis

Mr Kwok accepted bribes for showing favour to colluded applicants and tenants by exploiting the lack of transparency in units availability information and absence of pre-determined factors and guidance for tenancy extension. Moreover, the lack of random checks or audits on tenancy management by the NGO also increased the risk of collusion between Mr Kwok and dishonest applicants / tenants gone undetected. Mr Kwok also violated his duty to uphold the fairness in tenancy management which would in turn tarnish the reputation of the NGO and undermine public trust.

In order to detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Sections 4.6.4 and 4.6.6.





## 4.5

# CORRUPTION PREVENTION SAFEGUARDS FOR FINANCIAL MANAGEMENT

In establishing or revising the procedures for financial management and provision of services, NGOs are advised to refer to the key control measures set out in the checklists below. For those NGOs receiving government subventions (or other sources of public funding) for providing welfare services, they should also observe and adopt measures no less stringent than the funding requirements.

### 4.5.1 BASIC CONTROLS IN FINANCIAL MANAGEMENT

- Lay down clear policies, procedures and guidelines for financial management, and require strict compliance by the staff concerned. The guidelines should specify –
  - the designated authorities for approving expenditures (e.g. procurement of general goods and services (🏠 **Section 5.5.1**), maintenance works (🚧 **Section 6.5.1**), staff training and development), considering variation of the approved budget, approving payments or signing cheques, using the reserve or surplus funds on the NGO or for investment, and the corresponding financial limits;
  - procedures for payment application and documents required to support claims for payment; and
  - where applicable, the policy governing entertainment expenditure (e.g. it must be for an official purpose, maximum expenditure per head on each occasion) and official overseas trips which may incur substantial expenditure (e.g. frequency of duty-related overseas trips, allowable expenditure such as hotel rates), and the reimbursement procedures and types of supporting documents required for approval of the designated authorities.
- Specify the criteria, procedures and the types of supporting documents required for reimbursement of expenses and claims for payment incurred by the Board members and staff on entertainment, overseas visits, etc. to ensure such expenses are justified and reasonable.
- Segregate the duties in the financial management process as far as practicable (e.g. collection of fees / charges, checking of bank statements for reconciliation, and bookkeeping).

- Appoint independent staff, if resources permit, to conduct random checks and internal audits to ensure compliance with the financial management procedures (📄 **Section 4.5.8**).

## | 4.5.2 BUDGETING

- Produce at the beginning of each financial year a programme of activities and the budget for approval by the Board (or the Finance Committee, if one is established) and, if required, for information / endorsement by the sponsoring bodies (e.g. the funding Government bureau / department concerned).
- Include in the budget –
  - an estimate of incomes and expenditures, on itemised basis, for the coming year and the estimate (or revised estimate if applicable) and actual out-turn for the previous year;
  - sources of income for individual programmes (e.g. Government subvention, fees and charges collected, donations, or reserve funds);
  - a breakdown of the expenditure estimate –
    - staff expenses (including salaries, Mandatory Provident Fund contributions, other benefits and job-related allowance);
    - administration expenses (including rent, utilities expenses); and
    - recurrent and non-recurrent expenditures, including the use of donations, Government subvention, or other funds for the delivery of the pledged services and other major expenditure items (e.g. major renovation works).

## | 4.5.3 INCOME COLLECTION

- Set the levels of fees or charges for different types of activities or services operated by the NGO for prior approval by the senior management or the Board (or the Finance Committee, if appropriate).

- Publicise the acceptable payment methods (e.g. whether cheques, autopay, credit card or other electronic means are accepted).
- Adopt appropriate security measures to safeguard cash payments, including –
  - placing the cash collection point (e.g. the cashier) in a visible area to facilitate monitoring by supervisors or other staff, where practicable;
  - requiring units and centres to bank in all cash received at least once a week or whenever a pre-approved limit has been reached to minimise risks of embezzlement; and
  - establishing a mechanism for surprise checks on cash collection (e.g. cash in a register) with specified frequency (e.g. at least three times in a year at irregular intervals).
- Require the staff to issue serially pre-numbered receipts that accurately reflect the details of transactions, including the item, price, any discount offered, actual amount received and payment method (e.g. by cash), to keep copies of receipts issued for a specified period to facilitate audit checks, and to investigate any missing receipts.
- Issue an instruction to the staff warning them against falsification of information on the receipt (i.e. inflation / understatement of the price or entering incorrect amount on the receipt).
- Remind the service users to collect a receipt for every payment made (e.g. by posting a reminder at the cashier or by a notice printed on the demand note).
- Arrange regular verification of accounting records (e.g. actual incomes received, accounts receivables) against the income records (e.g. pay-in slips and receipts) in the form of a daily collection summary.

#### 4.5.4 HANDLING OF SPONSORSHIPS AND DONATIONS

- NGOs are advised to make reference to the Corruption Prevention Guide for Management of Charities, Donation and Fund-Raising Activities published by the ICAC, which includes detailed guidelines on the handling of donations and is available at the following webpage:

[cpas.icac.hk/EN/Info/Lib\\_List?cate\\_id=3&id=2752](https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=2752)



## 4.5.5 PAYMENT PROCEDURES

- Specify the payment methods based on the amount of transactions (e.g. by cheque except for petty sums).
- Ensure physical security and computer security in the payment process (e.g. to keep blank cheque books or payment receipts, and official stamps in a secure place, restrict users' access to the computer accounting data and keep the password for operating the bank account strictly confidential and change the password regularly and when necessary).
- Set up a mechanism to detect and deter undue delay in payment or double payments.
- Control cheque payments by –
  - using cross cheques marked as “Account Payee Only” and signed by at least two authorised signatories;
  - requiring the signatories to verify the cheques against invoices (i.e. payee and amount) before signing;
  - prohibiting the signatories to sign blank cheques in advance;
  - requiring cheques to be issued in sequence, with any void cheques duly stamped “CANCELLED” and retained for audit checks; and
  - stamping “PAID” on the original invoices and receipts to prevent double payment.
- Ensure that all payments to be made must be –
  - supported by invoices from suppliers providing details of the goods and services received and the amount to be paid, and relevant supporting records containing certification by responsible officers (e.g. certified goods delivery note, records of short delivery or defective goods returned, certified records of satisfactory service delivery or completion of milestones);
  - checked and confirmed by responsible officers as to the accuracy of every payment detail; and
  - processed within the timeframe laid down in the guidelines or stipulated in the contract.
- Establish a petty cash imprest system for reimbursement of small amount expenses, with the following control measures –
  - designate a staff member as the petty cash holder and set a cash holding limit;

- release petty cash only upon receiving a written request (e.g. a petty cash voucher) and an invoice or a receipt duly certified by the designated authority;
  - stamp “PAID” on the original invoices and receipts to prevent double payment;
  - require the claimants to acknowledge receipt of payments by signature and date; and
  - disallow cash advance unless approved by the designated approving authority with proper justifications and documentation.
- Keep payment records and all supporting documents (e.g. purchase orders, invoices and delivery notes) in an orderly manner to facilitate supervisory checks and audits (📄 **Sections 4.5.8 and 4.5.9**).

#### | 4.5.6 MANAGEMENT OF RESERVE OR SURPLUS FUNDS

- Keep separate accounts of reserve funds or surplus funds accumulated.
- Establish a policy on the investment of funds, taking into account the rules stipulated by the relevant sponsoring bodies where appropriate, e.g. whether the funds should be managed in-house or by external fund managers, types of investment instruments and the limits allowed.
- Where the amount of reserve / surplus fund is substantial, lay down a competitive procedure for the selection of banks or financial institutions for placement of deposits or choice of investment products.
- Require the Board members and staff involved in the selection of banks or investment products to declare if they have any conflict of interest with the relevant personnel of the banks or related institutions.
- Draw up a mechanism to monitor bank accounts and investments and the performance of fund managers.
- Require proper recording of the reserve / surplus funds in monthly financial statements.
- Require periodic reporting to the Board the investment returns (📄 **Section 4.5.7**).

## 4.5.7 FINANCIAL REPORTING

- Require the executive arm of the NGO to make periodic financial reporting to the Board and/or its Finance Committee where applicable.
- Review the financial reports (a function of the Board or the Finance Committee) to –
  - ascertain the reasonableness of incomes and expenditures (e.g. expenses on purchases of high cost as compared with market rates), and the reasons for any significant deviation from the budget or the previous year's account; and
  - identify any significant changes in the balance sheet as compared with that of the previous year and require justifications for the changes.

## 4.5.8 INTERNAL AND EXTERNAL AUDITS


- Appoint an internal audit team, on a permanent or ad hoc basis depending on the size and need of the NGO, to conduct internal audits independently on high-risk operations, such as procurement of goods and services, for ensuring the relevant unit(s) / division(s)' compliance with the NGO's policies and procedures and the funding requirements as stipulated by the sponsoring bodies, where appropriate.
- Appoint staff not involved in the procedures under audit to the internal audit team.
- Appoint a professional accountant approved by the Board or the Audit Committee, if one is established, to conduct annual financial audits on the NGO.
- Ensure the external auditor does not have any conflict of interest arising from its interest in the NGO's business or from its relationship with any Board member or executive staff member.
- Ensure the internal audit team and the external auditor have direct access to the Audit Committee, if established, or the Board.
- Take necessary action in response to the audit findings and recommendations, and document in minutes the actions taken.

## 4.5.9 MANAGEMENT OVERSIGHT AND SUPERVISION

- Assign supervisors or independent senior staff, where resources permit, to conduct periodical checks on –

- deposit slips and bank statements against the records of the cash register;
- payment records and supporting documents (e.g. purchase orders, invoices and delivery notes); and
- accounting records against payment vouchers or petty cash vouchers, etc.

with a view to detecting and deterring anomalies such as unauthorised payments, irregular expenditures, split orders, etc.

- Require supervisors or designated staff to make enquiries into delays or other exceptions in making payments.
- Compile periodic financial reports on the operations of the NGO for management information, showing clearly the incomes received and a breakdown of the expenditures, such as staff and administrative cost, procurement, publicity and transportation expenses, etc. ( **Section 4.5.7**)
- As far as practicable and where resources permit, digitalise the financial management processes, such as by adopting a financial information management system to facilitate budgeting, payment procedures, financial reporting, etc. and with built-in workflow controls (e.g. approval from a designated authority for variation of the approved budget) and security safeguards (e.g. unique user account with password protection, maintenance of audit trail).
- Generate different types of management reports in specified formats to facilitate monitoring and detect irregularities (e.g. a breakdown of the financial position by budget items and by individual cost centres).



## 4.6

# CORRUPTION PREVENTION SAFEGUARDS FOR PROVISION OF WELFARE SERVICES

## 4.6.1 BASIC CONTROLS IN PROVISION OF WELFARE SERVICES

- Lay down clear policies, procedures and guidelines for provision of welfare services, and make them transparent to members of the public as far as practicable. The guidelines should specify –
  - procedures for processing applications for welfare services, including the application procedures, supporting documents required, processing timeframe for each key stage, detailed assessment criteria and consideration factors for approval / rejection of applications, mechanism for allocation of services, calculation of service fees, and handling of requests for change of application details, as well as the designated approving authorities;
  - policies and guidelines in relation to provision of welfare services in accordance with the service plan (👉 **Section 4.6.2**);
  - guidelines on handling of special / urgent / exceptional cases (e.g. accepting an applicant not meeting the eligibility criteria or without supporting documents, offering services to an applicant with a lower priority on the waiting list), including the relevant justifications, approving authorities and documentation requirements; and
  - requirement of maintaining proper records to facilitate supervisory monitoring and subsequent audit reviews.
- Segregate the duties in the provision of welfare services process as far as practicable (e.g. vetting of applications for services / service extension / renewal, approving of application / service extension / renewal, and handling of appeals).
- Appoint independent staff, if resources permit, to conduct random checks and internal audits to ensure compliance with the provision of welfare services procedures (👉 **Section 4.5.8**).
- Require all personnel involved in the processing of applications for welfare services to declare in writing any actual, potential or perceived conflict of interest (e.g. handling applications from their relatives / close personal friends) to the designated authority as soon as practicable when the conflict arises; and if any, to follow the mitigating measures as directed by the approving authorities (👉 **Section 2.3.6**).



- Design a standard form / document for applicants to fill in personal particulars, financial situation and reasons for seeking the welfare services and submission of the supporting documents and information required.
- Include in the application forms / documents a warning against bribery and submission of false information / documents, and the possible consequences of doing so (e.g. disqualification of applications, criminal liabilities), to enhance applicants' awareness.
- Require applicants to declare in writing (e.g. on application forms) that all information provided is true and accurate to the best of their knowledge.

#### **4.6.2 DRAWING UP OF SERVICE PLAN**

- Draw up a service plan encompassing details of the services to be provided, including the scope of service, targeted users, eligibility criteria, quota and allocation method, service fee (if any) and the calculation method, policy on whether applicants are permitted to obtain similar services from other sources concurrently, maximum duration of service per application and conditions for extending and terminating the services, if applicable.
- Lay down the procedural workflow for delivering services, covering procedures for verifying applicants' eligibility, assessing applicants' service needs, prioritising applications, extending the service duration and terminating the services before the expiry of the approved service period, and engaging third party organisations to assist in service delivery (e.g. purchasing of goods / services, selection of partner organisations).
- Specify the service standards required (e.g. the number of cases served, number of programmes / activities organised) and key performance indicators (e.g. rate of satisfaction by service users) as far as practicable.

### 4.6.3 INVITATION FOR APPLICATIONS FOR SERVICES

- Openly invite for applications as far as practicable (e.g. through the NGO's website or service centres) and publicise the service details for information of applicants, including –
  - a brief introduction of the services (e.g. service scope and duration, targeted users);
  - eligibility criteria for receiving the services (e.g. financial threshold of individual / household income and/or asset) and broad principles for making the assessment (e.g. what types of assets will be counted towards the total asset amount);
  - application procedures (e.g. application form and supporting documents required, any application deadline, submission method, performance pledge or timeframe for each key stage of the application process);
  - for services with a quota, the mechanism for service allocation and/or prioritisation of applicants (e.g. first-come-first-served, or based on the applicants' needs assessment results);
  - service fees to be charged (e.g. free of charge, a fixed rate, based on the applicant's income) and the payment interval, as well as the fee waiver policy and application procedures (if any);
  - enquiry channel(s); and
  - key obligations of service users, conditions for service termination (e.g. user's major breach of service requirements), and policy and application procedures for service renewal (if allowed).
- If invitation for application is only issued to certain target groups or prospective users –
  - generate the list of invitees based on pre-defined parameters (e.g. eligibility criteria);
  - subject the list to supervisory checks; and
  - make known to the invitees the service details described above, as appropriate.
- If concurrent application for similar services from other organisations is not permitted –
  - publicise such policy for the applicants' information; and
  - require applicants to declare in their applications whether or not they are applying / receiving or have received similar services within a specified period before the current application.

- For services with a quota or offered on a first-come-first-served basis, as far as practicable inform applicants of the latest position of the service (e.g. number of quota remained, availability of service slots), or provide a channel for them to check the relevant information (e.g. through email or online reservation system).

## **4.6.4 PROCESSING OF APPLICATIONS**

### **4.6.4.1 RECEIPT AND SAFEKEEPING OF APPLICATIONS**

- Acknowledge receipt of applications within a reasonable specified timeframe.
- Keep a register of the applications received, in ascending order of the date and time of receipt.
- If there is an application deadline, pre-determine the mechanism for handling late applications and require written justifications and approval by an appropriate authority for any deviation.
- If applicants are allowed to make changes to their applications, lay down and make known to applicants the procedures for handling such change requests, such as timeframe for making and accepting the changes, allowable scope / items of change, impact on prioritisation of the application concerned (if applicable).
- Adopt security measures to restrict the access and amendments to applications (e.g. granting staff access to applications on a need-to-know basis, maintaining amendment logs), and keep them in a secure physical location (for hardcopy applications) or application system with stringent data protection controls (for applications submitted via electronic means).

### **4.6.4.2 VERIFICATION OF APPLICANTS' ELIGIBILITY AND ASSESSMENT OF SERVICE NEEDS**

- Require applicants to produce the original copies of supporting documents (e.g. identity cards, address proof, income statements) to substantiate the applications, where appropriate.
- Obtain applicants' consent for passing their information for verification of eligibility with third parties (e.g. government departments, banks, employers).
- Devise a checklist on the vetting of applications (e.g. checking on the fulfilment of individual eligibility criteria, calculation and verification of total household income against the relevant documents), and require the vetting staff to record and sign against the checking result.

- If necessary, conduct interviews or visits with the applicants to assess their eligibility and actual need for the service in accordance with the laid-down criteria.
- Maintain proper records of interviews / visits conducted, and require the staff responsible and applicants concerned to countersign the records.
- Document the assessment results, including the reasons for recommending approval / rejection of applications and any conditions attached to the receipt of services (e.g. fees to be charged / waived).

#### 4.6.4.3 APPROVAL OF APPLICATIONS AND PRIORITISATION OF APPLICATIONS

- Notify applicants in writing of the application result and the conditions / requirements of receiving the service, and require the applicants to acknowledge understanding of the terms.
- Provide a channel for rejected applicants to make further enquiries or appeals.
- Require supervisors to check / endorse special cases before approval (e.g. urgent applications without supporting documents, applications or fee waivers approved despite eligibility criteria not being met), with justifications properly documented.
- For services with a quota –
  - devise and make known to applicants a fair mechanism for prioritisation of approved applications (e.g. by balloting, a scoring system, or first-come-first-served policy); and
  - inform the applicants of their priority ranking in receiving the services.


#### 4.6.4.4 MANAGEMENT OF WAITING LISTS

- For services that are allocated to applicants in order of priority, compile a central waiting list of applicants based on their approved priority ranking.
- Devise a mechanism to ensure that the allocation of services follows the order on the waiting list, and subject any out-of-turn allocation (e.g. urgent case) to the approval of a designated higher authority, with proper documentation of the justifications and approval.
- Provide a channel for applicants to enquire about their current position on the waiting list.
- Take necessary security measures (e.g. restricting access to designated staff, maintaining audit trail to detect unauthorised alteration) to protect the waiting list against tampering.

- If there is a need to make changes to the order on the waiting list (e.g. removal of applicants due to death or withdrawal from application), provide supporting documents for consideration and approval by a supervisor.
- Lay down and inform the applicants of the policy and procedures for handling their rejection of offer (e.g. treat the application concerned as withdrawn, move the application to the last on the waiting list to queue for another offer).
- Maintain proper documentation of the rejection of offer by applicants on the waiting list to facilitate future audit.

#### **4.6.5 DELIVERY OF SERVICES**

- Verify the identities of the service users (e.g. through checking the identity cards of the service users against the records) before provision of services.
- If necessary, record the date and types of services provided (e.g. food items collected in short-term food assistance service) to the users on a form for acknowledgement by both the staff responsible and the user.
- Adopt measures to monitor service delivery by staff as well as detect possible abuse of the services by users (e.g. re-selling of food coupons / subletting of transitional housing units to other persons), for example –
  - regularly obtain users' feedback on the standard and quality of services provided;
  - conduct visits to check the services provided and users' compliance with the service conditions (e.g. home visits to verify the identities of the occupiers in a transitional housing unit); and
  - use information technology to help prevent possible malpractice (e.g. use of non-transferrable electronic food vouchers to replace paper-form food coupons) and technological devices to facilitate real-time monitoring of service delivery (e.g. installing CCTVs with video recording function at strategic locations) so as to detect and deter irregularities from a broader perspective;
- Devise a sanctioning system to take disciplinary actions against breaches of the service conditions / requirements by users, such as temporary suspension or termination of services, having regard to the nature and severity of the breach.
- Lay down and make known to applicants the criteria for approving requests for extension / renewal of service, and the conditions for service termination.

- If the service delivery involves procurement of goods / services or receipt of in-kind donations, adhere to the NGO's established procedures in these aspects and make reference to the recommended measures respectively in Chapter 5 and Corruption Prevention Guide for Management of Charities, Donation and Fund-Raising Activities (  **Section 4.5.4**) as appropriate.
- If partner organisations are engaged to assist in service delivery –
  - make sure that the partner organisations understand clearly the procedures for and required standard of the services to be delivered through stipulating such in a written agreement and briefing to the partner organisations;
  - require partner organisations to commit to ethical practices by issuing a code of conduct or probity guidelines to their directors and staff, covering restrictions on offer, solicitation and acceptance of advantages and entertainment, mechanism for managing conflict of interest, and rules on protection and use of confidential or proprietary information;
  - enter into a written agreement with the partner organisations stipulating, among other things, responsibilities and obligations of both parties, duration of the agreement and mechanism for renewal, the procedures for and required standard of the services to be delivered as well as conditions of terminating the agreement; and
  - devise a performance monitoring system to ensure that the partner organisations deliver services as committed in the agreement, such as requiring them to submit service statistics at regular intervals, and conducting site visits to ascertain their service quality and internal control mechanism.


#### **| 4.6.6 MANAGEMENT OVERSIGHT AND SUPERVISION**

- Conduct risk-based or random supervisory checks and independent checks (e.g. by NGO's internal auditor) on the provision of services to detect and deter irregularities, in particular –
  - assessment and approval of applications (e.g. justifications for approval / rejection of applications, calculation of service fees, granting of fee waivers, handling of special cases);
  - prioritisation of applications and management of waiting lists; and
  - quality and timeliness of services delivered (e.g. through surprise visits to the service centres).

- Establish a user-friendly channel (e.g. designated telephone hotline) for service users to provide feedback, lodge complaints and report improprieties of the service / staff, and conduct surveys among the users to collect their views on the services, if applicable and where resources permit.
- Generate periodic information and exception reports to facilitate management monitoring, such as actual processing timeframe for individual applications, number of approved / rejected / extension / special cases (with justifications), trend or pattern in the usage of services, users' feedback / complaints on the services, etc.
- As far as practicable and where resources permit, digitalise the processes in the application for and delivery of services (e.g. submission, assessment and approval of applications, allocation of services), with built-in controls to ensure compliance with, and prevent circumvention of, the NGO's guidelines and requirements (e.g. timeframe for handling applications, calculation of applicants' household income / asset, approval from a higher authority for special cases, prohibition of queue-jumping on the waiting list unless with proper approval), and equipped with adequate security safeguards (e.g. unique user account with password protection, maintenance of audit trail).
- Generate information management reports to facilitate monitoring and detect irregularities (e.g. amount of service fees charged to service users with justifications, applicants' waiting time for the services and their corresponding position in the waiting list, number of service extension cases with justifications and extended periods).







# 5 PROCUREMENT

5.1 Introduction

5.2 Key Processes

5.3 Major Corruption Risks and Red Flags

5.4 Case Studies

5.5 Corruption Prevention Safeguards

# 5 PROCUREMENT

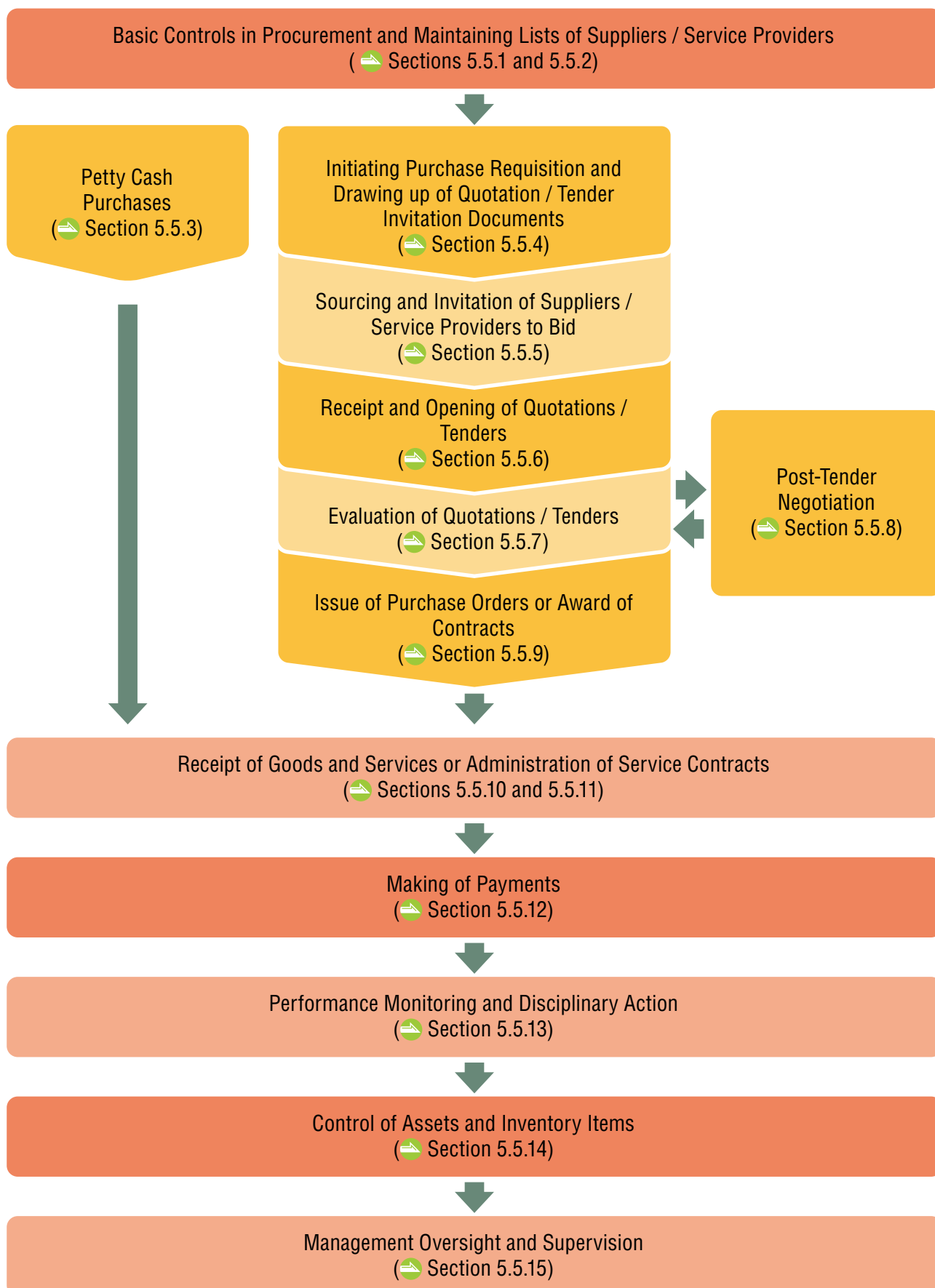
## 5.1 INTRODUCTION

Procurement is of paramount importance for the operation of NGOs and often involves substantial expenditure. In the daily operation, NGOs have to procure a wide variety of goods and services, such as furniture and equipment, computers and office stationery, food for service users, printing and design services, cleaning and security services, etc. Service contracts also involve regular monitoring to ensure that the services ordered are properly delivered. Past corruption cases showed that procurement and contract administration processes, in particular those involving high contract value, are vulnerable to corruption and malpractice. To uphold accountability in making proper use of public funds and donations and avert any corrupt practices, it is necessary for NGOs to put in place adequate safeguards in the system to ensure that the goods and services are purchased in an open, fair and competitive manner and represent value for money.

This Chapter highlights the major risks and provides corresponding recommended measures in the procurement processes, including maintenance of suppliers' list, handling of direct purchases, conduct of quotation and tender exercises, administration of contracts and control of assets.

## 5.2 KEY PROCESSES

The following flow chart illustrates the key procurement processes –



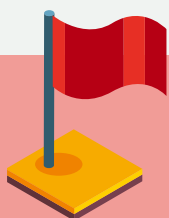
## 5.3 MAJOR CORRUPTION RISKS AND RED FLAGS

### 5.3.1 PROCUREMENT PROCESSES



#### MAJOR CORRUPTION RISKS

- ❗ Dishonest staff failing to declare conflict of interest with the suppliers / service providers (e.g. financial interest, personal relationship) with a view to favouring the latter in the procurement process.
- ❗ Corrupt staff drawing up biased specifications or using unclear specifications to favour particular suppliers / service providers.
- ❗ Colluded staff divulging sensitive information (e.g. other bidders' quotations) or insider information (e.g. baseline price for post-tender negotiation) to favour suppliers / service providers.
- ❗ Dishonest staff circumventing normal purchase procedures or approving authorities through splitting of orders.
- ❗ Unscrupulous staff fabricating competitive quotations with higher bids purported to be submitted by other bidders, or discarding other bidders' quotations to ensure that the favoured supplier / service provider can win the contract.
- ❗ Compromised staff manipulating the assessment process (e.g. making changes to the criteria for evaluation) to favour colluded suppliers / service providers.



#### RED FLAGS OF MALPRACTICE IN PROCUREMENT PROCESSES

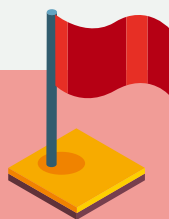
- **Use of a particular brand / supplier** – Staff member insists on using a particular brand / supplier without objective justifications.
- **Frequent use of exceptions** – Staff member frequently uses exceptions or urgent purchases instead of normal procedures and controls (e.g. frequent use of single quotation / direct purchase method).

## 5.3.2 CONTRACT ADMINISTRATION



### MAJOR CORRUPTION RISKS

- 🔥 Dishonest staff soliciting / accepting advantages from suppliers / service providers for placing excessive orders with them.
- 🔥 Colluded staff conspiring with suppliers to inflate quantity provided or price of the purchased items.
- 🔥 Compromised staff soliciting / accepting advantages from suppliers / service providers for conniving at their poor performance or renewing the contract repeatedly without going through any competitive process.



### RED FLAGS OF MALPRACTICE IN CONTRACT ADMINISTRATION

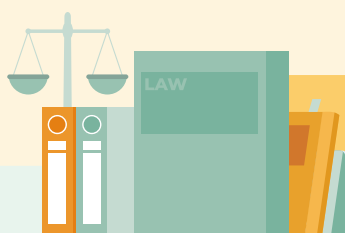
- **Frequent contract variations** – Where a supplier / service provider has been engaged under a term contract (often with highly competitive rates stated in the contract), a staff member frequently issues variation orders to the term contractor for goods / services not covered by the contract (with different prices or specifications), resulting in increased payments to the contractor or substitution with goods of lower quality.
- **Abnormal or doubtful payments**, for example –
  - There are frequent / repeated payments to a particular supplier / service provider with value slightly under a certain authorisation level.
  - A supervisor frequently allows disbursements to suppliers / service providers with insufficient supporting documents but various excuses.
- **Increase in number of complaints** – Increase in number of complaints by staff or service users about the quality of goods or services provided by a particular supplier / service provider.

## 5.4 CASE STUDIES



### Case Study 1 – Soliciting Illegal Rebate for Purchase of Technology Products

- 1 Mr Lee was an IT officer of an NGO. He was instructed to procure various technology products for the NGO, including making purchase requisitions, drawing up the specifications and sourcing the products in the market.
- 2 As the NGO did not maintain a suppliers' list, Mr Lee contacted a sales manager of a supplier to obtain product information and preliminary quotation for the technology products, during which Mr Lee proposed to secure the contracts for the latter and asked for a certain percentage of the contract price as rebate.
- 3 The sales manager did not accede to Mr Lee's solicitation and reported the matter to the ICAC.



Mr Lee contravened Section 9(1) of the POBO.

### Analysis

Mr Lee abused his power by soliciting advantages in the process of sourcing and inviting suppliers to bid. The absence of a proper list of suppliers, and sole reliance on an individual staff member to select and invite suppliers to bid heightened the risk of favouritism.

In order to detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Sections 5.5.2 and 5.5.5.

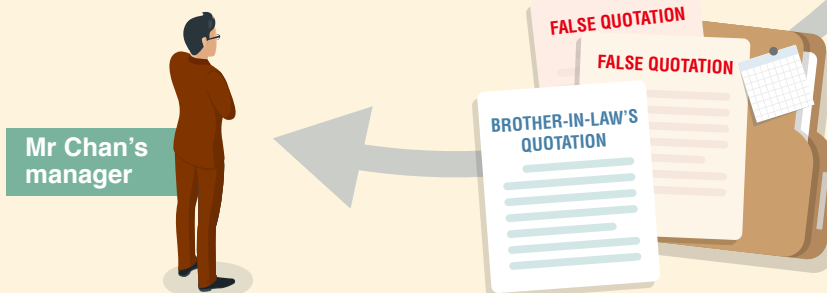


## Case Study 2 – Using False Quotations to Deceive NGO

**1** Mr Chan was a fundraising officer of an NGO. He was tasked to source printing services for various fundraising activities, receive quotations and recommend to the fundraising manager for awarding the contracts.



**2** According to procurement procedures of the NGO, Mr Chan was required to obtain quotations from at least three service providers for each procurement exercise.



**3** Mr Chan's brother-in-law was an owner of a printing company which was interested in providing services for the NGO. To help his brother-in-law's company winning the contracts, Mr Chan always submitted his brother-in-law's quotation together with two false quotations with higher bidding prices to his manager.



**4** As a result, the printing service contracts were awarded to the company owned by Mr Chan's brother-in-law as its bidding price was purportedly the lowest.

Mr Chan using false quotations with an intent to deceive his principal committed Section 9(3) of the POBO.



### Analysis

In the given case scenario, Mr Chan failed to disclose the conflict of interest arising from his relationship with the bidder (i.e. his brother-in-law) which impeded the NGO's taking of appropriate mitigating measures. Mr Chan also exploited his position to manipulate the procurement procedures by submitting falsified quotations with higher bidding prices so as to favour his brother-in-law's printing company. This not only constituted a violation of the law but also tarnished the reputation of the NGO. Furthermore, the case scenario revealed potential deficiencies in the NGO's checking of quotations received from suppliers (e.g. verifying if the quotations submitted were genuine), undermining the effectiveness of supervisory and management monitoring, and created a loophole for Mr Chan to deceive the NGO using false quotations.

In order to detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Sections 5.5.1, 5.5.6 and 5.5.7.



### Case Study 3 – Placing Excessive Orders and Conniving at Short Delivery

1

Mr Lee, a chef of a canteen run by an NGO, was responsible for placing orders with the selected food suppliers and accepting food items.



2

Knowing that Mr Lee was heavily indebted, a frozen food supplier approached Mr Lee to offer illegal rebate in return for food orders.

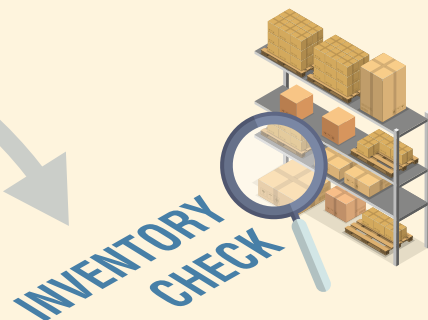
3

Mr Lee placed excessive orders with the supplier, who inflated the price of the frozen food and delivered only half of the ordered food items to the canteen. Mr Lee connived at the short delivery and accepted the rebates from the supplier.



4

The malpractice was not discovered until a surprise inventory check conducted by the Accounts Department of the NGO.



Mr Lee and the frozen food supplier respectively committed an offence under Sections 9(1) and 9(2) of the POBO.

### Analysis

The insufficient checks and balances in the purchase and receipt of goods (e.g. conducting supervisory check on the purchase of the food items and reviewing the purchase orders) and absence of other management tools (e.g. generating management reports to identify suspicious purchase pattern / exceptionally high consumption rate) undermined the effectiveness of the existing system to detect and deter irregularities and opened loopholes for unscrupulous staff like Mr Lee to collude with the supplier.

In order to detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Sections 5.5.10 and 5.5.15.

This case also reflected the importance of proper control of inventory items to prevent and detect malpractice as outlined in Section 5.5.14.





## 5.5 CORRUPTION PREVENTION SAFEGUARDS

### 5.5.1 BASIC CONTROLS IN PROCUREMENT

- Adopt a set of standard procurement procedures, no less stringent than the requirements of the fund provider, to ensure consistency in practice (i.e. the same set of procedures for procurement using government subvention or the NGO's own fund), which should cover the following –
  - procurement methods for different amounts of purchases (e.g. open tendering for high value purchases) and the corresponding approving authorities for different key stages in the procurement and contract variations;
  - procurement procedures for different methods, such as petty cash purchase (including reimbursement claim procedures) (📄 **Section 5.5.3**), procurement by quotation or tendering (including whether a two-envelope system is necessary when price is not the only consideration), including the rank / post of staff tasked for different duties, and timeframe for submission of bids;
  - procedures and approving authority for handling special circumstances (e.g. urgent purchases) and exceptions (e.g. single tendering, the number of invited quotations / tenders below the minimum requirement), and requirement for the staff concerned to give justification in writing; and
  - mechanism for managing lists of suppliers / service providers for frequently purchased goods / services (📄 **Section 5.5.2**).
- Require that term contracts or bulk purchases should be arranged for frequently purchased goods or services (e.g. office stationery, printing service) to achieve the benefit of economy of scale and to reduce the risk of corrupt practices arising from frequent minor purchases.
- Segregate the duties in the procurement processes as far as possible (e.g. assign different staff members to source suppliers / service providers for invitation of quotations / tenders, assess quotations / tenders, certify the goods / services received, certify invoices and monitor the suppliers / service providers).

- Require key personnel involved in procurement exercises for high value goods / services (e.g. personnel responsible for shortlisting suppliers for invitation or evaluating tenders) to declare whether or not they have any relationship with any bidders or there is any conflict of interest; and if any, to follow the mitigating measures as directed by the approving authorities (👉 **Section 2.3.6**).
- Devise forms for use at different key stages of procurement to facilitate proper documentation of decisions and related justifications (e.g. purchase requisition form, quotation / tender evaluation form).

## 5.5.2 MAINTAINING LISTS OF SUPPLIERS / SERVICE PROVIDERS

- Maintain lists of approved suppliers / service providers for frequently purchased goods or services, categorise the lists by types of goods / services, and ensure that the lists contain an adequate number of suppliers / service providers for each category of goods / services.
- Lay down the criteria and procedures (including the approving authority) for including suppliers / service providers on or deleting them from the respective lists, and make known to suppliers / service providers (e.g. openly invite applications for inclusion on the lists through the NGO's website).
- Periodically review the lists of approved suppliers / service providers with a view to deleting those which are inactive, have gone out of business, or with poor performance (👉 **Section 5.5.11**).
- Ensure that all inclusions and deletions are conducted in a proper and accountable manner (e.g. conducting random checks by supervisors).

## 5.5.3 PETTY CASH PURCHASES

- Follow the procedures described in 👉 **Section 4.5.5** on maintenance of an imprest system for petty cash purchases.
- Lay down the circumstances under which petty cash purchases are applicable (e.g. for urgent minor purchases below a financial threshold), and require the approval of designated authority before the purchase, or else, provide written justifications.
- Set a time limit for claims of petty cash reimbursement after a purchase (e.g. within seven days of the purchase).

- Ensure that the reimbursement claim is appropriate (e.g. expenditure being eligible for petty cash purchases), the purchase is necessary and the expenditure is reasonable.

#### 5.5.4 INITIATING PURCHASE REQUISITION AND DRAWING UP OF QUOTATION / TENDER INVITATION DOCUMENTS

- Ascertain the need for the goods or services required and ensure that the purchase is under the authorised ambit and the estimated cost is within the approved budget (📄 **Section 4.5.2**).



[Sample Purchase Requisition Form is at Appendix 5]

- Seek endorsement of the requisition from the designated authority, or a higher authority if it is an unbudgeted item.
- Determine the procurement method based on the estimated total amount of purchases (📄 **Section 5.5.1**) and the criteria for evaluating the quotations / tenders and basis of contract award –

Evaluation criteria	Basis of contract award
Price consideration only	Lowest conforming bid
Price and non-price considerations (usually using a marking scheme)	Conforming bid with highest overall score

- Ensure that the quotation invitation / tender document includes the following –
  - clear and comprehensive specifications based on the functions / standards required, but not brand names or overly restrictive specifications;
  - basis of contract award and if non-price factors are also evaluated, the evaluation criteria and weightings;

- submission arrangements including the deadline (i.e. date and time), means of submission (e.g. whether electronic transmission is allowed), and where price is not the only consideration, the requirement for submitting price and non-price proposals under separate sealed envelopes (i.e. two-envelope approach);
- anti-bribery clauses to prohibit bidders from offering, soliciting or accepting any advantages in connection with the quotation / tender and execution of contract; and



**[Sample Probity Clauses in Quotation / Tender Invitation Documents is at Appendix 6]**

- terms and conditions of the contract, such as delivery schedule.

### **| 5.5.5 SOURCING AND INVITATION OF SUPPLIERS / SERVICE PROVIDERS TO BID**

- For open tendering, openly invite suppliers / service providers to bid such as through placing the invitation via newspapers or other public media (e.g. at the NGO's website).
- Adopt the following measures for restricted quotation / tender where bidders are invited from a list of approved suppliers / service providers –
  - establish a fair mechanism (e.g. by rotation) for shortlisting approved suppliers / service providers for invitation to bid;
  - shortlist the required number of suppliers / service providers from the relevant list according to the pre-determined mechanism;
  - require written justifications and approval by an appropriate authority for any exception to the pre-determined shortlisting mechanism, such as out-of-turn invitation (e.g. the skipped supplier not supplying the required types of goods) or frequent invitation of the same few suppliers / service providers (e.g. performance consideration); and
  - require written justifications and approval by an appropriate authority for including non-listed supplier / service provider nominated by users or other staff and ensure that all bidders meet the listing criteria (📄 **Section 5.5.2**).

- Include the last successful supplier / service provider in the shortlist if its past performance was satisfactory.
- Require written justifications and approval by an appropriate authority if the number of suppliers / service providers invited to bid does not meet the minimum requirement.

### **5.5.6 RECEIPT AND OPENING OF QUOTATIONS / TENDERS**

- Record all verbal quotations in writing to enhance accountability and facilitate future audits.
- Put in place adequate measures for proper handling and secure storage of quotations / tenders received to safeguard the confidentiality before the submission deadline, including –
  - ensure that quotations / tenders are opened only after the submission deadline;
  - designate a staff member to securely keep all the quotations / tenders before opening;
  - use a designated fax machine kept at a secure place and with access restricted to designated staff to receive quotations by fax;
  - use a double-locked tender box for receiving tenders and storing them before opening, and assign two different staff to hold the keys; and
  - use a designated electronic mailbox to receive quotations / tenders by email and prohibit staff from using their personal email accounts (including official and private) for the purpose; if email accounts are used to receive tenders, designate two staff as password holders each only keeping part of the password.
- Assign an opening team (comprising at least two persons) to open the tender proposals immediately after the deadline, and designate a senior staff member not involved in the evaluation to keep duplicate copies of the proposals.
- Do not accept quotations / tenders received after the submission deadline and state this clearly in the invitation documents.
- Keep proper records of all quotations / tenders received to facilitate future checking as necessary.

## 5.5.7 EVALUATION OF QUOTATIONS / TENDERS

- Avoid making changes to the pre-determined evaluation method, including any addition, deletion or amendment of evaluation criteria, and amendment to the weightings and marking scheme.
- Evaluate the quotations / tenders according to pre-determined evaluation method –
  - check compliance of the quotations / tenders with product / service specifications and mandatory requirements;
  - if price is the only consideration, recommend the lowest conforming bid to the designated approving authority for contract award; and
  - if price is not the only consideration, adopt the following measures –
    - establish an evaluation panel comprising at least two members with the required knowledge and expertise;
    - require panel members to evaluate the quotations / tenders on their own according to the pre-determined marking scheme / guidelines and properly record the outcomes (i.e. scores against each evaluation criterion);
    - open the price proposals only after the evaluation of non-price proposals to calculate the total scores of the quotations / tenders and recommend the award of contract to the highest-scoring bidder;
    - in case of any change to the final scores, require the panel members to properly sign off against the change and document the justifications; and
    - require the panel to submit a tender evaluation report for consideration by the appropriate approving authority.



**[Sample Tender Evaluation Report is at Appendix 7]**


- Stay vigilant to suspicious quotation / tender (e.g. if all bids received are much higher than the market price, it may indicate that the bidders have communicated with each other, giving rise to the risk of bid rigging; whereas those with unrealistically low price offer may result in substandard service) and consider rejecting the acceptance of the quotation / tender concerned if necessary.

## | 5.5.8 POST-TENDER NEGOTIATION


- Avoid conducting post-tender negotiation unless considered necessary and in the interest of the NGO.
- Lay down the guidelines for post-tender negotiation, including –
  - requirement to pre-determine the criteria for selecting tenderers for negotiation (e.g. the highest scorer or the top three highest scoring bidders);
  - the composition of the negotiation team and the level of staff according to the value of purchase (e.g. at least two persons for high value purchases);
  - the baseline price and conditions, beyond which the negotiating team is required to seek instructions from the management;
  - prohibition on disclosure of the tenderers' bids before, during or after the negotiation; and
  - requirement for the bidders to submit the “best and final” offer in writing after negotiation.
- Conduct negotiation within the defined parameters and seek instructions from the management as necessary.
- Document the salient points of negotiation and the result.
- Evaluate the “best and final” offers and submit a recommendation in writing to the approving authority.

## | 5.5.9 ISSUE OF PURCHASE ORDERS OR AWARD OF CONTRACTS

- Ensure that the purchase order is issued or contract is awarded to the bidder offering the lowest conforming bid or being the highest scorer (👉 **Section 5.5.4**); and require written justifications and approval for any deviation under exceptional circumstances.

- For service contracts, include the following essential terms and conditions –
    - probity requirements for successful bidders in the execution of the contract, including service providers to prohibit their directors, staff, agents and subcontractors who are involved in the contract from offering, soliciting or accepting any advantage when discharging their duties in connection with the contract;
-  **[Sample Probity Clauses in Contracts to be Awarded is at Appendix 8]**
- service levels and performance standards required (e.g. minimum staffing requirement for cleaning and security service contracts);
  - reporting requirements (e.g. incident report regarding shortage of cleaning / security staff); and
  - other general contract terms and conditions, such as payment terms, consequences of non-compliance with the contract requirements, and termination clauses.

## **| 5.5.10 RECEIPT OF GOODS AND SERVICES**

- Assign staff member(s), preferable one not participating in selecting the supplier (if resources allow), with relevant skills to inspect and test, if appropriate, the goods received against the purchase order (e.g. quantity, description, functions).
- For high-value purchases and where practicable, assign more than one staff member to receive the goods.
- Follow up immediately with the supplier for any short delivery or defective goods / substandard services or non-compliance with the contract conditions in accordance with established policies and procedures (e.g. asking the supplier to make good the shortfall immediately).
- Require receiving staff to certify acceptance of goods / services within a specified time limit to ensure payment is made within a reasonable time limit ( **Section 5.5.12**).




## | 5.5.11 ADMINISTRATION OF SERVICE CONTRACTS

- Establish a monitoring mechanism appropriate to the nature of service (e.g. review regular reports submitted by the service providers, conduct random inspections and meet with the service providers regularly); and lay down key monitoring requirements, such as inspection frequency and items, and timeframe for following up on any irregularities identified.
- Designate staff at the appropriate rank to monitor the standards of service provided, and subject the process to supervisory checks.
- Design a checklist on items to be inspected and require staff concerned to document the inspection results and provide supporting documents (e.g. photos) as appropriate.
- Require justifications and approval of the designated authority for contract variation (e.g. change of the job duties of cleaning staff) (👉 **Section 5.5.1**).
- Require staff to confirm satisfactory delivery of service before payment.

## | 5.5.12 MAKING OF PAYMENTS

- Segregate the duties of verifying payment, certifying invoice and monitoring the supplier / service provider as far as practicable (👉 **Section 4.5.1**).
- Ensure that the invoice is certified by the designated staff, and endorsed by the approving authority before effecting payment (👉 **Section 4.5.5**).
- Ensure the payment is paid according to the payment terms (👉 **Section 4.5.5**).
- Conduct supervisory random checks to ensure that payments made are in order, and make enquiries into delays or other exceptions in making payments (👉 **Section 4.5.9**).

### 5.5.13 PERFORMANCE MONITORING AND DISCIPLINARY ACTION

- Collect and review the feedback from users about the performance of suppliers / service providers, and take appropriate actions in case of unsatisfactory performance.
  - Devise a mechanism to assess the performance of suppliers / service providers, including –
    - devise an appraisal form for completion by the staff concerned;
-  **[Sample Supplier / Service Provider Performance Evaluation Form is at Appendix 9]**
- hold meetings with the supplier / service provider to review and conduct periodic appraisals on their performance, taking into consideration all performance records in the preceding period; and
  - where it is not practical or cost effective to conduct periodic performance appraisals, adopt an adverse reporting system to record suppliers / service providers' unsatisfactory performance for future reference.
- Lay down procedures for dealing with non-conformance or unsatisfactory performance of suppliers / service providers, including –
  - actions to be taken in accordance with the contract conditions (e.g. verbal / written warnings, removal from approved suppliers' list);
  - criteria / circumstances and approving authorities for taking such actions; and
  - procedures and guidelines for handling disputes from suppliers / service providers (e.g. dispute over whether there is a breach), and subject the result for review by a higher authority.
- Keep proper records of performance of suppliers / service providers, including any unsatisfactory performance and follow-up actions taken.

## 5.5.14 CONTROL OF ASSETS AND INVENTORY ITEMS

- Label the property with identification number or assign a serial number to each high value asset (e.g. equipment, furniture) and inventory item (e.g. consumables, goods for sale) as far as practicable.
- Assign a staff member to be responsible for the overall control and management of the assets and inventory items, including any movements or transfers among users.
- Establish an electronic inventory / asset control system, if resources permit, to facilitate timely updating of movements of stocks and assets and production of periodic records for inventory checks.
- Lay down the procedures for control of assets and inventory items, including –
  - approving authority for issuing assets and inventory items to users and procedures for issue and return of items (e.g. requiring the user / staff to acknowledge receipt of items);
  - approving authority and procedures for disposal of assets and inventory items, covering –
    - determination of appropriate disposal methods (e.g. sale of obsolete stocks with resale value, write-off, or disposal as waste);
    - assigning staff members other than the users to handle and check the quantity and condition of assets or obsolete inventory items;
    - sourcing of buyers and seeking offers from prospective buyers if the assets / inventory items have a resale value, to ensure that assets approved for disposal (e.g. obsolete or invalidated) are not abused;
    - keeping records of the disposal (e.g. the approving authority, date of disposal and documentary proofs, if any); and
  - conducting random physical checks on the assets and inventory items.
- Keep all high value assets and inventory items under lock before issue to users.
- Report any loss of assets / inventory items or abnormal consumption patterns of inventory items to the management for monitoring and necessary action.

### | 5.5.15 MANAGEMENT OVERSIGHT AND SUPERVISION

- Review the procurement policies and guidelines periodically, taking into account the operational needs and changing operation environment.
- Ensure the management has adequate supervision and oversight over procurement activities, including –
  - require regular compilation of management reports (e.g. single tender, purchases exceeding a specified value, repeated purchases within a specified period of time, missing items) for review by a designated authority;
  - identify frequently-purchased goods / services for consideration of engaging term suppliers / service providers for such purchases; and
  - conduct supervisory random checks on procurement activities to detect and deter irregularities, including non-compliance with the laid-down guidelines, circumvention of stringent requirements by way of splitting orders, and abnormal consumption patterns of inventory items.

### | 5.5.16 E-PROCUREMENT

- As far as practicable and where resources permit, digitalise the procurement and inventory / asset control processes, for example –
  - adopt e-procurement system to facilitate –
    - maintenance of lists of suppliers / service providers;
    - selection of suppliers / service providers for invitation to bid;
    - receipt of quotations / tenders;
    - performance monitoring (e.g. performance appraisal and disciplinary actions taken); and

- utilise electronic inventory / asset control system to facilitate timely update of movements of stocks and assets and production of periodic records for inventory checks.

NGOs are advised to make reference to Chapter 5 of the Corruption Prevention Guide on Procurement for Public Bodies published by the ICAC, which introduces digitalised corruption prevention functionalities for procurement and is available at the following webpage:



[cpas.icac.hk/EN/Info/Lib\\_List?cate\\_id=3&id=2826](https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=2826)

- Build workflow controls in the system to ensure compliance with, and prevent circumvention of, the NGO's procurement guidelines, and functionalities to capture / record data with audit trail to enhance information integrity and automate process to minimise manipulations (e.g. maintain suppliers' lists based on preset criteria, automate the selection of suppliers by rotation / fair-share for invitation to bid, track and acknowledge receipt of bids, prohibit opening of bids before the deadline).
- Assign a unique user account, with password protection, to each of the staff with operational need for accessing different functions of the computer system (e.g. data input, assessment of service needs, approval of special cases with audit trail for data input, retrieval and amendments).
- Automate routine tasks that require minimal human interference or discretion (e.g. selection of cases for random supervisory checks, generation of management or exception reports), with the aid of data analytics tools as appropriate.
- Generate alerts on anomalies and management reports to facilitate monitoring and detect irregularities (e.g. signs of split orders and abnormal patterns of purchases).





# 6 MANAGEMENT OF WORKS AND MAINTENANCE CONTRACTS

6.1 Introduction

6.2 Key Processes

6.3 Major Corruption Risks and Red Flags

6.4 Case Studies

6.5 Corruption Prevention Safeguards

# 6 MANAGEMENT OF WORKS AND MAINTENANCE CONTRACTS

## 6.1 INTRODUCTION

NGOs occasionally appoint contractors to carry out maintenance and improvement works on their premises (e.g. renovation of offices, replacement of air-conditioning system), as well as large-scale capital works for special projects (e.g. construction of transitional housing and youth hostels) in which works consultants may also be engaged to provide professional services on the more complicated projects. As these works-related services, in particular the large-scale ones, often involve professional knowledge / technical expertise and substantial amount of money, both the appointment of works consultant / contractor and contract administration processes are inherently prone to manipulation and corruption. Vulnerable areas include favouritism in the selection of consultants and contractors, connivance at the substandard work of consultants and contractors, issue of unnecessary works variation orders, and approval of payment for incomplete works.

This Chapter highlights the major risks and introduces safeguards specific to the management of works and maintenance contracts to ensure integrity of the processes, including appointment of consultants / contractors, monitoring of works progress and quality, handling of work variations, and certification of works completion and payments. As appointment of works consultants / contractors is in essence procurement of service which entails substantial contract administration efforts, NGOs should also refer to the key processes and control measures in procurement and contract administration as described in Chapter 5, which are generally applicable in the selection and monitoring of works consultants / contractors. In addition, NGOs receiving external grants for their works or maintenance projects (e.g. the Lotteries Fund) should observe and adopt measures no less stringent than the funding requirements.



## 6.2 KEY PROCESSES

The following flow chart illustrates the key processes in the management of works-related contracts –



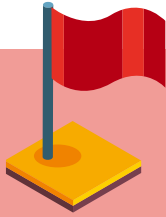
## 6.3 MAJOR CORRUPTION RISKS AND RED FLAGS

### 6.3.1 APPOINTMENT OF WORKS CONSULTANTS / CONTRACTORS



## MAJOR CORRUPTION RISKS

- 💣 Staff having conflict of interest with a particular consultant (e.g. financial interest, personal relationship) fail to declare the conflict to the appropriate authorities and manipulate the tender assessment process to favour the consultant (e.g. altering the assessment criteria after tender closing, directly engaging the consultant without recourse to competitive bidding).
- 💣 Dishonest bidders offering advantages (e.g. part of the inflated quotation / tender price) to staff / consultants in return for the latter's assistance in obtaining the consultancy agreements / works contracts.
- 💣 Staff / consultants failing to declare conflict of interest or assisting colluded contractors to obtain works contracts by illicit means such as –
  - using the list of work items proposed by a single bidder as the specifications of the contract to give the latter an edge over the others;
  - disclosing the content of quotation / tender submitted by other bidders to the colluded contractor to facilitate adjustment of his proposal to outbid his competitors;
  - falsifying / destroying other bids received;
  - altering the quotation / tender submission of the colluded contractor after the quotation / tender closing date to his favour; and
  - exerting undue influence over other assessment panel members during the evaluation process.






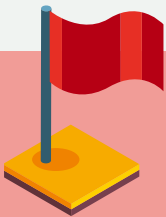
## RED FLAGS OF MALPRACTICE IN APPOINTMENT OF CONSULTANTS / CONTRACTORS

- **Biased specifications** – The brand name or model number of construction materials is specified in the quotation / tender invitation documents without justification; or it appears that the specifications are tailor-made for a particular bidder (e.g. using proprietary materials for which the bidder is the sole agent).
- **Suspicious quotation / tender invitation list** – Consultants / contractors that are unfamiliar or even never heard of in the trade, and whose reputation and reliability are unknown or in doubt, are always on the quotation / tender invitation list.
- **Acceptance of late bids** – Staff accept late bids or exercise discretion in postponing the quotation / tender submission deadline, without providing valid justifications.
- **Abnormal bidding price** – The price quoted by a particular bidder is substantially lower than that of the other bidders or normal market price; or prices submitted by all bidders are much higher than the market price.
- **Moving goalposts in bid assessment** – The conforming bid with the lowest price or highest score is not selected for contract award, without proper justifications or approval.



### MAJOR CORRUPTION RISKS

-  Compromised staff soliciting or accepting advantages from consultants / contractors as a reward for turning a blind eye to the latter's unsatisfactory performance, incomplete works, poor workmanship and/or substandard materials.
-  Site supervisory staff accepting frequent and/or lavish entertainment from contractors, resulting in conflict of interest and compromised impartiality in site inspections such as –
  - concealment of works defects in the inspection records;
  - failure to conduct checks on hidden works before their completion;
  - biased selection of prefabricated samples for compliance tests to the contractor's advantage; and
  - connivance at contractor's tampering with selected test samples or test reports.
-  Unscrupulous contractors offering advantages to NGO staff / consultants in return for the latter to accept test reports submitted by laboratories affiliated with the contractor, so as to cover up the use of substandard materials in the project.



### RED FLAGS OF LAX SITE SUPERVISION

- **Complaints against unusual defects** – Shortly after works completion, defective works are detected or frequent complaints about the quality of certain works are received and extensive repairs / replacement are required.
- **Suspicious inspection records**, for example –
  - Site supervisory staff have not maintained detailed inspection records or signed against the inspection records.

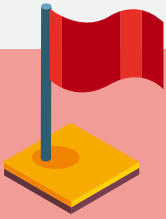
- Photographs used to support inspection findings do not show clearly important details of the works constructed, or if shown, the photographs used for different inspections are identical or very similar.
- The identities of the site supervisory staff who conducted the inspections could not be ascertained from the inspection records.
- **Dubious relationship with contractors** – Site supervisory staff have dubious or unusually close relationship with contractors' staff (e.g. having frequent (in particular after office hours) or lavish entertainment together).
- **Anomalies in delivery and testing of construction materials,** such as –
  - Key information (e.g. brand name) of materials delivered to the site is not provided or illegible in the delivery note, and the quantities shown on the note is substantially different from those required for the works.
  - Contractors' staff often prepare or select test samples without the presence of site supervisory staff, or use different means / excuses to restrict site supervisory staff from selecting test samples in various areas / locations of the site (e.g. restricted access to the areas concerned).
  - The serial number of some test reports are identical or illogical (e.g. not following a sequential order, the number of a report is larger than that of another report issued at a later date).

### | 6.3.3 WORKS VARIATIONS



#### MAJOR CORRUPTION RISKS

- Dishonest staff ordering unnecessary or overpriced additional services to favoured or colluded consultants.
- Contractors offering advantages to NGO staff / consultants in return for the latter's issuance of unnecessary / inflated variation orders so as to exaggerate the scope of works and rates of the related works items.



#### RED FLAGS OF UNNECESSARY WORK VARIATIONS

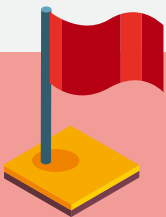
- **Unusual issue of works orders**, for example –
  - Significant quantity or value of additional works are ordered shortly after contract award.
  - High value works orders are split into a number of lower value ones to avoid the need for seeking approval from a higher authority.

### | 6.3.4 CERTIFICATION OF WORKS COMPLETION AND PAYMENTS



#### MAJOR CORRUPTION RISKS

- Staff / consultants soliciting or accepting advantages from contractors in return for –
  - accepting defective / incomplete works and approving payment for such works;
  - approving unjustified requests for extension of time or money claims; and
  - expedited processing and release of payments.



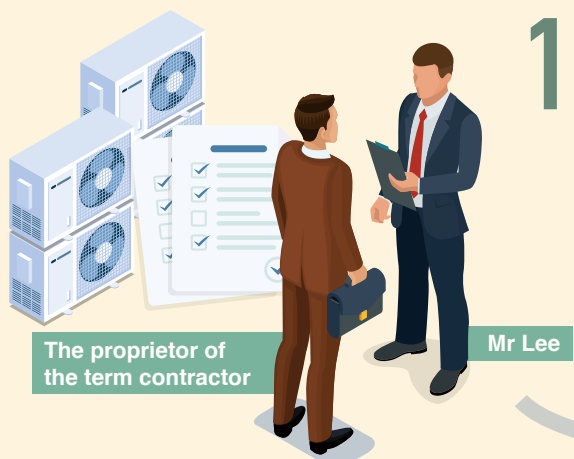
#### RED FLAGS OF PREMATURE PAYMENT AND CERTIFICATION

- **Early release of payment** – Payment is released and works are certified completed without supporting documents or before completion of all required work items.

## 6.4 CASE STUDIES



### Case Study 1 – Unnecessary Works Orders in Maintenance Contract

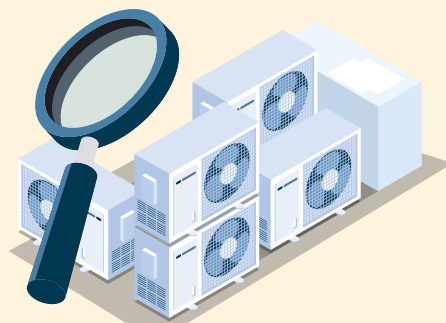


**1** Mr Lee, the facilities manager of an NGO, was solely responsible for overseeing the term contractor appointed for repair and maintenance works for the air-conditioning system at various service centres under the management of the NGO, including issuing works orders and certifying the completion of works of the term contractor.

**2** In the course of the contract, the proprietor of the term contractor approached Mr Lee for issuing unnecessary works orders and offered illegal rebate in return.

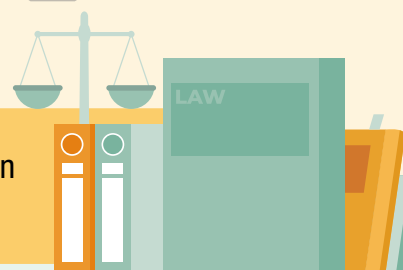


**3** Apart from placing unnecessary works orders to replace parts of the air-conditioning system with the term contractor, Mr Lee also certified the completion of such orders. In fact, the unnecessary orders were not carried out.



**4** The malpractice was unnoticed until the NGO conducted random supervisory checks on the certified payment claims of the term contractor.

Mr Lee and the proprietor of the term contractor respectively committed an offence under Sections 9(1) and 9(2) of the POBO.



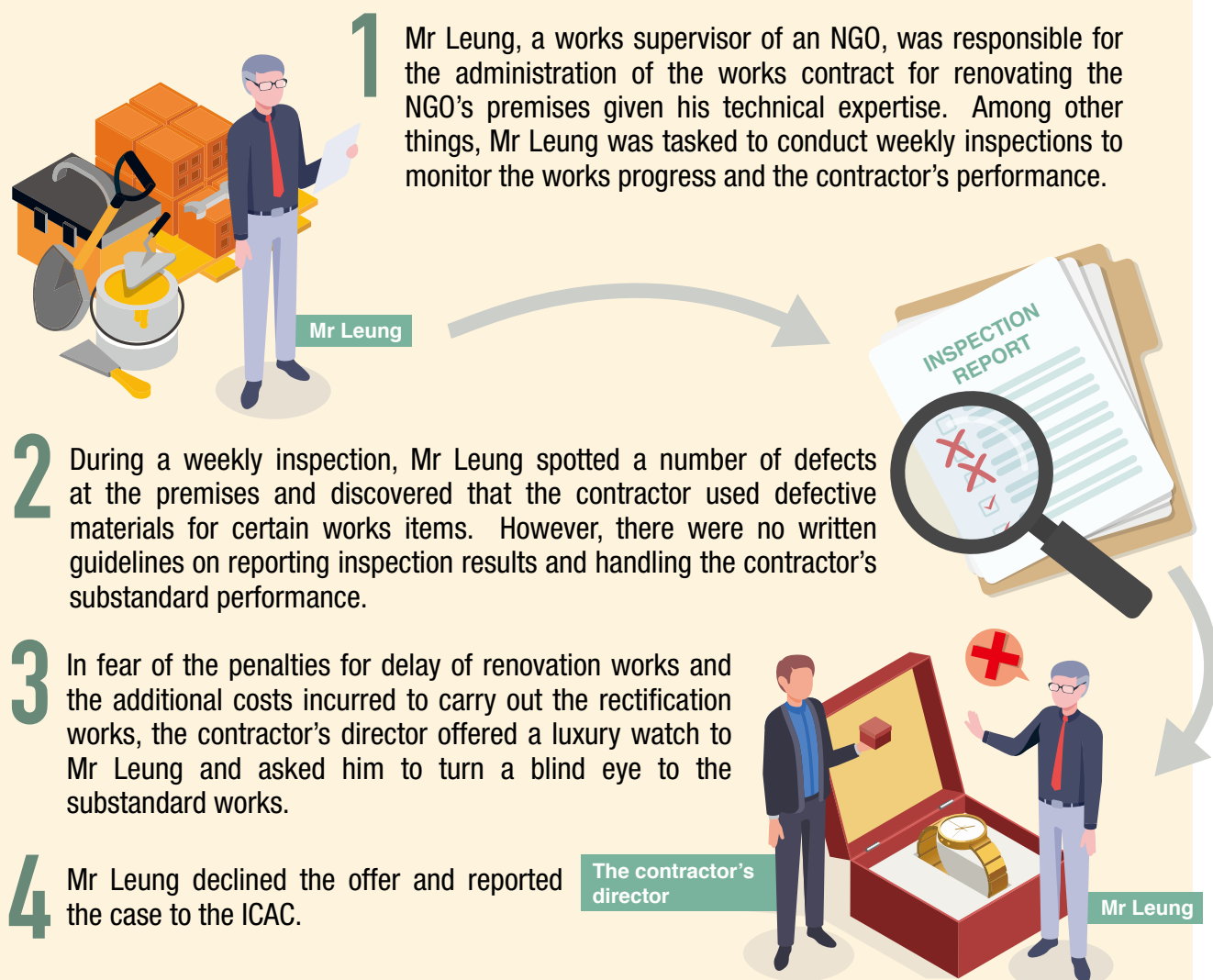
### Analysis

In the case scenario described, the NGO relied on a single staff member (i.e. Mr Lee) for administering the repair and maintenance works contract. Such insufficient segregation of duties created opportunities for Mr Lee to abuse his authority by colluding with the contractor to issue unnecessary works orders and certify completion and payment claims for works not carried out.

To detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Sections 6.5.3, 6.5.5 and 6.5.6.



## Case Study 2 – Harboursing Substandard Renovation Works



The contractor's director committed an offence under Section 9(2) of the POBO.

### Analysis

The corrupt act by the contractor's director tarnished his company's reputation. The insufficient mechanism on monitoring the works progress and quality and the lack of requirement for reporting inspection results undermined the accountability and increased the risk of lax supervision. The lack of laid-down guidelines on the handling of the substandard works also created room for undue discretion and corrupt practice by unscrupulous staff.

Nevertheless, Mr Leung's refusal to accept the watch, which was regarded as an advantage under the POBO, reflected that the NGO had fostered an integrity culture among staff that helped raise their anti-corruption awareness.

To detect and deter similar malpractice, NGOs are advised to adopt the recommended practices in Section 6.5.3.





## 6.5

# CORRUPTION PREVENTION SAFEGUARDS

## 6.5.1 BASIC CONTROLS IN MANAGEMENT OF WORKS AND MAINTENANCE CONTRACTS

- Lay down comprehensive operational guidelines on the key processes of selection of consultants / contractors and supervision of works projects, including –
  - preparation of quotation / tender invitation documents, consultancy agreements and works contracts;
  - sourcing, evaluation and selection of consultants / contractors;
  - approval and award of contracts;
  - conduct of site inspections for progress monitoring and certification of works completion, including the documentary proof to support the observations / certification and follow-up actions on rectification works required;
  - handling and approval of works variations;
  - processing of payment claims and release of payments;
  - handling of exceptional cases, including the relevant justifications, documentation requirements and approving authorities; and
  - management oversight to ensure staff's compliance with the laid-down procedures.
- Require all personnel involved in the selection and management of consultants / contractors to declare in writing any actual, potential or perceived conflict of interest to the designated authority as soon as practicable.
- Put in place a mechanism and provide guidance to the designated authority on determining the mitigating measures for managing the declared conflict, with the justifications and actions taken properly documented (📄 **Section 2.3.6**).
- Require consultants / contractors to commit to ethical practices by issuing a code of conduct or probity guidelines to their directors and staff. The code / guidelines should include essential probity requirements such as restrictions on offer, solicitation and acceptance of advantages and entertainment, mechanism for managing conflict of interest, and rules on protection and use of confidential or proprietary information.

## **| 6.5.2 APPOINTMENT OF WORKS CONSULTANTS AND CONTRACTORS**

### **6.5.2.1 ASSESSMENT OF THE NEED FOR WORKS CONSULTANCY SERVICES**

- Assess the need for works consultancy services having regard to statutory requirement and operational considerations, including –
  - requirement for the appointment of registered works professionals under the law (e.g. structural alteration plans have to be submitted by Authorized Persons);
  - complexity of the works (e.g. merely re-painting the premises versus demolishing and re-designing the existing premises for provision of new facilities);
  - technical expertise involved in the works project; and
  - availability of competent Board and/or staff members to supervise the works.
- Submit the recommendation for appointing works consultant, together with justifications, to the designated authority for approval.

### **6.5.2.2 PREPARATION OF QUOTATION / TENDER INVITATION DOCUMENTS**

- If a consultant is to be appointed for management and implementation of the works project, determine the mandatory services such as identification of works items required (including the estimated quantities and costs for individual items), works design, selection of works contractor, supervision of works, and administration of works contract.
- Map out the comprehensive scope of works to be carried out and specifications that suit the NGO's actual needs (e.g. areas requiring refurbishment and the relevant details), and clearly distinguish the essential / mandatory works items from non-essential ones.
- Clearly specify the following clauses in the quotation / tender invitation documents for the consultancy agreement or works contract –
  - anti-bribery clauses, and a requirement for bidder to submit a declaration pledging compliance with these clauses;
  - scope and standard of consultancy services / works required;
  - pre-determined evaluation criteria and their weightings;
  - terms and conditions covering payment arrangements, insurance, and termination of agreement / contract;

## Additional clauses for works consultancy agreement

- requirement for the submission of staffing proposal and pricing schedule (i.e. a breakdown of consultancy fees);



**[Sample Form for Invitation of Fee Proposals for Consultancy Agreement is at Appendix 10]**

## Additional clauses for works contract

- detailed specifications for each works item;
  - pricing and time schedules for works items; and
  - terms and conditions on defects liability period<sup>4</sup>, extension of time<sup>5</sup>, liquidated damages<sup>6</sup>, retention money<sup>7</sup>, and works variations.
- Do not draw up the service / works specifications solely based on the information or proposal provided by a single potential bidder.
- Consider the need to include a clause to debar the consultant from assisting or partnering with the contractors to bid for works contracts related to the consultancy agreement, and to require the consultant to declare any interest in the contractors under its supervision (⇒ **Section 6.5.2.5**).

### 6.5.2.3 SOURCING AND INVITATION OF WORKS CONSULTANTS / CONTRACTORS TO BID

- Adopt open tendering as far as practicable, or strictly follow the NGO's established procurement method based on the estimated cost of engagement of the consultant / contractor.

<sup>4</sup> After works completion, there should be a "defects liability period" during which the contractor has the responsibility to make good any defects in or arising from its work (e.g. plaster cracking, doors and windows not functioning properly).

<sup>5</sup> An extension of time may be granted to the contractor if failure to complete the works by the agreed date is caused by factors outside the contractor's control.

<sup>6</sup> Liquidated damages are compensations to be paid to the NGO by the contractor for any delay in work caused by the latter, in accordance with the contract.

<sup>7</sup> Retention money refers to the amount of money, which normally ranges from 5% to 10% of the contract sum, held by the NGO as a safeguard against defects which may subsequently develop and which the contractor may fail to rectify.

- If open tendering is not adopted, pay special attention to the following –
  - avoid inviting consultants referred or employed by a contractor who may bid for the works contract;
  - do not rely on a single person to source and shortlist the consultants / contractors to bid, and consider appointing a panel comprising Board and/or staff members with the relevant technical knowledge to shortlist consultants / contractors;
  - identify potential consultants / contractors from various channels, e.g. lists maintained by the related government departments (e.g. Architectural Services Department, Buildings Department), professional bodies (e.g. The Hong Kong Institute of Architects, The Hong Kong Institute of Engineers) or other NGOs; and
  - subject the invitation list to approval by the senior management or the Board / relevant committee depending on the scale and cost of the project;
  - for consultant-managed projects –
    - do not solely rely on the consultant to source and invite contractors to bid;
    - add contractors from other sources to the invitation list; and
    - avoid disclosing the consultant's name in any invitation documents (e.g. advertisement for open tendering, quotation / tender documents).

#### 6.5.2.4 EVALUATION OF QUOTATIONS / TENDERS

- Set up an assessment panel, comprising members with the technical knowledge and preferable with at least one member from an office / unit independent from the user department, to evaluate the bids received.
- Ensure that the evaluation criteria include all critical factors, such as –
  - relevant experience of the bidder in overseeing (for works consultancies) or implementing (for works contracts) similar projects;
  - organisational structure, company resources and current workload (e.g. number of full-time professional and technical staff, number and details of on-going projects);
  - staffing proposal for the project concerned, including the qualifications, relevant experience, responsibilities and degree of involvement of key personnel (e.g. committed man-hours by individual key personnel); and
  - past performance (e.g. letter of recommendation in relation to previous projects).

- Require assessment panel members to independently evaluate the bids received, using an evaluation form, before deliberating their views and scores given.



**[Sample Quotation / Tender Evaluation Forms for Consultancy Service and Works Contract are at Appendices 11 and 12 respectively]**

- Properly record members' original marking / assessment and any subsequent revisions, as well as the gist of deliberations during the evaluation meeting.
- Assess the reasonableness of the quotation / tender prices, based on the consultant's proposed manpower input and the fees breakdown for works consultancy services at various stages<sup>8</sup> (for works consultancies) or the estimated quantities and prices for individual major works items (for works contracts), or by making reference to the fees paid by other NGOs on similar projects.

#### 6.5.2.5 AWARD OF CONSULTANCY AGREEMENT / WORKS CONTRACT

- Ensure that the consultancy agreement / works contract has included the following essential terms and conditions –

- probity clauses;



**[Ethical Probity Clauses in Consultancy Agreement and Contracts to be Awarded are at Appendices 13 and 8 respectively]**

- if considered necessary, a clause to debar the consultant from assisting other consultants or contractors to bid for contracts arising from the consultancy agreement to avoid conflict of interest;



**[Sample Debarment Clauses in Consultancy Agreement is at Appendix 14]**

- scope of consultancy services / works and specifications;
  - payment arrangements for services delivered / works completed;
  - payment arrangements for additional services (for works consultancies); and
  - pricing schedule for works items (for works contracts).
- Make reference to the sample consultancy agreements / works contracts published by the professional bodies.

<sup>8</sup> To assess the reasonableness of the consultancy fees, NGOs may divide the fees quoted by the proposed manpower input to work out the average salary of the staff, and compare such with the market rate.

## | 6.5.3 MONITORING OF WORKS PROGRESS AND QUALITY

### 6.5.3.1 SITE SUPERVISION OF WORKS

- Appoint a project team with staff who have the technical or professional knowledge to monitor the works project and regularly report to the management, or enlist the assistance of Board members with the relevant expertise for the purpose.
- For works project managed by NGO itself –
  - require the contractor to submit a works programme at the commencement of the works, showing the stages and deliverables required, and maintain detailed records for reporting to / inspection by the NGO;
  - conduct site inspections and record the date, time and results of the inspection on an inspection form, which should clearly show the identities and signatures of the inspection staff and have supporting photographs attached, for timely reporting to the management;
  - follow up in a timely manner with the contractor on any rectification works required;
  - require the contractor to submit photographs of the works showing the progress and hidden works (before and after work completion) as evidence of compliance with the required quality / standard and progress of works;
  - require the contractor to explain any delay and propose remedial measures; and
  - conduct regular / random supervisory checks on the inspection results and properly document the checks.
- For works project managed by the consultant –
  - require the consultant to submit a site supervision plan, providing detailed site inspection arrangements, including particulars of inspection staff, frequency of site inspection, rank and number of site supervisory staff, inspection records (e.g. certified site photos, material test certificate), for approval by the NGO;
  - require the consultant to regularly report on the contractor's progress and the quality of works carried out;
  - check whether the consultant has carried out its supervision based on the approved site supervision plan and require immediate rectification in case of deviation; and

- avoid relying entirely on the consultant in monitoring the works progress, and appropriately take part in the process (e.g. join the site inspections with the consultant, convene regular meetings with the consultant and contractor to review work progress and any rectification work required).
- Prohibit site supervisory staff from accepting frequent / lavish entertainment from contractors and over-socialising with them.
- Adopt technology that enables real-time monitoring / surprise checks (e.g. using mobile devices to record automatically the identities of the site supervisory staff, date, time and results of inspections, and take photographs of the works conducted) and easy retrieval of project records.
- As far as practicable, automate the manual processes and digitalise the workflow for site supervision, such as assignment of site supervisory staff, recording and submission of inspection results on an electronic platform, and supervisors' verification of the inspection results.

#### 6.5.3.2 QUALITY CONTROL OF MATERIALS

- Specify in the contract the materials to be used with clearly defined performance requirements and acceptance criteria, as well as the percentage of materials that should be subject to compliance tests.
- Check the materials proposed by the contractor and supporting documents (e.g. test reports, catalogues) to ensure compliance with the contract requirements before approval.
- Inspect the materials delivered to the site against the sample board and approved material proposals, and record on an inspection form the inspection results with supporting photographs and documents (e.g. original or certified true copies of delivery notes, copies of test reports).
- Require the contractor to provide justifications for using alternative materials, and check if the alternative materials have equivalent performance.
- Appoint laboratories accredited under the Hong Kong Laboratory Accreditation Scheme and without affiliation with the contractor or its subcontractors for performing compliance tests on materials.
- Ensure randomness in the selection of test samples, and automate the random selection process where practicable and with the aid of information technology.

- Ensure the traceability and security of test samples through the use of anti-tampering security labels (e.g. QR codes or Radio Frequency Identification tags for concrete cubes, tamper-evident labels for steel reinforcing bars), and implement a control system to ensure the proper issue and usage of the security labels.
- Require laboratories to send test reports directly to the NGO / consultant in sealed envelopes, or the NGO / consultant and the contractor in parallel.
- Engage a separate laboratory to conduct parallel tests<sup>9</sup> of materials if necessary, having regard to the nature of the materials (e.g. those quality / safety-critical items and used in large quantity) and past performance of the original laboratory.

### 6.5.3.3 SUPERVISION OF WORKS IN FACTORIES OUTSIDE HONG KONG

- Establish a mechanism for approving inspection visits outside Hong Kong conducted by site supervisory staff of the NGO or the consultant, as appropriate.
- Lay down the standard and arrangement of accommodation and transportation for factory visits, if these are to be provided by the contractor; and prohibit the contractor from reimbursing site supervisory staff for expenses incurred during the visits.

### 6.5.4 HANDLING OF VARIATIONS OF CONSULTANCY SERVICES AND WORKS ITEMS

- Minimise the need for service / work variations which often entail negotiation with the consultant / contractor on non-standard or special rates.
- Where practicable, consider inviting new quotations / tenders for service / work variations if the scope or cost is substantial.
- Specify the level of authorities and the respective financial limits for approving variations, and set a ceiling on the total value of allowable variations under a contract (e.g. a certain percentage of the contract value).
- Require the staff responsible or the consultant to provide justifications, cost estimates and supporting documents when issuing variation orders to the contractor.
- Require the contractor to estimate the rates for proposed works variations based on the contract rates as far as possible.

<sup>9</sup> Parallel tests are tests on the same batch of materials conducted by another laboratory to verify the test results of the original laboratory and hence the quality of the materials.



- Require the consultant to seek NGO's prior approval for major variation orders (e.g. when the value of an individual variation order or accumulated variation orders exceeds the specified threshold), and consider seeking independent professional advice on the estimated value and scope of works in such cases.

### **6.5.5 CERTIFICATION OF WORKS COMPLETION**

- Conduct inspections, jointly with the consultant if appointed, on the completed works claimed by the contractor.
- Require the consultant / contractor to compile and submit a list of defects for approval by the NGO and to follow up the rectification of defects.
- Require the inspection staff to sign for all accepted works before certifying works completion, with supporting documents as necessary (e.g. site photographs), or the consultant to inspect and certify all works done before issuing the certificate of works completion.
- Conduct inspection, jointly with the consultant if appointed, to check the completion of the defect rectification works before the expiry of the defects liability period and final certification of works completion.

### **6.5.6 PAYMENTS**

- State in the consultancy agreement the work stages for payment entitlement and time limit for processing payment applications, and require the consultant to provide service details / progress reports to substantiate its payment claims.
- Require the contractor to rectify any substandard works identified before release of payments, and provide billing details in the invoices (e.g. particulars of the actual works done with supporting proof such as site photographs, rates for individual works items as specified in the contract).
- Make payments to the consultant / contractor in accordance with the terms and schedule in the agreement / contract.
- Conduct random supervisory checks on the certified payment claims.
- For final payment claim, ascertain that the contractor has completed the following items before releasing retention money according to the contract terms –
  - provide all certificates, test reports and any other relevant documents; and
  - make good all the defects identified within the defect liability period.

- For consultant-managed project, in addition to the measures described above, require the consultant to –
  - verify the works progress against the amount claimed when certifying payment applications; and
  - submit regular reports on work progress and financial statements of the works project accounts.
- For handling extension of time and the related money claims, put in place the following safeguards –
  - require the consultant and contractor to maintain sufficient and up-to-date records of the claims; and
  - require the consultant (if appointed) to record its assessment on the extension of time and money claims, and conduct audits on the handling of claims.

### **6.5.7 MANAGEMENT OVERSIGHT AND SUPERVISION**

- Set up a mechanism for regular reporting of the consultant's performance or for adverse reporting by the project team to the management.
- Compile information management reports to facilitate monitoring and detect irregularities (e.g. information on variations of services / works, extension of time and the related money claims, comparison between the project schedule and actual progress with reasons for delay (if any)).





## APPENDICES

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- 1 Sample Code of Conduct for Board Members of Non-governmental Organisations in Social Welfare Sector
- 2 Sample Code of Conduct for Staff of Non-governmental Organisations in Social Welfare Sector
- 3 Other Sample Guidelines for Incorporating in the Codes of Conduct for Board Members and Staff of Non-governmental Organisations in Social Welfare Sector
- 4 ICAC Service and Other Assistance
- 5 Sample Purchase Requisition Form
- 6 Sample Probity Clauses in Quotation / Tender Invitation Documents
- 7 Sample Tender Evaluation Report
- 8 Sample Probity Clauses in Contracts to be Awarded
- 9 Sample Supplier / Service Provider Performance Evaluation Form
- 10 Sample Form for Invitation of Fee Proposals for Consultancy Agreement
- 11 Sample Quotation / Tender Evaluation Form for Consultancy Service
- 12 Sample Quotation / Tender Evaluation Form for Works Contract
- 13 Sample Probity Clauses in Consultancy Agreement
- 14 Sample Debarment Clauses in Consultancy Agreement

## SAMPLE CODE OF CONDUCT FOR BOARD MEMBERS OF NON-GOVERNMENTAL ORGANISATIONS IN SOCIAL WELFARE SECTOR

### ETHICAL COMMITMENT

1. *[Name of Organisation]* (hereafter referred to as the Organisation) regards honesty, integrity and fair play as our core values that must be upheld by all Board members<sup>1</sup> of the Organisation at all times. This Code sets out the basic standard of conduct expected of all Board members, including the Organisation's policy on acceptance of advantage and handling of conflict of interest when dealing with the Organisation's business.

*[The Organisation may wish to include other core values relevant to its duties and business.]*

### PREVENTION OF BRIBERY

2. The Organisation prohibits all forms of bribery and corruption. All Board members are prohibited from soliciting, accepting or offering any bribe in conducting the Organisation's business or affairs. In conducting all business or affairs of the Organisation, they must comply with the Prevention of Bribery Ordinance (Cap. 201) (POBO)<sup>2</sup> of Hong Kong.

*[The relevant sections of the POBO are detailed at **Annex 1**.]*

### SOLICITATION AND ACCEPTANCE OF ADVANTAGES<sup>3</sup>

3. *[Name of Organisation]* prohibits Board members from soliciting or accepting any advantage from any persons or companies having official dealings with the Organisation (e.g. service recipients, suppliers, contractors, professional fund-raisers), and from staff to whom the Board may have an influence<sup>4\*</sup>, except that

<sup>1</sup> "Board members" means members of the NGO's governing body which may be referred to as "Management Board", "Executive Committee", "Management Committee", "Council", etc. in some NGOs. *[The Organisation should also ensure that members of the committees, sub-committees and panels under its governing body are covered by this code of conduct or a separate code tailor-made for them.]*

<sup>2</sup> Full text of the POBO is available at <https://www.elegislation.gov.hk/hk/cap201>.

<sup>3</sup> "Advantage" means almost anything which is of value, except entertainment (see footnote 8), including any gift (both of money and in kind), loan, fee, reward, commission, office, employment, contract, service and favour, etc.

<sup>4</sup> For example, staff members whose appointment, performance, remuneration and contract renewal are subject to the Board's decisions, or who request for favour from Board members on matters related to the Organisation for himself or others.

they may accept, but not solicit, the following advantages when offered on a voluntary basis –

- (a) advertising or promotional gifts or souvenirs of a nominal value;
- (b) discount or other special offers given by any person or company to them as customers, on terms and conditions equally applicable to other customers in general; or
- (c) gifts given by donors to a Board member in his private capacity<sup>5</sup>.

*[\* Acceptance of gifts by Board members from staff whom they may have an influence could invite allegations of impropriety, hence it should be discouraged. However, if an Organisation, wishes to give permission<sup>6</sup> for Board members to accept such an advantage, it should impose restriction as below –*

- (d) *gifts given by staff to Board members who may have an influence over them on festive or special occasions, subject to a maximum limit of \$ \_\_\_\_\_ in value<sup>7</sup> .]*

4. Gifts or souvenirs described in paragraph 3(a) that are presented to Board members by virtue of their official positions or in official functions are deemed as offers to the Organisation. The Board member concerned should take it back to the Organisation and follow guidelines set out in **Annex 2** for the disposal of gifts or souvenirs received. If a Board member wishes to accept from any persons or companies having official dealings with the Organisation, or from staff to whom the Board may have an influence any other advantages not listed in paragraph 3, he should seek the permission from *[the approving authority]*. In case of doubt, the Board member should refer the matter to *[insert an appropriate unit / officer]* for advice and instruction.
5. Even if the offeror does not have any official dealings with the Organisation, a Board member should decline an offer of an advantage if the acceptance could affect his objectivity in conducting the Organisation's business, induce him to act against the Organisation's interest or place him under an improper obligation, or where he believes the offeror has such an intention, or lead to the perception or allegation of impropriety or conflict of interest. Board members should ensure that

<sup>5</sup> If an Organisation considers there is incentive for a donor to offer advantage to a Board member in return for benefits (e.g. assisting the donor to become a Board member), it should exclude (c) from the blanket permission covered above. The Organisation should then follow the procedures described in paragraph 4 in processing the application for acceptance of advantage.

<sup>6</sup> Special permission is recommended from a control perspective as the Organisation can consider the circumstances in each case before its decision to grant the permission.

<sup>7</sup> The Organisation should consider setting different amounts allowed for festive and special occasions but they should be minimal as such they might not be perceived as influencing the recipient's impartiality, taking into consideration the recipient's income and public perception.

the solicitation or acceptance of any advantages can stand up to public scrutiny and will not bring the Organisation into disrepute.

## ACCEPTANCE OF SPONSORSHIP

6. Sponsorship (which may comprise passage, accommodation, or other fees) is a form of advantage. Board members may be offered sponsorship in their official capacity by persons or other organisations for official purposes such as attending local / overseas conferences, conventions and product trial activities. Such sponsorship should be regarded as sponsorship offered to the Organisation and referred to the Organisation for consideration of acceptance, based on operational need, and assignment of the Board member / staff to attend the sponsored activity, based on suitability. The general criteria for considering whether or not to accept the sponsorship offer are suggested at **Annex 3**.
7. A Board member may be offered sponsorship due to his personal expertise or professional membership. Though not representing the Organisation, care should be taken when such a sponsored visit is offered by a party having business dealings with the Organisation and the Board member's duty is directly related to, or could potentially or seen to be influenced by, the content or result of the visit. In accepting such sponsorship, Board members should ensure that their conduct and activities would not bring them or the Organisation into disrepute or lead to any actual or perceived conflict of interest.

## OFFER OF ADVANTAGES

8. Board members are prohibited from offering advantages to any director, staff member or agent of another company or organisation, for the purpose of influencing such person in any dealing, or any public official, whether directly or indirectly through a third party, when conducting the Organisation's business.
9. Board members should as far as possible refrain from bestowing gifts / souvenirs to others during the conduct of official activities. Where it is necessary or unavoidable



due to operational, protocol or other reasons, the gifts / souvenirs to be bestowed should not be lavish or extravagant, and be kept to a minimum in quantity and the exchange of gifts / souvenirs should be made from organisation to organisation.

## ACCEPTANCE OF ENTERTAINMENT

10. Board members should not accept lavish, or unreasonably generous or frequent entertainment<sup>8</sup> from any person having official dealings with the Organisation. When offered entertainment, a Board member should consider whether the entertainment offered could be regarded as –

- excessive – taking into account its value, substance, frequency and nature;
- inappropriate – taking into account the relationship between the Board member and the offeror (e.g. the offeror is bidding for the Organisation's contract); or
- undesirable – taking into account the character or reputation of the host or known attendees.

*[The Organisation may insert additional guidelines on acceptance of entertainment and/or the reporting requirements.]*

## MANAGING CONFLICT OF INTEREST

11. A conflict of interest situation arises when the “private interests” of a Board member compete or conflict with the interests of the Organisation or the official duties of the Board member. Private interests include financial and other interests of the Board member himself, and those of his connections including family and other relations, personal friends, the clubs and societies to which he belongs, any other groups of people with whom he has personal or social ties, and any person to whom he owes a favour or to whom he may be obligated in any way. Some common examples of conflict of interest are provided at **Annex 4**.

<sup>8</sup> As defined in section 2 of the POBO, “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 the provision of food or drink.

## **AVOIDANCE AND DECLARATION OF CONFLICT OF INTEREST**

12. A fundamental integrity requirement is that all Board members should avoid situations which may compromise (or be seen to compromise) their personal judgement or integrity at work or lead to conflict of interest. A Board member's duty to avoid or declare a conflict of interest goes beyond the disclosure of interests that are definable in pecuniary terms.
13. When a situation involving a conflict of interest cannot be avoided, Board members should as soon as possible make full disclosure of all relevant interests which conflict, may conflict or may be seen to conflict with their official duties. The declaration guidelines are provided at **Annex 5**. Any declarations made and the related decisions should be recorded in meeting minutes or using a declaration form (sample at **Annex 6**) where practicable. If Board members have doubts concerning the handling of conflict of interest situation, they should immediately consult the Chairman / Secretary.

## **MANAGING DECLARED CONFLICT OF INTEREST**

14. Upon receipt of a report on conflict of interest situation, the Chairman or the Board should, as soon as practical, decide on the appropriate course of action to be taken such as to relieve the Board member of his involvement in the task, and give clear direction / instruction to the Board member concerned. The declaration and the decision / action should be properly recorded. The Chairman or the Board should ensure the Board members' compliance with the instruction so as to effectively remove / mitigate the conflict of interest.
15. In deciding on the course of action to be taken, the Chairman or the Board should take into account the seriousness of the conflict and public perception. Mitigating measures which the Chairman or the Board can consider adopting are at **Annex 7**.
16. As a matter of principle, Board members should avoid entering into any business contract (e.g. for the supply of goods or services) with the Organisation in their personal capacity to prevent the public perception of Board members using their capacity to obtain financial gains from the Organisation. Where this is unavoidable, Board members should adhere to the guidelines on managing possible conflict of interest in bidding for the Organisation's business contracts as set out at **Annex 8**.

## MISUSE OF OFFICIAL POSITION

17. Persons occupying offices of NGOs which receive subventions from the Government / other sponsoring organisations or public donations for the provision of services in the community are placed in a position of trust. Our society expects persons in such a position to exercise the powers and discretions with integrity and fidelity, and in an incorrupt manner to serve the interest of the Organisation, and should not subordinate the interest of the Organisation to private interests.
18. Board members should act impartially and should not use their official position for personal gains nor accord preferential treatment to organisations or persons with whom they have connections. They should not use or permit the use of their official position or title or an authority associated with their office in a manner that is intended to coerce or induce another person to provide any benefit to himself or his relations, friends or associates. Nor should they use their official position or title in a manner that could reasonably be construed to imply that the Organisation sanctions or endorses their personal activities or those of another.

## CONFIDENTIALITY OF INFORMATION

19. Board members should not disclose any classified or proprietary information of the Organisation without authorisation or misuse any Organisation's information (e.g. for personal gain or the benefit of others). Special care should be taken when handling any personal data of the Board members, staff, volunteers and service recipients to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486) and the Organisation's data privacy policy.
20. Board members should continue to observe their duty of confidentiality after they have left the Organisation. They should not use, or take advantage of any classified or proprietary information obtained in the course of their official duties.

## RECORDS, ACCOUNTS AND OTHER DOCUMENTS

21. Board members should ensure, to the best of their knowledge, that any record, receipt, account or other documents they submit to the Organisation, gives a true representation of the events or transactions reported in the documents. Intentional use of documents containing false information to deceive or mislead the Organisation, regardless of whether the Board member may obtain any gain or advantage, may constitute a criminal offence.

## REPORTING SUSPECTED IRREGULARITIES AND CRIMINAL OFFENCES

22. A Board member should report, either directly or through [*insert an appropriate unit / officer in / the Chairman of the Organisation*] as appropriate, instances of crime or suspected crime discovered in the course of his work to the appropriate authority or law enforcement agency at the first practicable opportunity. A Board member should avoid making any enquires or taking any action that may hinder or frustrate subsequent investigation by the law enforcement authority concerned. All Board members who receive or have knowledge of such reports should treat the reports in the strictest confidence.

## COMPLIANCE

23. Any Board member in breach of the Code will be subject to disciplinary action, including termination of appointment. In case of suspected corruption or other criminal offences, a report will be made to the appropriate law enforcement agencies.

## ENQUIRY

24. Any enquiries, comments or suggestions in relation to this Code may be referred to [*insert an appropriate unit / officer in the Organisation*].

## EXTRACTS OF THE PREVENTION OF BRIBERY ORDINANCE (CAP. 201)

## SECTION 9

(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 4

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-

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

## EXTRACTS OF THE PREVENTION OF BRIBERY ORDINANCE (CAP. 201)

- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

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

### SECTION 2

**“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.

### SECTION 8

- (1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

### SECTION 19

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.

## **GUIDELINES FOR HANDLING GIFTS / SOUVENIRS GIVEN TO BOARD MEMBERS IN THEIR OFFICIAL CAPACITY**

All gifts / souvenirs received by Board members in their official capacity should be forwarded to the Secretary for disposal in the following manner –

- If the gift / souvenir is of perishable nature (e.g. food, drink), it may be shared among service recipients, donated to a charitable organisation or, when this is not practical, shared among staff of the Organisation on a suitable occasion.
- If the gift / souvenir is a useful item, it may be kept for use by the Organisation or donated to another charitable organisation.
- If the gift / souvenir is suitable for display (e.g. a painting, vase), it may be displayed at appropriate locations of the Organisation premises.
- If the gift / souvenir is of low value, it may be donated as a prize in functions organised by the Organisation.
- If the gift / souvenir is a personal item of low value, such as a plaque or pen inscribed with the name of the recipient, it may be retained by the recipient.
- If the gift / souvenir is distributed to all participants in public activities, such as a ball pen, file folder or key clasp, etc, it may be retained by the recipient.
- Any gift / souvenir of high value should be returned to the offeror as far as possible.

## CONSIDERING FACTORS FOR ACCEPTANCE OF SPONSORSHIP

In considering whether or not to accept the sponsorship offer, the following general criteria are relevant –

- acceptance of the sponsorship will benefit the Organisation as a whole;
- acceptance of the sponsorship will not bring the Organisation into any disrepute;
- the sponsorship is not excessive in value or frequency;
- acceptance of the sponsorship will not give rise to any express or implied obligation towards the offeror;
- acceptance of the sponsorship will not give rise to any actual or perceived conflict of interest (e.g. the offeror is a supplier / contractor bidding for the Organisation's contracts); and
- the sponsor will not be given or be perceived to derive an unfair advantage over other persons or organisations.



## EXAMPLES OF CONFLICT OF INTEREST FOR BOARD MEMBERS

Some examples of conflict of interest are provided below but they are by no means exhaustive –

### **Procurement of Products or Services**

- A Board member involved in a procurement process (e.g. assessment of tender) has an interest in or is closely associated with a company which provides the Organisation with paid services (e.g. training, consultancy, legal, accounting), or bids for supply of goods or services to the Organisation.
- A Board member or his close relative / friend has financial interest in a professional fundraiser (e.g. a marketing or public relations company) which the Organisation engages to solicit donations.
- A Board member leases or sells his property to the Organisation.

### **Staff Administration**

- 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 Board member responsible for the exercise.
- A Board member soliciting assistance from the Organisation's staff in dealing with his own personal matters.

### **Others**

- A Board member attends a meeting for evaluation of an NGO supplier of which he is also a Board member.
- A Board member is involved in the allocation of seats or mechanism for publicity in an event which his company is also a sponsor.
- A client of a Board member's business bids for purchase of an asset owned by the Organisation.

## **GUIDELINES ON DECLARATION OF CONFLICT OF INTEREST BY BOARD MEMBERS OF NGOS**

### **General Principles**

When a Board member (including the chairman) of a board or committee has a potential conflict of interest in a matter placed before the committee, he should make full disclosure of his interest. The basic principle to be observed is that Board members' advice, decisions or views should be disinterested and impartial and it is the responsibility of each Board member to judge and decide if the situation warrants a declaration, and to seek a ruling from the chairman in case of doubt.

It is impossible to define or describe all the situations that would call for such a declaration, because each individual case differs, and because of the difficulty of catering for unusual and unforeseen circumstances. On the other hand, it is not intended that a Board member should make a declaration of conflict of interest simply because the committee is considering a matter in which he has knowledge or experience.

### **Potential Conflict of Interest Situations**

The following are potential conflict of interest situations :

1. Pecuniary interests in a matter under consideration by the committee, held either by the Board member or by any close relative of his. Board members are themselves the best judge of who, in the particular circumstances, is a "close relative".
2. A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the Board.
3. Some friendships which might be so close as to warrant declaration in order to avoid situations where an objective observer might believe a Board member's advice to have been influenced by the closeness of the association.
4. A Board member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advised or represented or had frequent dealings with any person or body connected with a matter under consideration by the Board.
5. Any interest likely to lead an objective observer to believe that the Board member's advice might have been motivated by personal interest rather than a duty to give impartial advice.

## **Declaration of Conflict of Interest at Meetings**

The following are guidelines governing declaration of conflict of interest at meetings :

1. If a Board member (including the chairman) has any direct personal or pecuniary interest in any matter under consideration by the Board, he must, as soon as practicable after he has become aware of it, disclose to the chairman (or the committee) prior to the discussion of the item.
2. The chairman (or Board) shall decide whether the Board member disclosing a conflict of interest may speak or vote on the matter, may remain in the meeting as an observer, or should withdraw from the meeting.
3. If the chairman declares a conflict of interest in a matter under consideration, the chairmanship may be temporarily taken over by a vice-chairman.
4. When a known direct pecuniary interest exists, the secretary may withhold circulation of relevant papers to the Board member concerned. Where a Board member is in receipt of a paper for discussion which he knows presents a direct conflict of interest, he should immediately inform the secretary and return the paper.
5. All cases of declaration of conflict of interest shall be recorded in the minutes of the meeting.

**(NAME OF THE ORGANISATION)**  
**DECLARATION OF CONFLICT OF INTEREST**

**Part A – Declaration** *(To be completed by Declaring Board Member)*

To : (Approving Authority)

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

Person(s) / organisation(s) with whom / which I have official dealings and/or private interest

My relationship with the person(s) / organisation(s) (e.g. relative)

My contact with the person(s) / organisation(s)  
(Please state the frequency of contact and the usual occasions of contact, etc.)

Relationship of the person(s) / organisation(s) with [*the Organisation*] (e.g. supplier)

Brief description of my duties which involved the person(s)/organisation(s) (e.g. handling of tender exercise)

File reference, if any, of the mentioned duties

(Date)

(Name of Declaring Board Member)

## Part B – Approval *(To be completed by Approving Authority)*

To : (Declaring Board Member)

Part B(i) – In respect of the declaration in Part A of this form, it has been decided that:

☐ The declaration as described in Part A is noted. You are allowed to continue handling the work as described in Part A, provided that there is no change in the information declared above.

☐ You are restricted in the work as described in Part A (e.g. prohibit from handling the specific part / duty that you have conflict, withdraw from discussion on a specific issue / case).

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ You may continue to handle the work as described in Part A, but an independent Board member would be recruited to participate in, oversee or review part or all of the decision-making process (e.g. task another Board member with the required expertise to provide objective assessment on the matter).

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ You are relieved of your duty as described in Part A, which will be taken up by another Board member through redeployment.

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ Others (please specify) (e.g. you should not contact the person(s) / organisation(s) concerned until the conflict situation described in Part A no longer exists):

Details: \_\_\_\_\_  
\_\_\_\_\_

Part B(ii) – The justification(s) for the measure(s) as described in Part B(i) above is/are:

(Factors of consideration including the materiality of the conflict, link between the conflict and the matter in question, and any possible negative public perception over the conflict / incident.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In all cases, please be reminded that you should not disclose any privileged / internal information of the subject matter to the person(s) / organisation(s) concerned and should further report if there are changes in circumstances necessitating reporting.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name of Approving Authority)

**Part C – Keeping of Records** *(To be completed by the Declaring Board Member)*

To : (Designated Office / Staff Member for keeping the completed declaration form)

I noted the decision in Part B. The completed form is for your retention please.

---

(Date)

---

(Name of Declaring Board Member)

\* Potential conflict of interest refers to situation that may be developed into an actual conflict in the future.

## MITIGATING MEASURES FOR MANAGING DECLARED CONFLICT OF INTEREST

- Record – Where the risk in a conflict of interest situation is indirect, remote or insignificant, and the occurrence of such a situation is infrequent, it may be sufficient to take note of the conflict only.
- Restrict – Where a conflict is not likely to arise frequently and the Board member can be effectively separated from the part of activity or process in which the conflict arises, it may be suitable to restrict the Board member's involvement in the task in which he has a conflict (e.g. withdrawing from discussion on a specific issue, abstaining from voting on the decisions) and access to the related information.
- Recruit – Where it is impractical to restrict a Board member's involvement, an independent Board member/expert may be recruited to participate in, oversee, or review part or all of the decision-making process if appropriate (e.g. engaging expert in the selection of highly specialised items).
- Redeploy – Where it is inappropriate to allow the Board member who has declared a conflict of interest to handle a specific matter, it may be suitable to relieve of the Board Member's duty which may then be taken up by another Board member through redeployment (e.g. redeploy the Board member to serve another sub-committee).

**MEASURES TO MANAGE POSSIBLE CONFLICT OF INTEREST  
ARISING FROM BOARD MEMBERS BIDDING FOR CONTRACTS OF  
*[NAME OF THE ORGANISATION]***

- When the need for a contract is discussed, Board members should be asked at the outset to declare whether they or any company associated with them are interested in bidding for the contract.
- Board members who have declared an interest to bid should not take part or be present at any subsequent discussions or meetings concerning the proposed contract, and should be prohibited from access to any information in relation to the contract (other than in the capacity of a bidder).
- Board members who have not declared an interest to bid (and the companies concerned) should not be allowed to bid subsequently.
- When a Board member (or a company associated with him) has expressed an interest to bid, the Organisation should ascertain whether any information relating to the contract has already come to the possession of the Board member in the course of his duties as a Board member. If so, such information should be made available to other bidders as well to ensure a level playing field.
- If a Board member (or a company associated with him) has put in a bid, care should be taken to ensure that he subsequently has no access to the submitted tender documents which may contain commercially sensitive information.
- Bidder identity should be anonymised before the evaluation of bids if a Board member (or a company associated with him) is one of the bidders.
- If a Board member (or a company associated with him) is successful in bidding for the contract, he should withdraw from all discussions relating to the contract, except when attending in the capacity of a supplier or a service-provider.



## SAMPLE CODE OF CONDUCT FOR STAFF OF NON-GOVERNMENTAL ORGANISATIONS IN SOCIAL WELFARE SECTOR

### ETHICAL COMMITMENT

1. *[Name of Organisation]* (hereafter referred to as the Organisation) regards honesty, integrity and fair play as our core values that must be upheld by all staff<sup>1</sup> of the Organisation at all times. This Code sets out the basic standard of conduct expected of all staff, including the Organisation's policy on acceptance of advantage and handling of conflict of interest when dealing with the Organisation's business.

*[The Organisation may wish to include other core values relevant to its duties and business.]*

### PREVENTION OF BRIBERY

2. The Organisation prohibits all forms of bribery and corruption. All staff are prohibited from soliciting, accepting or offering any bribe in conducting the Organisation's business or affairs. In conducting all business or affairs of the Organisation, they must comply with the Prevention of Bribery Ordinance (Cap. 201) (POBO)<sup>2</sup> of Hong Kong

*[The relevant sections of the POBO are detailed at **Annex 1**.]*

### SOLICITATION AND ACCEPTANCE OF ADVANTAGES<sup>3</sup>

3. *[Name of Organisation]* prohibits staff from soliciting or accepting any advantage from any persons or companies having official dealings with the Organisation (e.g. service recipients, suppliers, contractors, professional fund-raisers), and from any subordinates\*, except that they may accept, but not solicit, the following advantages when offered on a voluntary basis –

<sup>1</sup> "Staff" includes full-time, part-time and temporary staff.

<sup>2</sup> Full text of the POBO is available at <https://www.elegislation.gov.hk/hk/cap201>.

<sup>3</sup> "Advantage" means almost anything which is of value, except entertainment (see footnote 7), including any gift (both of money and in kind), loan, fee, reward, commission, office, employment, contract, service and favour, etc.

- (a) advertising or promotional gifts or souvenirs of a nominal value;
- (b) discount or other special offers given by any person or company to them as customers, on terms and conditions equally applicable to other customers in general; or
- (c) gifts given by donors to a staff member in his private capacity<sup>4</sup>.

*[\*Acceptance of gifts by staff from subordinates could invite allegations of impropriety, hence it should be discouraged. However, if an Organisation wishes to give permission<sup>5</sup> for staff to accept such an advantage, it should impose restriction as below –*

- (d) *gifts given by subordinates to their supervisors on festive or special occasions, subject to a maximum limit of \$ \_\_\_\_\_ in value<sup>6</sup>.]*

4. Gifts or souvenirs described in paragraph 3(a) that are presented to staff by virtue of their official positions or in official functions are deemed as offers to the Organisation. The staff member concerned should report the acceptance to the Organisation and seek direction as to how to handle the gifts or souvenirs from *[the approving authority]*. If a staff member wishes to accept from any persons or companies having official dealings with the Organisation, or from any subordinates any other advantages not listed in paragraph 3, he should seek the permission from *[the approving authority]*. Form A (Sample at **Annex 2**) could be used to record and seek approval of the advantages received by staff. In case of doubt, staff should refer the matter to *[insert an appropriate unit / officer]* for advice and instruction.
5. Even if the offeror does not have any official dealings with the Organisation, a staff member should decline an offer of an advantage if the acceptance could affect his objectivity in conducting the Organisation's business, induce him to act against the Organisation's interest or place him under an improper obligation, or where he believes the offeror has such an intention, or lead to the perception or allegation of impropriety or conflict of interest. Staff should ensure that the solicitation or acceptance of any advantages can stand up to public scrutiny and will not bring the Organisation into disrepute.

<sup>4</sup> If an Organisation considers there is incentive for a donor to offer advantage to a staff member in return for benefits (e.g. assisting the donor to become a Board member), it should exclude (c) from the blanket permission covered above. The Organisation should then follow the procedures described in paragraph 4 in processing the application for acceptance of advantage.

<sup>5</sup> Special permission is recommended from a control perspective as the Organisation can consider the circumstances in each case before its decision to grant the permission.

<sup>6</sup> The Organisation should consider setting different amounts allowed for festive and special occasions but they should be minimal as such they might not be perceived as influencing the recipient's impartiality, taking into consideration the recipient's income and public perception.

## ACCEPTANCE OF SPONSORSHIP

6. Sponsorship (which may comprise passage, accommodation, or other fees) is a form of advantage. Staff may be offered sponsorship in their official capacity by persons or other organisations for official purposes such as attending local/overseas conferences, conventions and product trial activities. Such sponsorship should be regarded as sponsorship offered to the Organisation and referred to the Organisation for consideration of acceptance, based on operational need, and assignment of the Board member / staff to attend the sponsored activity, based on suitability. The general criteria for considering whether or not to accept the sponsorship offer are suggested at **Annex 3**.
7. Staff may be offered sponsorship due to his personal expertise or professional membership. Though not representing the Organisation, care should be taken when such a sponsored visit is offered by a party having business dealings with the Organisation and the staff's duty is directly related to, or could potentially or seen to be influenced by, the content or result of the visit. In accepting such sponsorship, staff should ensure that their conduct and activities would not bring them or the Organisation into disrepute or lead to any actual or perceived conflict of interest.

## OFFER OF ADVANTAGES

8. Staff are prohibited from offering advantages to any director, staff member or agent of another company or organisation, for the purpose of influencing such person in any dealing, or any public official, whether directly or indirectly through a third party, when conducting the Organisation's business.
9. Staff should as far as possible refrain from bestowing gifts / souvenirs to others during the conduct of official activities. Where it is necessary or unavoidable due to operational, protocol or other reasons, the gifts / souvenirs to be bestowed should not be lavish or extravagant, and be kept to a minimum in quantity and the exchange of gifts / souvenirs should be made from organisation to organisation.

## ACCEPTANCE OF ENTERTAINMENT

10. Staff should not accept lavish, or unreasonably generous or frequent entertainment<sup>7</sup> from any person having official dealings with the Organisation. When offered entertainment, staff should consider whether the entertainment offered could be regarded as –
  - excessive – taking into account its value, substance, frequency and nature;

<sup>7</sup> As defined in section 2 of the POBO, "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 the provision of food or drink.

- inappropriate – taking into account the relationship between the staff and the offeror (e.g. the offeror is bidding for the Organisation’s contract); or
- undesirable – taking into account the character or reputation of the host or known attendees.

*[The Organisation may insert additional guidelines on acceptance of entertainment and / or the reporting requirements.]*

## MANAGING CONFLICT OF INTEREST

11. A conflict of interest situation arises when the “private interests” of a staff member compete or conflict with the interests of the Organisation or the official duties of the staff. Private interests include financial and other interests of the staff himself, and those of his connections including family and other relations, personal friends, the clubs and societies to which he belongs, any other groups of people with whom he has personal or social ties, and any person to whom he owes a favour or to whom he may be obligated in any way. Some common examples of conflict of interest are provided at **Annex 4**.

## AVOIDANCE AND DECLARATION OF CONFLICT OF INTEREST

12. A fundamental integrity requirement is that all staff should avoid situations which may compromise (or be seen to compromise) their personal judgement or integrity at work or lead to conflict of interest. A staff member’s duty to avoid or declare a conflict of interest goes beyond the disclosure of interests that are definable in pecuniary terms.
13. When a situation involving a conflict of interest cannot be avoided, staff should as soon as possible make full disclosure of all relevant interests which conflict, may conflict or may be seen to conflict with their official duties. Any declarations made and the related decisions should be recorded using a declaration form (sample at **Annex 5**). If staff have doubts concerning the handling of conflict of interest situation, they should immediately consult their supervisors / approving authority.

## MANAGING DECLARED CONFLICT OF INTEREST

14. Upon receipt of a report on conflict of interest situation, the supervisors should, as soon as practical, decide on the appropriate course of action to be taken such as to relieve the staff member of his involvement in the task, ask the staff member to

divest himself of certain investment, etc., and give clear direction / instruction to the staff concerned. The declaration and the management decision / action should be properly recorded. The supervisors should ensure the staff's compliance with the instruction so as to effectively remove / mitigate the conflict of interest.

15. In deciding on the course of action to be taken or making a recommendation to their senior officers, the supervisors should take into account the seriousness of the conflict and public perception. Mitigating measures which the supervisors can consider adopting are at **Annex 6**.

## MISUSE OF OFFICIAL POSITION

16. Persons occupying offices of NGOs which receive subventions from the Government / other sponsoring organisations or public donations for the provision of services in the community are placed in a position of trust. Our society expects persons in such a position to exercise the powers and discretions with integrity and fidelity, and in an incorrupt manner to serve the interest of the Organisation, and should not subordinate the interest of the Organisation to private interests.
17. Staff should act impartially and should not use their official position for personal gains nor accord preferential treatment to organisations or persons with whom they have connections. They should not use or permit the use of their official position or title or an authority associated with their office in a manner that is intended to coerce or induce another person to provide any benefit to himself or his relations, friends or associates. Nor should they use their official position or title in a manner that could reasonably be construed to imply that the Organisation sanctions or endorses their personal activities or those of another.

## CONFIDENTIALITY OF INFORMATION

18. Staff should not disclose any classified or proprietary information of the Organisation without authorisation or misuse any Organisation's information (e.g. for personal gain or the benefit of others). Special care should be taken when handling any personal data of the Board members, staff, volunteers and service recipients to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486) and the Organisation's data privacy policy.
19. Staff should continue to observe their duty of confidentiality after they have left the Organisation. They should not use, or take advantage of any classified or proprietary information obtained in the course of their official duties.

## RECORDS, ACCOUNTS AND OTHER DOCUMENTS

20. Staff should ensure, to the best of their knowledge, that any record, receipt, account or other documents they submit to the Organisation, gives a true representation of the events or transactions reported in the documents. Intentional use of documents containing false information to deceive or mislead the Organisation, regardless of whether the staff may obtain any gain or advantage, may constitute a criminal offence.

## REPORTING SUSPECTED IRREGULARITIES AND CRIMINAL OFFENCES

21. A staff member should report, either directly or through [*insert an appropriate unit / officer in the Organisation*] as appropriate, instances of crime or suspected crime discovered in the course of his work to the appropriate authority or law enforcement agency at the first practicable opportunity. A staff member should avoid making any enquires or taking any action that may hinder or frustrate subsequent investigation by the law enforcement authority concerned. All staff members who receive or have knowledge of such reports should treat the reports in the strictest confidence.

## COMPLIANCE

22. Any staff member in breach of the Code will be subject to disciplinary action, including termination of appointment. In case of suspected corruption or other criminal offences, a report will be made to the appropriate law enforcement agencies.

## ENQUIRY

23. Any enquiries, comments or suggestions in relation to this Code may be referred to [*insert an appropriate unit / officer in the Organisation*].

## EXTRACTS OF THE PREVENTION OF BRIBERY ORDINANCE (CAP. 201)

## SECTION 9

- (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 4

- (1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-
- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
  - (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or



## EXTRACTS OF THE PREVENTION OF BRIBERY ORDINANCE (CAP. 201)

- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

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

### SECTION 2

**“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.

### SECTION 8

- (1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

### SECTION 19

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.



**(NAME OF THE ORGANISATION)**  
**REPORT ON GIFTS / ADVANTAGES RECEIVED**

**Part A – To be completed by Receiving Staff**

To : (Approving Authority)

Description of Offeror :

*Name & Title* : \_\_\_\_\_

*Company* : \_\_\_\_\_

*Relationship (Business / Personal)* : \_\_\_\_\_

Occasion on which the Gift / Advantage was / is to be received : \_\_\_\_\_

Description & (assessed) value of the Gift / Advantage : \_\_\_\_\_

Suggested Method of Disposal :

Remarks

☐ Retain by the Receiving Staff

☐ Retain for Display / as a Souvenir in the Office

☐ Share among service recipients or the Office

☐ Reserve as Lucky Draw Prize at Staff Functions

☐ Donate to a Charitable Organisation

☐ Return to Offeror

☐ Others (please specify) :

Guidelines on disposal method –

- If the gift / souvenir is of perishable nature (e.g. food, drink), it may be shared among service recipients, donated to a charitable organisation or, when this is not practical, shared among staff of the Organisation on a suitable occasion.
- If the gift / souvenir is a useful item, it may be kept for use by the Organisation or donated to another charitable organisation.
- If the gift / souvenir is suitable for display (e.g. a painting, vase), it may be displayed at appropriate locations of the Organisation premises.
- If the gift / souvenir is of low value, it may be donated as a prize in functions organised by the Organisation.
- If the gift / souvenir is a personal item of low value, such as a plaque or pen inscribed with the name of the recipient, it may be retained by the recipient.
- If the gift / souvenir is distributed to all participants in public activities, such as a ball pen, file folder or key clasp, etc, it may be retained by the recipient.
- Any gift / souvenir of high value should be returned to the offeror as far as possible.

(Date)

(Name of Receiving Staff)  
(Title / Department)

**Part B – To be completed by Approving Authority**

To : (Name of Receiving Staff)

The recommended method of disposal is \*approved / not approved. \*The gift / advantage concerned should be disposed of by way of : \_\_\_\_\_

\_\_\_\_\_.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name of Approving Authority)  
(Title / Department)

\* Delete as appropriate.

## CONSIDERING FACTORS FOR ACCEPTANCE OF SPONSORSHIP

In considering whether or not to accept the sponsorship offer, the following general criteria are relevant –

- acceptance of the sponsorship will benefit the Organisation as a whole;
- acceptance of the sponsorship will not bring the Organisation into any disrepute;
- the sponsorship is not excessive in value or frequency;
- acceptance of the sponsorship will not give rise to any express or implied obligation towards the offeror;
- acceptance of the sponsorship will not give rise to any actual or perceived conflict of interest (e.g. the offeror is a supplier / contractor bidding for the Organisation's contracts); and
- the sponsor will not be given or be perceived to derive an unfair advantage over other persons or organisations.

## EXAMPLES OF CONFLICT OF INTEREST FOR STAFF

Some common examples of conflict of interest are provided below but they are by no means exhaustive –

### **Procurement of Products or Services**

- A staff member involved in a procurement process has an interest in or is closely associated with a company which provides the Organisation with paid services (e.g. training, consultancy, legal, accounting), or bids for supply of goods or services to the Organisation.
- A staff member leases or sells his property to the Organisation.

### **Contract Administration**

- A staff member undertaking part-time work with a contractor whom he is responsible for monitoring.
- A staff member responsible for contract administration solicits quotations from or employs contractors of the Organisation for renovating his home.

### **Staff Administration**

- 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 exercise.
- A staff member soliciting assistance from his subordinate in dealing with his own personal matters.

### **Others**

- A staff member responsible for assessing eligibility of applications for services provided by the Organisation is considering an application from his personal friend or relative.

**(NAME OF THE ORGANISATION)**  
**DECLARATION OF CONFLICT OF INTEREST**

**Part A – Declaration** *(To be completed by Declaring Officer)*

To : (Approving Authority)

Via: ( )@

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

Person(s) / organisation(s) with whom / which I have official dealings and/or private interest

My relationship with the person(s) / organisation(s) (e.g. relative)

My contact with the person(s) / organisation(s)  
 (Please state the frequency of contact and the usual occasions of contact, etc.)

Relationship of the person(s) / organisation(s) with [*the Organisation*] (e.g. supplier)

Brief description of my duties which involved the person(s) / organisation(s) (e.g. handling of tender exercise)

File reference, if any, of the mentioned duties

(Date)

(Name of Declaring Officer)  
 (Title / Department)

## Part B – Approval *(To be completed by Approving Authority)*

To : (Approving Authority)

Via: ( )@

Part B(i) – In respect of the declaration in Part A of this form, it has been decided that:

☐ The declaration as described in Part A is noted. You are allowed to continue handling the work as described in Part A, provided that there is no change in the information declared above.

☐ You are restricted in the work as described in Part A (e.g. prohibit from handling the specific part / duty that you have conflict, withdraw from discussion on a specific issue / case).

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ You may continue to handle the work as described in Part A, but an independent officer would be recruited to participate in, oversee or review part or all of the decision-making process (e.g. task another officer with the required expertise to provide objective assessment on the matter).

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ You are relieved of your duty as described in Part A, which will be taken up by another officer through redeployment.

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ You should relinquish the personal / private interest (e.g. cease to be a member of a club / association, divest the investments until the conflict situation described in Part A no longer exists).

Details: \_\_\_\_\_  
\_\_\_\_\_

☐ Others (please specify) (e.g. you should not contact the person(s) / organisation(s) concerned until the conflict situation described in Part A no longer exists):

Details: \_\_\_\_\_  
\_\_\_\_\_

Part B(ii) – The justification(s) for the measure(s) as described in Part B(i) above is/are:

(Factors of consideration including the materiality of the conflict, link between the conflict and the matter in question, and any possible negative public perception over the conflict / incident.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In all cases, please be reminded that you should not disclose any privileged / internal information of the subject matter to the person(s) / organisation(s) concerned and should further report if there are changes in circumstances necessitating reporting.

(Date)

(Name of Approving Authority)  
(Title / Department)

**Part C – Keeping of Records** (*To be completed by the Declaring Officer*)

To : (Designated Office/Staff Member for Keeping the Completed Declaration Form)

Via : (Approving Authority)

*I noted the decision in Part B. The completed form is for your retention please.*

---

(Date)

---

(Name of Declaring Officer)  
(Title / Department)

*@ Subject to the guidelines of the Organisation, a conflict of interest declaration / decision may be made via the declaring officer's immediate supervisor / supervisors to / from the approving officer. Otherwise, delete the line.*

*\* Potential conflict of interest refers to situation that may be developed into an actual conflict in the future.*

## MITIGATING MEASURES FOR MANAGING DECLARED CONFLICT OF INTEREST

- **Record** – Where the risk in a conflict of interest situation is indirect, remote or insignificant, and the occurrence of such a situation is infrequent, it may be sufficient to take note of the conflict only.
- **Restrict** – Where a conflict is not likely to arise frequently and the staff can be effectively separated from the part of activity or process in which the conflict arises, it may be suitable to restrict the staff's involvement in the task in which he has a conflict (e.g. withdrawing from discussion on a specific issue, abstaining from voting on the decisions) and access to the related information.
- **Recruit** – Where it is impractical to restrict a staff member's involvement, an independent staff member/expert may be recruited to participate in, oversee, or review part or all of the decision-making process if appropriate (e.g. engaging expert in the selection of highly specialised items).
- **Redeploy** – Where it is inappropriate to allow the staff who has declared a conflict of interest to handle a specific matter, it may be suitable to relieve of the staff's duty which may then be taken up by another staff through redeployment. For serious conflict of interest cases with a high likelihood of relapse, it may be suitable to post out the staff to avoid negative public perception.
- **Relinquish** – Where a staff member's commitment to the official duty outweighs his attachment to his private interest, and adopting other mitigating measures are not appropriate or possible, he may be asked to relinquish his personal or private interests (e.g. divesting the investments, ceasing to be a member of a club / association).



## OTHER SAMPLE GUIDELINES FOR INCORPORATING IN THE CODES OF CONDUCT FOR BOARD MEMBERS AND STAFF OF NON-GOVERNMENTAL ORGANISATIONS IN SOCIAL WELFARE SECTOR

### PREAMBLE

Non-governmental organisations (NGOs) may make reference to the Sample Codes of Conduct for Board Members and Staff of NGOs in Social Welfare Sector for developing or updating their own codes of conduct. NGOs may also include in their codes of conduct the other sample guidelines provided below, having regard to their corporate values and operational needs as appropriate.

### OTHER SAMPLE GUIDELINES

#### **Use of the Organisation's Funds, Assets and Resources**

Board members and senior management / designated staff (e.g. approving authority) shall ensure that the Organisation's funds are used in a prudent and responsible manner to safeguard the Organisation's interest. They should only approve funds for any project / activity / expenditure item which falls within the ambit of the funds and can achieve the purpose of the funds.

Board members / staff shall particularly ensure that an open, fair and competitive mechanism is adopted for the procurement of goods / services / assets, sale of assets and recruitment of staff for the Organisation.

Board members / staff in charge of or having access to any assets of the Organisation, including funds, property, information, and intellectual property should use them solely for the purpose of conducting the Organisation's business. They should make the best use of the Organisation's assets and resources in terms of money, property, goods or services economically and effectively. Any appropriation of the Organisation's properties for personal use or personal gain is strictly prohibited and may amount to an offence under the Theft Ordinance (Cap. 210).

**Outside Work of Staff**

A staff member should avoid any outside activity which may impair the performance of his duties, distract his attention from them or give rise to a conflict of interest. If a full-time staff member<sup>1</sup> wishes to take up concurrent employment / service, either on a regular or ad hoc basis, he should obtain the prior written approval of [*insert an appropriate unit / officer in the Organisation*]. The approving authority will take into consideration whether the employment / service would pose a conflict of interest with the staff's duties in the Organisation.

**Gambling**

Board members / staff should not engage in frequent or excessive gambling of any kind, or any games of chance involving high stakes. Board members / staff should not gamble with persons having official dealings with the Organisation. Gambling in the Organisation's premises is strictly forbidden.

**Loans**

Board members / staff should not accept a loan from or through the assistance of, any person or organisation having official dealings with the Organisation. There is, however, no restriction on borrowing from a licensed bank or financial institution.

A staff member shall be liable to disciplinary action if he uses a subordinate or a junior officer as a guarantor for a loan or a hire purchase agreement. He shall also be so liable if he acts as a guarantor for his supervisor or an officer at a rank senior than his. Similar, Board members should not use a staff member as a guarantor for a loan or hire purchase agreement, nor should a staff member act as a guarantor for a Board member.

**Indebtedness**

Board members / staff should avoid allowing themselves to get into a position where any debts they may have become unmanageable and other financial embarrassment which may bring the Organisation into disrepute.

Board members / staff are required to notify [*the Chairman or secretariat / insert an appropriate unit/officer in the Organisation*] if proceedings are taken against them with a view to bankruptcy. Board members/staff who become insolvent or bankrupt<sup>2</sup>, even though no proceedings have been taken against them yet, should also report their

<sup>1</sup> The Organisation could consider including in this requirement any part-time staff who, if taking up outside job, may give rise to potential conflict of interest with their official duties.

<sup>2</sup> Individual voluntary arrangement (IVA) is an alternative to bankruptcy under the Bankruptcy Ordinance. A member/staff taking up an IVA is regarded as insolvent and should report the case to the Organisation.

case to the Organisation. Staff having financial problems which they may not be able to manage should approach [*insert an appropriate unit / officer in the Organisation*] for advice and assistance. Where serious pecuniary embarrassment results in impairment of a staff's work performance, the staff member may be subject to administrative action.

### **Supervisory Accountability**

All staff who have a responsibility to supervise and direct subordinates should embrace a two-fold responsibility, namely –

- the satisfactory discharge of his own duties; and
- his duties as a supervisor.

A supervisor will be asked to account for wrongdoings or omissions by his subordinates, if these wrongdoings or omissions are serious, repeated or widespread that by reasonable diligence the supervisor should have known of them had he exercised the level of leadership, management and supervision required of his position.

As a supervisor, a staff member should –

- provide adequate guidance, advice, counselling and training for staff;
- monitor the conduct and performance of staff to ensure that they meet the standards required;
- be alert to signs of malpractice in the workplace (e.g. unauthorised absence from work); and
- take prompt and decisive action to handle misconduct and poor performance.

## ICAC SERVICE AND OTHER ASSISTANCE

### 1. INTRODUCTION

The ICAC stands ready to help NGOs and their business partners (e.g. suppliers, partner organisations, works consultants, contractors) establish, strengthen and continually improve their corruption prevention controls / programmes that cater for their operational needs. Moreover, it is important that NGOs knock on the right door for assistance and advice which can better defend themselves against corrupt practices and exploitation in day-to-day operations. Below is a quick guide on the ICAC's service and assistance available to NGOs.

### 2. CORRUPTION PREVENTION ADVISORY SERVICE (CPAS)

- The CPAS of the Corruption Prevention Department, ICAC is a specialised unit that focuses on providing the following free, tailor-made professional corruption prevention advice and services to private organisations, including NGOs –
  - providing confidential and tailor-made advice on integrity management systems including the adoption of the recommended measures in the Guide; and corruption prevention measures for specific business operations (📄 See **Frequently Asked Questions** below) on request;
  - offering assistance in drawing up a Code of Conduct for the Board members and staff (📄 **Section 2.3**) and other probity guidelines (e.g. organisation policy / guidelines on reporting corruption and anti-corruption commitment) that will help them raise the organisation's integrity standard;
  - organising corruption prevention training for organisations' staff to raise their awareness of corruption risks and corruption prevention measures specific to their operations (📄 See **Frequently Asked Questions** below); and
  - answering any enquiries about this Guide.

- For further information, please contact CPAS through the following channels –

Phone : 2526 6363

Fax : 2522 0505

E-mail : [cpas@cpd.icac.org.hk](mailto:cpas@cpd.icac.org.hk)

Website : [cpas.icac.hk/EN/](http://cpas.icac.hk/EN/)



**In what areas can CPAS render advice for an NGO?**



The service will cover an NGO's integrity management system, including its policy, ethical standard and guidance for all NGO personnel (e.g. through a Code of Conduct for Board members and staff), identification and assessment of corruption risks, corruption prevention controls, training and communication; and specific systems and procedures such as financial management and provision of services, and general operational areas (e.g. procurement, management of works contracts, etc.).



**Will CPAS disclose an NGO's service request and other information (e.g. our policies, procedures, risks, concerns, incidents) to others / the public?**



No. Our services are provided in strict confidence to protect clients' information unless individual clients are willing to share their experience of using the services of the CPAS so as to assist in promoting the services. NGOs have full discretion to decide on the information to be given to us.

### 3. EDUCATION SERVICES

- The Community Relations Department (CRD) of the ICAC offers full range of education services to NGOs free of charge –
  - offering anti-corruption training to individual NGOs to promote integrity culture;
  - organising seminars, workshops and training on different themes (such as anti-corruption law, corruption-prone areas, managing staff integrity, handling conflict of interest) to enhance ethics of practitioners;
  - producing an array of educational and publicity materials to promote anti-corruption messages; and
  - operating an enquiry hotline for handling corruption complaints and enquiries.

- Interested NGOs are welcome to contact CRD's Regional Office (New Territories North West) –

Phone : 2459 0459 (Enquiry & Report)

2899 3880 (Liaison)

Fax : 2450 7925 (Liaison)

Address : G/F, Fu Hing Building, 230 Castle Peak Road - Yuen Long  
Yuen Long, New Territories

(opening hours : 9:00 a.m. - 7:00 p.m. Monday to Friday;  
closed on Saturdays, Sundays and public holidays)

## 4. REPORTING CORRUPTION

- Reporting corruption in person is more direct and allows the ICAC to get more details of the corruption complaint. Complainant's identity and content of complaint are handled in strict confidence.
- Full evidence is not required when lodging a complaint. One may report if he has reasonable doubt. Complainants only need to state the known facts of the suspected case and the ICAC will follow up according to the information provided.
- Any person encountering corruption should make a report to the ICAC through any of the following channels –

Phone : 25 266 366 (24-hour service)

Mail : G.P.O. Box 1000, Hong Kong

In person : ICAC Report Centre (24-hour service)



G/F, 303 Java Road, North Point, Hong Kong

ICAC Regional Offices<sup>1</sup>

(opening hours: 9:00 a.m. - 7:00 p.m. Monday to Friday;  
closed on Saturdays, Sundays and public holidays)

<sup>1</sup> Contact information of the ICAC Regional Offices is available at [www.icac.org.hk/en/crd/struct/ro/index.html](http://www.icac.org.hk/en/crd/struct/ro/index.html).

## SAMPLE PURCHASE REQUISITION FORM

Purchase Requisition No.: \_\_\_\_\_

Requesting Staff: \_\_\_\_\_

Date: \_\_\_\_\_

Procurement Method<sup>Note.</sup>:
☐ Direct Purchase      ☐ Quotation      ☐ Tender

Item No.	Quantity	Description/Specification	Justification(s) for the Purchase	Estimated Price
<b>Total:</b>				

Item No.	Quantity	Description/Specification	Justification(s) for the Purchase	Estimated Price
Total:				

Requested by: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Approved / Not approved (*please delete as appropriate*)

Reason(s) if not approved: \_\_\_\_\_

Approving Officer<sup>Note.</sup>: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>Note</sup> The procurement method and the approving authority are determined by the aggregate value of goods / services to be procured.



## SAMPLE PROBITY CLAUSES IN QUOTATION / TENDER INVITATION DOCUMENTS

### Offering, Solicitation or Acceptance of Advantages

- (A) The tenderer (for tender) / bidder (for quotation) shall not, and shall procure that his directors, employees, agents and subcontractors shall not, offer, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in connection with the quotation / tender and execution of this contract.
- (B) Failure to comply with the aforesaid clause (A) by the tenderer / bidder or his directors, employees, agents or subcontractors shall, without affecting the tenderer's / bidder's liability for such failure and act, result in his quotation / tender being invalidated.

Note: The above clauses are for reference only. NGOs should consult their own legal advisor in this regard.

# SAMPLE TENDER EVALUATION REPORT

## PROVISION OF \_\_\_\_\_ [TYPE OF GOODS / SERVICES]

### Brief Description of Contract:

*[Give a brief description of the goods / services required]*

### Details of Invitation

Tender invitation method: \* Open tender / Selective tender

Invitations issued to \_\_\_\_\_ \* suppliers / service providers

Tender invitation date : \_\_\_\_\_

Tender closing date : \_\_\_\_\_

Tender validity period : \_\_\_\_\_ days from \_\_\_\_\_

### Tenders Received

Number of tenders received: \_\_\_\_\_

### Details of Tenders Received

Tenderers	Tendered Sums (lowest first)
1.	
2.	
3.	
4.	
5.	
6.	
7.	

### \* Name of Non-returning Tenderers

Tenderers	Reasons, if known
1.	
2.	
3.	

### Compliance with Tender Specifications

Tenderers (in order of tendered sum)	Compliance with tender specifications	Details of any non-compliance
1.	* Yes/No	
2.	* Yes/No	
3.	* Yes/No	
4.	* Yes/No	
5.	* Yes/No	
6.	* Yes/No	
7.	* Yes/No	

For tenders with non-price considerations adopting a marking scheme, evaluation of individual assessment panel members is at Appendix. [Attach the tender evaluation forms duly completed by each assessment panel member to this report.]

### Performance Records of Lowest Three Tenderers

	Lowest Bid [Name of Tenderer]	2 <sup>nd</sup> Lowest Bid [Name of Tenderer]	3 <sup>rd</sup> Lowest Bid [Name of Tenderer]
(a) Previous dealings with the Organisation	* Yes / No	* Yes / No	* Yes / No
(b) *Previous performance	* Satisfactory / Unsatisfactory, details: _____ _____ _____	* Satisfactory / Unsatisfactory, details: _____ _____ _____	* Satisfactory / Unsatisfactory, details: _____ _____ _____
(c) *Recommendations of Assessment Panel	* Suitable / Not suitable for contract award	* Suitable / Not suitable for contract award	* Suitable / Not suitable for contract award

### Recommendations

\* The lowest tender / The tender with the highest score / The \_\_\_\_\_ lowest / highest scoring tender submitted by \_\_\_\_\_ [tenderer name] is recommended for contract award.

Reasons: \_\_\_\_\_ (Mandatory if the lowest tender is not recommended)

\* To negotiate with the tenderer submitting the lowest conforming tender / tender with the highest overall scores for a better price with a view for tender award. Other items to be negotiated:

\* Other recommendations and reasons: \_\_\_\_\_

**Conflict of Interest:**

This is to confirm that persons involved in preparing the tender documents and assessing tenders have declared conflict of interest before recommendation. The tender specifications and assessment results will be reviewed by the [*designated authority*] to detect any favouritism to particular tenderers if any other conflicts are declared.

☐ No conflict is declared.

☐ The conflict(s) declared is/are as follows:

\_\_\_\_\_

\*The following actions have been taken to manage the conflicts declared –

☐ Required the persons \_\_\_\_\_ [*name*] who have made a declaration to abstain from the procurement process.

☐ Other actions taken: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_ Position: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

(\* Delete as appropriate)

## SAMPLE PROBITY CLAUSES IN CONTRACTS TO BE AWARDED

### ETHICAL COMMITMENT

#### CONFIDENTIALITY

- (A) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by [*Name of the Organisation*] (*hereafter referred to as the Organisation*) in the Contract or in any subsequent correspondence or documentation. Disclosure to any person or agent or subcontractor for the purpose of the Contract shall be in strict confidence and shall be on a “need to know” basis and extend only so far as may be necessary for the purpose of this Contract. The Contractor shall take all necessary measures (including by way of a code of conduct, internal guidelines or contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or subcontractor. The Contractor shall indemnify and keep indemnified the Organisation against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Organisation may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his directors, employees, agents or subcontractors.

#### PREVENTION OF BRIBERY

- (B) The Contractor shall prohibit his directors, employees, agents and subcontractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Contract.

#### MANAGEMENT OF CONFLICT OF INTEREST

- (C) The Contractor shall require his directors, employees, agents and subcontractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential conflict between their personal / financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or

potential conflict so disclosed.

- (D) The Contractor shall prohibit his directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this Contract. The Contractor shall require his agents and subcontractors to impose similar restriction on their directors and employees by way of a contractual provision.
- (E) The Contractor shall take all necessary measures (including by way of a code of conduct, internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and subcontractors who are involved in this Contract are aware of the requirements under the aforesaid sub-clauses (B), (C) and (D).

*[The below sub-clause (F) is applicable to works contracts]*

## DECLARATION OF ETHICAL COMMITMENT

- (F) The Contractor shall submit a signed declaration in a form (**Annex**) prescribed or approved by the Organisation to confirm compliance with the provisions on ethical commitment as stated in the aforesaid sub-clauses on confidentiality, prevention of bribery and management of conflict of interest. If the Contractor fails to submit the declaration as required, the Organisation shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses on confidentiality, prevention of bribery and management of conflict of interest, the Contractor and the subcontractors employed for the performance of duties under this Contract are required to deposit with the Organisation a code of conduct issued to their staff.

Note: The above clauses are for reference only. NGOs should consult their own legal advisor in this regard.

To: *[Name of NGO]*

Contract No.: \_\_\_\_\_ Contract Title : \_\_\_\_\_

## DECLARATION FORM BY CONTRACTORS ON COMPLIANCE WITH THE ETHICAL COMMITMENT REQUIREMENTS

In accordance with the Ethical Commitment Clauses in the Contract –

- (1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, subcontractors and agents are aware of the following provisions –
- (a) Prohibiting our directors, employees, agents and subconsultants who are involved in this Contract from offering, soliciting or accepting any advantage as defined in Section 2 of the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Agreement;
  - (b) Requiring our directors, employees, agents and subcontractors who are involved in this Contract to declare in writing to us any actual or potential conflict between their personal / financial interests and their duties in connection with this Contract. In the event that a conflict or potential conflict is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
  - (c) Prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this Contract and requiring our agents and subcontractors to do the same; and
  - (d) Taking all measures as are necessary to protect any confidential / privileged information or data entrusted to us by or on behalf of the Organisation from being divulged to a third party other than those allowed in this Contract.

Signature: \_\_\_\_\_

Name of the Contractor : \_\_\_\_\_

\_\_\_\_\_

Name of the Signatory : \_\_\_\_\_

Position of the Signatory : \_\_\_\_\_

Date: \_\_\_\_\_

## SAMPLE SUPPLIER / SERVICE PROVIDER PERFORMANCE EVALUATION FORM

Name of Supplier / Service Provider: \_\_\_\_\_

Goods / Services Provided: \_\_\_\_\_

Date of Purchase / Contract Period: \_\_\_\_\_

Purchase Amount / Contract Sum: \_\_\_\_\_

### Performance Evaluation *(The items listed below are examples for reference only.)*

	Rating		Remarks (Including major defects (if applicable))
	0 – Very Poor 3 – Good	1 – Poor 2 – Moderate 4 – Excellent	
1. Quality of Goods / Services			
2. Delivery and timeliness			
3. Responsiveness to service requests			
4. Others (Please specify)			
	Overall		

### Recommendation

- ☐ Continue to invite for quotation / tender in the future
- ☐ Need to provide advice for improvement (please provide information on areas for improvement)
- ☐ Issue a warning letter (please provide reasons and supporting document(s) / evidence)
- ☐ Not recommended for future appointment (please provide reasons and supporting document(s) / evidence)

#### Prepared by

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

#### Approved by

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_



## SAMPLE FORM FOR INVITATION OF FEE PROPOSALS FOR CONSULTANCY AGREEMENT

By Fax & By Post (Fax no.): \_\_\_\_\_

[Name and Address of Project Consultant]

[Date]

Our ref.:

Dear Mr/Ms \_\_\_\_\_,

### INVITATION OF FEE PROPOSAL FOR CONSULTANCY AGREEMENT FOR [MAINTENANCE WORKS AT [NAME AND ADDRESS OF THE NGO] / CAPITAL WORKS FOR [NAME OF THE NGO]'S [NAME OF PROJECT]]

We invite you to submit a fee proposal for the provision of consultancy service in relation to the [maintenance works at the subject premises / capital works for the subject project].

### 1. MAINTENANCE / CAPITAL WORKS REQUIRED

*[A general description of the maintenance / capital works required, and any orders or advisory letters issued by the Government.]*

### 2. SCOPE OF SERVICES

The scope of services covered by the fee proposal shall include the following –

#### **Stage I - Preliminary Proposal and Cost Estimate**

- 1.1 Assist the NGO to develop the design brief.
- 1.2 Conduct condition survey to assess and identify the defects of the premises.<sup>#</sup>
- 1.3 Submit preliminary [*maintenance / capital*] works proposal with sketches and programme, etc.
- 1.4 Discuss the preliminary design proposal with the NGO.

<sup>#</sup> Please delete as appropriate

- 1.5 Submit a preliminary design and cost estimate for the NGO's consideration.
- 1.6 Provide the NGO with the recommendations and professional advice on the [*maintenance / capital*] works options, materials options, equipment/installation options, etc.
- 1.7 Study all relevant orders / advisory letters issued by the Government and incorporate the required works and cost into the design proposal and cost estimate.<sup>#</sup>
- 1.8 Liaise with the Government departments in connection with the [*maintenance / capital*] works.<sup>#</sup>

## **Stage II - Preparation of Detailed Design, Cost Estimate and Tendering Arrangement**

- 2.1 Review and study relevant drawings and regulations.
- 2.2 Prepare a detailed design (including repair / construction details, layout plans, colour schemes, elevations, and material samples) for the NGO's consideration.
- 2.3 Prepare a master work programme for the NGO's consideration.
- 2.4 Prepare a works' budget estimate for the NGO's consideration.
- 2.5 Prepare tender documents, including the schedule of works, form of tender, tender drawings, specifications and particulars for tender for the NGO's consideration.
- 2.6 Arrange tender documents, receive tenders, conduct tender evaluation, and make a recommendation on contract award for the NGO's consideration.
- 2.7 Liaise with the successful tenderer on behalf of the NGO.

## **Stage III - Contract Administration, Site Supervision and Works Management**

- 3.1 Prepare contract documents.
- 3.2 Submit site supervision plan.
- 3.3 Conduct site inspections to monitor the progress and quality of works based on the site supervision plan submitted.
- 3.4 Liaise with the representative of the NGO for arrangement of site works.
- 3.5 Provide advice to the NGO on variation works where necessary.

<sup>#</sup> Please delete as appropriate

- 3.6 Provide advice on payments to contractor(s).
- 3.7 Control works project cost.
- 3.8 Issue Certificate of Practical Completion of the work.
- 3.9 Monitor the contractor(s) on defects rectification.
- 3.10 Conduct final inspection upon expiry of Defects Liability Period and prepare Final Accounts.
- 3.11 Handle works or contractual disputes.
- 3.12 Liaise with Government departments on completion of works required by statutory orders / advisory letters, including preparation and submission of report/certificate of work completion.<sup>#</sup>

### 3. PROFESSIONAL FEE

Separate fee should be quoted for each stage of works as follows –

Stage I - Preliminary Design

Stage II - Detailed Design & Tendering

Stage III - Contract Administration & Works Management

*<sup>#</sup> Please delete as appropriate*

*[The consultant(s) should be required to submit staffing proposals and breakdown of consultancy fees at individual key stages, as shown below, to facilitate assessment of sufficiency of manpower and reasonableness of consultancy fees.]*

	Estimated Time for Each Stage (Month / Day)	Allocation of Working Hours (Total Estimated Working Hours of Each Stage)			Consultancy Service Fee (HK\$)
		Authorized Person (No.: __)	Project Manager (No.: __)	Project Assistant (No.: __)	
Preliminary Inspection and Planning Stage (including condition survey, development of design brief, cost estimate, and liaison with Government departments)					
Preparation of Tender Documents (including compilation of all tender documents, design drawings, advice on tendering procedures and the related arrangement)					
Tendering Stage (including tender evaluation and compilation of tender report)					
Pre-works Commencement Stage (including compilation of contract, review on and approval for pre-works commencement documents)					
Works Commencement Stage (including project monitoring and all contract administration works)					
Works Completion and Maintenance Stage (including works completion inspection, works monitoring and follow-up during maintenance period)					
<b>Total Duration</b>		<b>Total Consultancy Service Fee (HK\$)</b>			

Remark – The above-mentioned work includes attendance at the relevant committee meeting(s) of the NGO to report and discuss issues related to the maintenance / capital works.

#### 4. RIGHT OF [NAME OF THE NGO]

The NGO has the liberty to engage partial services for any one of the above stages upon completion of each stage.

#### 5. VALIDITY OF THE PROPOSAL

The tender shall remain valid and open for a period of *[please insert the appropriate number of days based on actual situation]* days from the tender closing date.

#### 6. TERMINATION OF SERVICES

The consultancy service may be terminated by either party upon a *[please insert the appropriate number of days based on actual situation]*-day prior written notice to the last known address of the other party. The consultant shall be remunerated for all services rendered up to the date of termination of the appointment, in so far as the services have been certified completion by the NGO and not already been covered by payments on account made to the consultant.

#### 7. PROBITY CLAUSES

*[Please refer to **Appendix 6** for Sample Probity Clauses in Quotation / Tender Invitation Documents]*

#### 8. INSURANCE

The consultant shall, on written request by the NGO, produce evidence by way of certificate of insurance, receipt of premium or otherwise as appropriate that the professional indemnity and public liability insurance have been effected and remain in effect.

## 9. SUBMISSION OF PROPOSAL

Please submit your fee proposal together with your job references in a sealed envelope marked conspicuously “Confidential - Tender Document: Fee Proposal for [Maintenance Works at [Name of the NGO] / Capital Works for [Name of the NGO]’s [Name of Project]]” to [Address for Return of Tender] on or before [Date and Time for Return of Tender]. Late submission will not be considered.

Should you require a site visit, please contact [Name] at [Telephone Number]. For any enquiries, please contact [Name].

Yours sincerely,

---

For and on behalf of [Name of the NGO]

## SAMPLE QUOTATION / TENDER EVALUATION FORM FOR CONSULTANCY SERVICE

### Essential Requirements

*(The items listed below are examples for reference only.  
Please include the essential requirements as specified in  
quotation/tender invitation document.)*

Lowest Bid                      Second  
Lowest Bid                      Third  
Lowest Bid

Name of Consultant:

(1)	Limited company	Yes / No	Yes / No	Yes / No
(2)	No. of staff with professional qualification			
(3)	Experience as a consultant for [maintenance / capital] works projects in the past <i>[please insert an appropriate number of years]</i> years	No. of projects		
(4)	Quality assurance certification (e.g. ISO 9001)			
(5)	Proof of professional indemnity insurance			
(6)	Registered with the Buildings Department as an Authorized Person / Registered Structural Engineer / Registered Geotechnical Engineer (supporting documents provided)	Yes / No	Yes / No	Yes / No
(7)	Quotation / Tender price for –			
	(a) Phase 1	(a)\$	(a)\$	(a)\$
	(b) Phase 2	(b)\$	(b)\$	(b)\$
	(c) Phase 3	(c)\$	(c)\$	(c)\$
	(d) Quotation / Tender Sum	(d)\$	(d)\$	(d)\$
(8)	Validity period of quotation / tender (upon closing date for submission of quotation / tender)	___ months	___ months	___ months
(9)	Scope of services as specified in the quotation/tender invitation document is covered	Yes / No	Yes / No	Yes / No
(10)	Others			

*Note: Where there is any missing information or ambiguities related to the factual information of the quotation/tender (e.g. clerical errors), but does not affect compliance with the essential requirements of the quotation / tender, request for submission/clarification of the information concerned can be made. Such submission / clarification must not change the quotation/tender in substance or give any advantage or perceived advantage to the bidder.*

Date \_\_\_\_\_

Signature \_\_\_\_\_

Name of Assessor \_\_\_\_\_

## SAMPLE QUOTATION / TENDER EVALUATION FORM FOR WORKS CONTRACT

### Essential Requirements

*(The items listed below are examples for reference only.  
Please include the essential requirements as specified in  
quotation/tender invitation document.)*

Lowest Bid                  Second  
Lowest Bid                  Third  
Lowest Bid

Name of Contractor:

(1)	Limited company	Yes / No	Yes / No	Yes / No
(2)	Curriculum vitae of key staff including site agent and Board of Directors			
(3)	No. of staff with professional / technical qualification			
(4)	No. of safety officer			
(5)	Organisation chart of contractor's site staff			
(6)	Experience in [maintenance / capital] works projects in the past <i>[please insert an appropriate number of years]</i> years	No. of projects		
	- completed projects			
	- on-going projects			
(7)	Financial information/capability (e.g. documentary proof from banks)			
(8)	Certification by a legal advisor – any on-going / previous lawsuits	Yes / No	Yes / No	Yes / No
(9)	With Licensed Plumber	Yes / No	Yes / No	Yes / No
(10)	With Registered Electrical Contractor licence	Yes / No	Yes / No	Yes / No
(11)	With Registered Fire Service Installation Contractor (Classes I & II)	Yes / No	Yes / No	Yes / No
(12)	Business Registration Certificate			
(13)	Relevant Government registration (including Registered Minor Works Contractor)			
(14)	Quotation / Tender sum	\$	\$	\$
(15)	Validity period of quotation / tender (upon closing date for submission of quotation/tender)	___ months	___ months	___ months
(16)	Scope of services as specified in the quotation / tender invitation documents is covered	Yes / No	Yes / No	Yes / No
(17)	Others			



*Note: Where there is any missing information or ambiguities related to the factual information of the quotation / tender (e.g. clerical errors), but does not affect compliance with the essential requirements of the quotation/tender, request for submission / clarification of the information concerned can be made. Such submission / clarification must not change the quotation / tender in substance or give any advantage or perceived advantage to the bidder.*

Date \_\_\_\_\_

Signature \_\_\_\_\_

Name of Assessor \_\_\_\_\_

## SAMPLE PROBITY CLAUSES IN CONSULTANCY AGREEMENT

### ETHICAL COMMITMENT

#### CONFIDENTIALITY

- (A) Except as necessary for the performance of the Services, the Consultant shall not (except with the prior written consent or as instructed by the [*Name of the Organisation*] (*hereafter referred to as the Organisation*), disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Organisation in connection therewith, or any such or similar information generated or produced by the Consultant pursuant to this Agreement, to any person other than a person employed or engaged by the Consultant in carrying out this Agreement, an agent of the Consultant, any approved sub-consultant or the Consultant's accountants, insurers and legal advisers.
- (B) Any disclosure to the persons, agent, sub-consultant, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purposes of this Agreement.
- (C) The Consultant shall take all necessary measures (including by way of a code of conduct, internal guidelines or contractual provisions where appropriate) to ensure that their directors, employees, agents, sub-consultants, accountants, insurers and legal advisers as mentioned in sub-clause (A) are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Organisation, the Consultant undertakes to procure for and on behalf of the Organisation a confidentiality agreement in a form to be prescribed by the Organisation from any director, employee, agent, sub-consultant, accountant, insurer and legal advisor to whom any confidential information is to be disclosed.
- (D) The Consultant shall not without the prior written consent of the Organisation publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.
- (E) The Consultant shall indemnify and keep indemnified the Organisation against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Organisation may suffer, sustain or incur, whether direct

or consequential arising out of or in connection with any breach by the Consultant or his directors, employees, agents, sub-consultants, accountants, insurers or legal advisers of this clause.

- (F) The provision of this clause shall survive the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

## PREVENTION OF BRIBERY

- (G) The Consultant shall prohibit his directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201). The Consultant shall also caution his directors, employees, agents and sub-consultants against soliciting or accepting any hospitality, entertainment or inducements which would impair their impartiality in relation to the Agreement. The Consultant shall take all necessary measures (including by way of a code of conduct, internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and sub-consultants are aware of the aforesaid prohibition and will not solicit or accept any advantages or hospitality which would impair their impartiality, etc. when conducting business in connection with this Agreement.

## MANAGEMENT OF CONFLICT OF INTEREST

- (H) The Consultant shall require his directors, employees, agents and sub-consultants who are involved in this Agreement to declare in writing to the Consultants any conflict or potential conflict between their personal / financial interests and their duties in connection with this Agreement. In the event that such conflict or potential conflict is disclosed in a declaration, the Consultant shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- (I) The Consultant shall prohibit his directors, employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this Agreement. The Consultant shall require his agents and sub-consultants to impose similar restriction on their directors and employees by way of a contractual provision.

- (J) The Consultant shall take all necessary measures (including by way of a code of conduct, internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and sub-consultants who are involved in this Agreement are aware of the requirements under the aforesaid sub-clauses (G), (H) and (I).

## DECLARATION OF ETHICAL COMMITMENT

- (K) The Consultant shall submit a signed declaration in a form (**Annex**) prescribed or approved by the Organisation to confirm compliance with the provisions on ethical commitment as stated in the aforesaid sub-clauses on confidentiality, prevention of bribery and management of conflict of interest. If the Consultant fails to submit the declaration as required, the Organisation shall be entitled to withhold payment until such declaration is submitted and the Consultant shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses on confidentiality, prevention of bribery and management of conflict of interest, the Consultant and the sub-consultants employed for the performance of duties under this Agreement are required to deposit with the Organisation a code of conduct issued to their staff.

Note: The above clauses are for reference only. NGOs should consult their own legal advisor in this regard.

To: *[Name of NGO]*

Contract No.: \_\_\_\_\_ Contract Title : \_\_\_\_\_

## DECLARATION FORM BY CONSULTANT ON COMPLIANCE WITH THE ETHICAL COMMITMENT REQUIREMENTS

In accordance with the Ethical Commitment Clauses in the Consultancy Agreement -

- (1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, agents and sub-consultants are aware of the following provisions –
  - (a) Prohibiting our directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in Section 2 of the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with this Agreement;
  - (b) Requiring our directors, employees, agents and sub-consultants who are involved in this Agreement to declare in writing to us any actual or potential conflict between their personal / financial interests and their duties in connection with this Agreement. In the event that a conflict or potential conflict of interest is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
  - (c) Prohibiting our directors and employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this Agreement and requiring our sub-consultants to do the same; and
  - (d) Taking all measures as are necessary to protect any confidential / privileged information or data entrusted to us by or on behalf of the Organisation from being divulged to a third party other than those allowed in this Agreement.
- (2) We further confirm that we have ensured that our accountants, insurers and legal advisers are aware of the provisions requiring us to take all measures as are necessary to protect any confidential / privileged information or data entrusted to us by or on behalf of the Organisation from being divulged to a third party other than those allowed in this Agreement.

Signature: \_\_\_\_\_

Name of the Consultant : \_\_\_\_\_

\_\_\_\_\_

Name of the Signatory : \_\_\_\_\_

Position of the Signatory : \_\_\_\_\_

Date: \_\_\_\_\_

## SAMPLE DEBARMENT CLAUSES IN CONSULTANCY AGREEMENT

- (A) The Consultant shall not, and shall ensure that any of his associated companies, associates or associated persons or any of his sub-consultants shall not, during the term of this Agreement and for [*please insert an appropriate number of months*] months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this Agreement), which touches, concerns or affects the services under this Agreement or which may reasonably be seen to touch, concern or affect the services under this Agreement, except with the prior written approval of the [*Name of the Organisation*] (*hereafter referred to as the Organisation*) which approval shall not be unreasonably withheld.
- (B) Without prejudice to the generality of clause (A), the Consultant shall not (whether on his own or through his associated companies, associates or associated persons or in joint venture with others), and shall ensure that any of his sub-consultants shall not, –
- (i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;
  - (ii) undertake any services for a contractor (including acting as a subcontractor) or supplier in respect of a contract between that contractor or supplier and the Organisation for which the Consultant is providing a service arising out of or relating to this Agreement;
  - (iii) undertake any services for, including, without limitation, provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Organisation.

In the event that the Consultant has advised on the preparation of the tender, including tender specifications and tender assessment, the Consultant undertakes that under no circumstances will he bid, participate or be financially involved in that or related tender exercise.

The Consultant shall take all necessary steps to ensure that under no circumstances will his associated companies, associates, associated persons and sub-consultants participate or be financially involved in the tender exercise referred to in the preceding sub-paragraphs.



