

SUPPLEMENTARY CODE OF CONDUCT

ON

SOLICITATION AND ACCEPTANCE OF ADVANTAGES

BY

MEMBERS OF THE BOARD AND SUB-COMMITTEES

OF

THE OCEAN PARK CORPORATION

JUNE 2019

Ambit

1. This Supplementary Code of Conduct on Solicitation and Acceptance of Advantages applies to all Members of the Board and sub-committees of the Ocean Park Corporation.

Definition

2. In this Supplementary Code of Conduct, unless the context otherwise requires -

"Corporation" means the Ocean Park Corporation;

" Member(s)" means a member of the Board of the Corporation as appointed by the Chief Executive of HKSAR, a co-opted member or an advisor appointed by the Board of the Corporation;

A reference to the masculine gender in this Supplementary Code of Conduct covers both the feminine and masculine gender.

Prevention of Bribery Ordinance

3. Ocean Park Corporation is a public body under the Prevention of Bribery Ordinance (Cap. 201) ("POBO"). All Members of the Corporation are "public servants" for the purpose of the Ordinance.
4. The POBO seeks, among other things, to enforce against any abuse of entrusted power or official position by public servants through the solicitation or acceptance of a bribe or an advantage. Members should thoroughly understand the legal requirements and the importance of compliance.
5. *Section 4* of the POBO makes it an offence for a public servant to solicit or accept, without lawful authority or reasonable excuse, any advantage *in Hong Kong or elsewhere* as an inducement to or reward for or otherwise on account of his performing or abstaining from performing any act in his capacity as a public servant¹.
6. "Advantage" is defined in *section 2(1)* of the POBO to mean almost anything which is of value, except entertainment which will be covered under a separate heading below. Common examples of advantages include any gift (both of money and in kind), loan, fee, reward, commission, office, employment, contract, service and favour, etc.

7. Members should note that one may commit an offence under the POBO irrespective of whether he, or any other person acting on his behalf, directly or indirectly solicits or accepts any advantage, and whether for himself or for any other person.

*[The relevant sections of the POBO pertaining to public bodies are detailed at **Appendix 1.**]*

¹The person offering the advantage may also commit an offence.

8. The Corporation prohibits Members from soliciting or accepting any advantage from any persons or companies having official dealings with the Corporation (e.g. consultants, suppliers or contractors).

Solicitation and Acceptance of Advantage

9. Even if the offeror does not have any official dealings with the Corporation, a Member should decline an offer of an advantage if the acceptance could affect his objectivity in conducting the Corporation's business, induce him to act against the Corporation'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.
10. A Member should always consider the public perception when accepting an offer of an advantage and ensure that the solicitation or acceptance of any advantages can stand up to public scrutiny and will not bring the Corporation into disrepute.
11. When a Member is in doubt, he should consult the Corporate Secretary.

Advantages Offered to Members in Their Official Capacity

12. An advantage (e.g. gift, souvenir) presented to a Member by virtue of his official position or on an occasion attended in the Member's official capacity is regarded as an advantage to the Corporation (e.g. a souvenir presented by the organizer of a ceremonial occasion to a Member representing the Corporation to officiate at the ceremony).

13. Members should as far as possible decline to accept advantages offered/presented to them by virtue of their official position. Where this cannot be done (e.g., owing to protocol reasons or the need to avoid causing offence or embarrassment, such as where a gift is offered/presented to a Member when attending a ceremonial occasion in his official capacity), he should take it back to the Corporation and follow the guidelines set out at *Appendix 2* for the disposal of gifts/souvenirs received.

Sponsorship Offered to Members in Their Official Capacity

14. Members may be offered sponsorship in their official capacity by persons/organizations other than the Corporation itself for official purposes such as attending local/overseas conferences, conventions and product trial activities. Such sponsorship should be regarded as sponsorship offered to the Corporation and referred to the Corporation for consideration of acceptance.

15. The Corporation will consider whether it is appropriate to accept the offer and if the Corporation decides to accept the sponsorship, it will select a suitable Member/staff to attend the sponsored activity on its behalf. In considering whether or not to accept the sponsorship offer, the following general criteria are relevant:

- a. acceptance of the sponsorship will benefit the Corporation as a whole;
- b. acceptance of the sponsorship will not bring the Corporation into any disrepute;
- c. the sponsorship is not excessive in value or frequency;
- d. acceptance of the sponsorship will not give rise to any express or implied obligation towards the offeror;
- e. 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 Corporation's contracts); and,
- f. the sponsor will not be given or be perceived to derive an unfair advantage over other persons or organizations.

Acceptance of Entertainment

16. As defined in section 2 of the POBO (Appendix 1), “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.
17. Although entertainment when offered by way of a favour is not an advantage per se and its acceptance is generally not subject to the POBO, a free entertainment may, in certain circumstances, amount to "a discharge of an obligation to pay" which is an advantage under section 2 of the POBO. For example, where a public servant visits a restaurant with which he has official dealings and at the end of the meal the restaurant owner waives the bill, this may amount to an acceptance of an advantage.
18. Members should not accept lavish, or unreasonably generous or frequent entertainment, or indeed any entertainment which is likely to give rise to any potential or real conflict of interest, put the Members in an obligatory position in the discharge of their duties, compromise their impartiality or judgement, or bring them or the Corporation into disrepute bearing in mind public perception. When offered entertainment, a Member should consider whether the entertainment offered could be regarded as:
 - a. excessive – taking into account its value, substance, frequency and nature;
 - b. inappropriate – taking into account the relationship between the Member and the offeror (e.g. whether they have any direct official dealings); or
 - c. undesirable – taking into account the character or reputation of the host or known attendees.

Offering of Advantages

19. Members are prohibited from offering advantages to any director, or staff of any organization, for the purpose of influencing such person or organization in any dealings, or any public official, whether directly or indirectly through a third party, when conducting the business of the Corporation. It is also an offence under the POBO for any person while having dealings with a public body to offer an advantage to the public body's members and employees.
20. 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 number of gifts/souvenirs to be bestowed should be kept to a minimum and the exchange of gifts/souvenirs should be made from organization to organization. Gift/souvenir items should not be lavish or extravagant and standard souvenirs inscribed with the Corporation's logo are preferred.

Managing Conflict of Interest

21. Managing conflict of interest is important to good governance and maintaining trust in public bodies. Conflict of interest if improperly managed, give rise to criticism of favoritism, abuse of authority or even allegation of corruption and undermine the integrity of Members, their decisions and eventually the Corporation.

Conflict of Interest

22. A conflict of interest situation arises when the "private interests" of a Member compete or conflict with the interests of the Corporation or the Member's official duties. Private interests include financial and other interests of the Member himself, and those of his connections including family and other relations, personal friends, the clubs and societies to which he belongs, and any person to whom he owes a favor or to whom he may be obligated in any way. Use of official position, use of official information, private investment and outside employment are some common areas in which a conflict of interest may arise between a Member's official duties and private interests.

Avoidance and Declaration of Conflict of Interest

23. A fundamental integrity requirement is that all 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.
24. When a situation involving a conflict of interest cannot be avoided, 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 basic principle to be observed is that Members' advice should be disinterested and impartial and it is the responsibility of each Member to judge and decide if the situation warrants a declaration, and to seek a ruling from the Chairman or the Corporate Secretary in case of doubt.
25. There are circumstances in which a tie of kinship or friendship, or some other association or loyalty which does not give rise to a financial interest, can influence the judgement of a Member in discharging his official duties, or may reasonably be perceived as having such an influence. As such, a Member's duty to avoid or declare a conflict of interest goes beyond the disclosure of interests that are definable in pecuniary terms.

Examples of Conflict of Interest

26. Some common examples of conflict of interest are described below but they are by no means exhaustive:
 - Pecuniary interests in a matter under consideration by the Corporation, held either by the Member or his close relative.
 - A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organization which is connected with, or the subject of, a matter under consideration by the Corporation.
 - Some friendships which might be so close as to warrant declaration in order to avoid the situations where an objective observer may believe that a Member's advice has been influenced by the closeness of the association.
 - A Member who, as a barrister, solicitor, accountant or other professional adviser, has personally or as a member of a company, advises or represents or has frequent dealings with any person or body connected with a matter under consideration by the Corporation.

Members Bidding for the Corporation's Contracts

27. As a matter of principle, Members should avoid entering into any business contract (e.g. for the supply of goods or services) with the Corporation in their personal capacity to prevent the public perception of Members using their capacity to obtain financial gains from the Corporation. Where this is unavoidable, Members shall adhere to the guidelines on managing possible conflict of interest in bidding for the Corporation's business contracts as set out at ***Appendix 4***.

Misuse of Official Position

28. Persons occupying public offices are placed in a position of trust and entrusted with certain powers by the public. Our society expects public officials in such a position to exercise the powers and discretions with integrity and fidelity, and in an incorrupt manner to serve the public interest, and should not subordinate the public interest to private interests.

29. Members should act impartially and should not use their official position for personal gains nor accord preferential treatment to organizations 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 public 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 Corporation sanctions or endorses their personal activities or those of another.

Misconduct in Public Office

30. A Member who misconducts himself in relation to his official duties may commit the common law offence of MIPO. The common law offence of "misconduct in public office" ("MIPO") extends the reach of criminal law beyond bribery into various types of misconduct of public officers when discharging their official duties. The elements constituting the offence of MIPO are as follows:

- a. a public official;
- b. in the course of or in relation to his public office;

- c. wilfully misconducts himself by act or omission (for example, by wilfully neglecting or failing to perform his duty);
 - d. without reasonable excuse or justification; and
 - e. such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.
31. The misconduct must be deliberate rather than accidental in the sense that the official either knows that his conduct is unlawful or wilfully disregards the risk that his conduct is unlawful. Wilful misconduct without reasonable excuse or justification is culpable.
32. The essential feature of the offence is an abuse by the public official of the powers, discretions or duties exercisable by virtue of his official position conferred on him for the public benefit. A public officer may commit MIPO even if his misconduct does not involve any bribery or he does not have any pecuniary gains as a result.

Use of Corporation's Assets and Resources

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

Confidentiality of Information

34. Members should not disclose any classified or proprietary information of the Corporation without authorization or misuse any Corporation's information. (e.g., using the information for personal gain or the benefit of others).
35. Members who have access to or in control of such information should at all times ensure its security and prevent any abuse, unauthorized disclosure or misuse of the information.

36. Special care should be taken when handling any personal data of both the Members and service recipients to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486) and the Corporation's data privacy policy.
37. Members should continue to observe their duty of confidentiality after they have left the Corporation. They should not use, or take advantage of any classified or proprietary information obtained in the course of their official duties.

Outside Work

38. A Member who intends to accept a position with any organization that could lead to a conflict of interest or situation prejudicial to the Corporation's interests, should discuss the implications of accepting such a position with the chairman of the Corporation. He should consider resigning from the Corporation if the conflict or the perception of such cannot be avoided.

Post-Service Employment/Activities

39. Members should avoid taking up employment or providing service in any organizations which might constitute conflict of interest with their former service in the Corporation.

Records, Accounts and Other Documents

40. Members should ensure, to the best of their knowledge, that any record, receipt, account or other documents they submit to the Corporation, gives a true representation of the events or transactions reported in the documents.
41. Intentional use of documents containing false information to deceive or mislead the Corporation, regardless of whether the Members may obtain any gain or advantage, may constitute an offence under the POBO (*Appendix 1*).

Loans

42. Members should not accept a loan from or through the assistance of, any person or organization having official dealings with the Corporation. There is, however, no restriction on borrowing from a licensed bank or financial institution.

Indebtedness

43. Members 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 Corporation into disrepute.
44. Members are required to notify the Corporate Secretary if proceedings are taken against them with a view to bankruptcy. Members who become insolvent or bankrupt², even though no proceedings have been taken against them yet, should also report their case to the Corporation.

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

Use of Public Funds

45. Members shall ensure that all public funds are used in a prudent and responsible manner to safeguard public interest. They should only approve funds for any project/activity/expenditure item which falls within the ambit of the funds and can achieve the purpose of the funds.
46. Members shall particularly ensure that an open, fair and competitive mechanism is adopted for the procurement of goods/services and recruitment of staff for the Corporation.

Compliance

47. Members should understand and comply with this Supplementary Code of Conduct when performing duties of the Corporation. They should adhere to the spirit and the letter of any rules or orders made for the Corporation's practices and procedures or for Members' behaviour in relation to the business of the Corporation.
48. Members should comply with all local laws and regulations when conducting the Corporation's business, and also those in other jurisdictions, when conducting business there.
49. Any member in breach of the Supplementary Code of Conduct 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 ICAC or the appropriate law enforcement agencies.

Review

50. This Supplementary Code of Conduct is subject to review and revision from time to time by the Corporation.

Enquiry

51. Any enquiries, comments or suggestions in relation to this Supplementary Code of Conduct may be referred to Corporate Secretary.

**Extracts from the Prevention of Bribery Ordinance
(Cap. 201)**

Section 4 - Bribery

- (1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's -
- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
 - (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
 - (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,
- shall be guilty of an offence.
- (2) Any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his -
- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
 - (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
 - (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,
- shall be guilty of an offence.

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

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(2B) If the Chief Executive, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

he shall be guilty of an offence.

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

(4) For the purposes of subsection (3) permission shall be in writing and -

- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 8 - Bribery of public servants by persons having dealings with public bodies

- (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 9 - Corrupt transaction with agents

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

(4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).

(5) For the purposes of subsection (4) permission shall -

- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 2 - Definition

Definition of an Advantage

“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.

Definition of Entertainment

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.

Guidelines for Handling Gifts/Souvenirs
Given to Members in their Official Capacity

All gifts/souvenirs received by Members in their official capacity should be forwarded to the Corporate Secretary of the Corporation for disposal in the following manner:

- (a) If the gift/souvenir is of perishable nature (e.g. food, drink), it may be donated to a charitable organization or, when this is not practical, shared among staff of the Corporation on a suitable occasion.
- (b) If the gift/souvenir is a useful item, it may be donated to a charitable organization.
- (c) If the gift/souvenir is suitable for display (e.g. a painting, vase), it may be displayed at appropriate locations of the Corporation premises.
- (d) If the gift/souvenir is of low value, it may be donated as a prize in functions organized by the Corporation.
- (e) 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.
- (f) 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.
- (g) Any gift/souvenir of high value should be returned to the offeror.

**Measures to Manage Possible Conflict of Interest
Arising from Members Bidding for Contracts of
Advisory and Statutory Bodies (ASBs) ^{Note 1}**

- (1) When the need for a contract is discussed, ASB members should be asked at the outset to declare whether they or any company associated with them are interested in bidding for the contract.
- (2) ASB 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).
- (3) ASB members who have not declared an interest to bid (and the companies concerned) should not be allowed to bid subsequently.
- (4) When a member (or a company associated with him) has expressed an interest to bid, the advisory or statutory board should ascertain whether any information relating to the contract has already come to the possession of the ASB member in the course of his duties as a member. If so, such information should be made available to other bidders as well to ensure a level playing field.
- (5) If a member of an advisory or statutory body (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.
- (6) Bidder identity should be anonymised before the evaluation of bids if a member of the advisory or statutory body (or a company associated with him) is one of the bidders.
- (7) If a member of an advisory or statutory body (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.

^{Note 1} *The guidelines were issued by the Home Affairs Bureau vide its memo HAB CR 7/15/379 dated 17 August 2005 to all Government Bureaux/Departments.*