

18 December 2020

Circular to Intermediaries

Anti-bribery Guidance

The Securities and Futures Commission (SFC) reminds intermediaries of their existing obligations to put in place robust internal control systems to prevent contravention of the Prevention of Bribery Ordinance (Cap. 201) (POBO) when conducting regulated activities.

Under paragraph 12.1 of the Code of Conduct¹, intermediaries should comply with, and implement appropriate measures to ensure compliance with, the law, rules, regulations and codes administered or issued by the SFC and the requirements of any regulatory authority which apply to the intermediary. More specifically, under paragraph 2.4 of the Code of Conduct, intermediaries should be familiar with the POBO and follow related guidance issued by the Independent Commission Against Corruption (ICAC). They must observe and comply with relevant provisions of the POBO, in particular section 8 on bribery of public servants by persons having dealings with public bodies and section 9 on corrupt transactions with agents (where an agent solicits or accepts any advantage as an inducement to or reward for some act in relation to his principal's affairs or business).

Part V of the Internal Control Guidelines² requires intermediaries to establish and maintain policies and procedures to ensure compliance with all applicable legal and regulatory requirements as well as with their own internal policies and procedures. Therefore, intermediaries should lay down anti-bribery policies and codes of conduct with essential probity requirements for their directors, staff members and agents, and adopt the statutory definition of "advantages" under section 2(1) of the POBO.

In this connection, intermediaries should draw reference from the sample code of conduct issued by the ICAC for the private sector (https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=2365) which:

- (a) requires directors and staff of a company not to solicit or accept any advantage from any person, company or organisation that the company is having business dealings with, except that they may accept (but not solicit) subject to conditions or with permission from the company's approving authority; and
- (b) prohibits directors and staff from offering advantage to any director, staff member or agent of another company or organisation unless such offer carries no intention of improper influence in any dealing and it is ascertained that the intended recipient is permitted by his employer or principal to accept it.

¹ Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.

² Management, Supervision and Internal Control Guidelines For Persons Licensed By or Registered with the Securities and Futures Commission.



Furthermore, intermediaries should provide appropriate training to their directors, staff members and agents to ensure compliance with the POBO, regulatory requirements and internal anti-bribery policies and procedures.

The relevant provisions of the POBO are set out in the Appendix. Please also refer to the ICAC's website at <https://www.icac.org.hk> for practical guides and education resources for corruption prevention.

Should you have any queries regarding this circular, please contact Ms Seine Luk at 2231 1696.

Intermediaries Supervision Department
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End

Enclosure

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