



CORRUPTION PREVENTION
TOOLKIT ON **Kindergartens'**
..... **Operations**

Frequently Asked Questions

CHAPTER

1

GOVERNANCE FRAMEWORK OF A KINDERGARTEN



GOVERNANCE FRAMEWORK OF A KINDERGARTEN

1

Who can approve Managers/staff on the acceptance of advantages?

- The School Management Committee (SMC) is the authority to approve its agents, i.e. Managers/staff, on their acceptance of advantages. The Principal, who is appointed by SMC to manage the matters of a kindergarten, should normally have the delegated authority to do so, and may further delegate the authority to a senior staff member (e.g. Vice-Principal).
- It is most advisable for the kindergarten to lay down a clear policy on integrity requirements (including the acceptance of advantages) approved by the SMC, covering the approval authority for acceptance of advantages not specified in the integrity guidelines. Reference may be made to ➤ [Section 1.2.2\(C\)](#) of the [Corruption Prevention Toolkit on Kindergartens' Operations](#).

2

What is an 'advantage'? Is the solicitation/acceptance of a gift below a value of \$500 allowed under the Prevention of Bribery Ordinance (POBO)?

- Under the POBO, an "advantage" refers to anything that is of value, including gift, loan, fee, reward, commission, employment, contract, service or favour, etc.
- Under the POBO, an agent may, with the approval of his principal (e.g. SMC of the kindergarten), solicit or accept advantages. The POBO has not specified any threshold or ceiling of allowable advantages, including any gifts, an agent may solicit or accept. As employers often set \$500 as the limit that their employees may accept, this is then misunderstood by some as being a permission under the law.
- The SMC should therefore lay down the policy and explicitly specify whether or not Managers and staff of a kindergarten are allowed to solicit or accept advantages (including gifts) from any persons/companies having business dealings with the kindergarten; and if allowed, the limit (which should be reasonably low that the acceptance will not likely lead to the perception or allegation of impropriety) and the circumstances (e.g. a souvenir of nominal value offered in a conference) should be specified.

2

- Solicitation or acceptance of advantages from any persons/companies having business dealings with the kindergarten may impair the impartiality of the Managers/staff in discharging their duties, or give rise to the perception of such. Hence, kindergartens should not allow their Managers and staff to solicit or accept any advantages from any persons/companies having business dealings with the kindergarten. Reference may be made to [➤ Section 1.2.2\(C\)](#) of the [Corruption Prevention Toolkit on Kindergartens' Operations](#).

3


Can a staff member accept "lai sees" offered by his subordinates, say during the Chinese New Year?

- "Lai sees" which are of value (e.g. money, coupons) are advantages under the POBO. A staff member of a kindergarten will commit an offence if he accepts without the permission of the SMC (the principal) any advantages, including "lai sees", from a subordinate in return for any act in his official capacity (e.g. giving the latter a favourable performance appraisal report despite his poor performance). In view of the high risks and likely perception of corruption involved in the supervisor-subordinate relationship, supervisors should refrain from accepting "lai sees" from subordinates.

4

If a teacher represents the kindergarten to attend an event and accepts a gift/souvenir as a guest of honour, will he contravene the law?


- Gifts and souvenirs fall under the definition of "advantage" under the POBO. As the gift/souvenir is presented to the teacher in his official capacity, it should be deemed as an offer to the kindergarten. Hence, the teacher should report the acceptance to the kindergarten for deciding the disposal method of the gift/souvenir; and kindergartens should lay down the policy and procedure for accepting gifts/souvenirs received by staff in official capacity.
- In deciding the disposal method, consideration should be given to factors including the value of the gift/souvenir received and the relationship of the offeror with the kindergarten. Proper records of the receipt and disposal of the gift/souvenir received should be maintained.

 [\[Reference may be made to Sample Code of Conduct for Managers and Staff of Kindergartens, Guide on Using the Sample Code, and the Sample Report on Gifts Received in Official Capacity \(Annex 1 – Form A\) of the Sample Code.\]](#)

5

Can staff accept hampers or fruit baskets from parents during festivals?

- Hampers or fruit baskets likely fall under the definition of “advantage” under the POBO. Acceptance of advantages from parents may impair the impartiality of the staff in discharging their duties, or give rise to the perception of such. Therefore, kindergartens that commit to ethical practices should not allow their staff to accept hampers or fruit baskets from parents, even during festivals.
- Kindergartens should also make it clear to parents that staff of the kindergartens are prohibited from soliciting or accepting gifts (including hampers or fruit baskets), money or any other form of advantages in the course of or in relation to their duties without the permission of the SMC, even during festivals. Kindergartens should appeal to parents to support the policy and refrain from offering advantages to staff, such as notifying parents of the kindergarten’s policy.

 [\[Reference may be made to Sample Notice to Parents \(Annex 2\) of Sample Code of Conduct for Managers and Staff of Kindergartens.\]](#)

- Staff who have accepted such advantages should return them to the parents as far as possible. If it is impracticable to do so, kindergartens should not allow individual staff to retain the advantages. While some kindergartens may dispose of certain advantages which are of perishable nature (e.g. fruits) by sharing among staff, in case where the advantages are of high value, the arrangement may still create an actual or perceived sweetening effect and thus may not be the most appropriate option.
- Kindergartens may consider other possible ways of handling advantages offered to staff, including retention for use in parents/parent-teacher association events,

6

Should the offer of a performance or a show be an “advantage” or “entertainment”?

- Under 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, such provisions”. In general, whether or not the offer of a performance should be classified as “entertainment” mainly depends on whether it meets the above conditions. If the offer is merely a performance or show, it may fall under the definition of “advantage” but not “entertainment” under the POBO.
- For example, if Managers or staff represent the kindergarten to attend another school’s graduation ceremony cum tea party where the school arranges performances by its students on both occasions, such performances generally do not fall under the definition of “advantage” under the POBO. However, if kindergarten Managers or staff are offered tickets to a performance (e.g. tickets to an orchestral performance), the performance tickets will be regarded as an “advantage” rather than “entertainment”.

7

If parents of graduates or soon-to-be graduates offer gifts to teachers as a token of gratitude, could teachers accept these gifts?

- Gifts fall under the definition of “advantage” under the POBO. If teachers of kindergartens, without the permission of the SMC, accept gifts offered by parents for acts in relation to their official duties, they may commit an offence.
- Legal implications aside, the acceptance of advantages may invite allegations of impropriety of teachers in carrying out their duties, and result in perception of inequity. To uphold the integrity of teachers and avoid unnecessary allegations, kindergartens should lay down clear integrity requirements and prohibit teachers and other staff from soliciting advantages from parents or declining any offer of advantages from parents.
- Under the POBO, SMC may grant permission for its teachers to accept advantages. If the SMC wishes to grant such a permission after due consideration (e.g. the perception of such acceptance from a reasonable person’s perspective, the possible conflict of interest arisen), it is still advisable for the SMC to be mindful of any abuse and thus lay down conditions for the acceptance (e.g. the value of such gifts).

8

What should a Manager/staff do if he is uncertain whether there is any conflict of interest?

- The Manager or staff may adopt a “sunshine test”, i.e. whether the issue and the decision concerned can be openly discussed and disclosed without any sense of misgivings. An important feature of “sunshine test” is that the Manager or staff concerned should take into account the perception of the others. If he is still uncertain after applying the sunshine test, it would be advisable for him to take a prudent approach of seeking advice from the SMC or his supervisor.

CHAPTER

2

PROCUREMENT PROCEDURES



PROCUREMENT PROCEDURES

1

What should the kindergarten do if a technical staff member who is responsible for the procurement of information technology (IT) services is a relative of a bidder?

- Conflict of interest arises when the private interest of the technical staff member (i.e. his relative's interest in bidding for the IT services of the kindergarten) conflicts with his official duty in procuring the services.
- If the kindergarten has put in place a declaration mechanism, the staff member should submit to the kindergarten a written declaration on his relationship with the bidder with details as required. Upon receipt of the declaration, the kindergarten should assess the seriousness of the conflict and adopt appropriate actions to mitigate the risks. Should the kindergarten consider the conflict as serious and other technical staff have knowledge in the IT services to be procured, the kindergarten may consider redeploying another technical staff member to take up the duty. However, if only the technical staff concerned possesses the relevant expertise, without which the kindergarten may have difficulties in drawing up the specifications and assessing the quotations/tenders, the kindergarten may restrict the staff's access to the information of the procurement exercise (e.g. seeking his advice only on the drawing up of specifications, or on the relevant technical aspects of the quotations/tenders received with the names of the bidders anonymised).
- The advice of the staff member concerned and the follow-up actions (including justifications) should be properly documented and checked by his supervisor as far as practicable. Alternatively, the kindergarten may also invite members of the School Management Committee with relevant expertise to take over or assist in the monitoring of the procurement exercise.

2

Can a kindergarten engage an agent (e.g. a company that offers procurement services) to procure goods or services on its behalf?

- Before engaging an agent to help procure goods or services on its behalf, a kindergarten should ensure that there is a genuine need to do so (e.g. lack of required expertise, lack of manpower). If it is considered necessary to engage an agent, the kindergarten should select the agent by going through a competitive process and following the procurement procedures set out by the kindergarten. The kindergarten should lay down clear probity requirements (e.g. declare conflict of interest) for compliance by all the key personnel of the agent involved in the procurement exercise.

3

A kindergarten does not clearly specify the materials required in a quotation invitation/tender document for student tables. If the quotations/tenders of two suppliers provide student tables made of different materials, how should the kindergarten assess and compare the quotations/tenders?

- If the specifications of the procurement item are drawn up based on the functional requirements and are clearly laid down, the difference in materials normally does not preclude objective evaluation of the quotations/tenders. However, if the kindergarten considers that there is a strong justification requiring the tables to be made of certain type of material (e.g. wood, plastic) or the use of material is critical in the evaluation of quotations/tenders but such essential requirement has not been included in the specifications, the kindergarten should revise the specifications by clearly specifying the required material of the tables and invite suppliers to re-submit the quotations/tenders, i.e. re-quotation/re-tendering should be conducted. To uphold the integrity of the process, the decision should be approved by the appropriate authority, with the justification properly documented. The kindergarten should award the contract to the supplier who has met all the requirements (including material) and has offered the lowest bid or being the highest scorer.

4

Should a kindergarten conduct price negotiation after the evaluation of quotations/tenders?

- After a bidder is selected through the laid-down evaluation process, an organisation may negotiate with the selected bidder for a better price and regardless of the negotiation results, still award the contract to the selected bidder. The corruption risk in such case is relatively low.
- Yet, if the negotiation could end up with a change of the evaluation result and hence the selected bidder, or a further selection among the bidders, it is prone to corruption and manipulation. Therefore, from the corruption prevention angle, such negotiation should be avoided.
- If the kindergarten considers that there is a genuine need for such negotiation, sufficient safeguards should be put in place with reference to the following suggested measures -
 - setting out the criteria for selecting bidders for negotiation (e.g. only with the bidder of the lowest conforming bid or the highest scoring bid, or where no one clearly stands out as the best, only with two or three better bidders whose prices or scores are very close)
 - appointing a negotiation team comprising at least two staff members of appropriate ranks and with proper expertise (e.g. in works projects), taking into account the value of purchase and the nature of the procurement
 - requiring all members of the negotiation team to declare any conflict of interest with the bidders concerned
 - setting out requirements for conducting negotiation, including -
 - the baseline price and conditions, beyond which the negotiating team is required to seek instruction from the management on the action to be taken
 - prohibiting the disclosure of other bidders' quotations/tenders
 - maintaining proper documentation of the negotiation and the results
 - after negotiation, requiring the bidders to submit the "best and final" offer in writing
 - assessing the "best and final" offers based on the original evaluation criteria
 - laying down the approving authority.

CHAPTER

3

MANAGEMENT OF MAINTENANCE AND IMPROVEMENT WORKS



MANAGEMENT OF MAINTENANCE AND IMPROVEMENT WORKS

1

Can a kindergarten specify the brand name or model number of material (e.g. paint) in the works specifications, so as to ensure consistency in the works (e.g. the colour of the classrooms' walls)?

- Kindergartens should, as far as practicable, avoid specifying the brand name or model number of material to avoid unfair competition and even allegations of corruption. Moreover, kindergartens should only specify the functions/characteristics (e.g. colour tone) of the required material. If it is necessary and justifiable to use a particular brand name, kindergartens should state "or equivalent" after the specified brand name, and seek approval from a designated authority, with proper documentation of the justifications.

2

How can a kindergarten monitor hidden works?

- Hidden works (e.g. laying of waterproof membranes in roofing) are prone to construction defects and corrupt practices as they can hardly be inspected after completion. To facilitate timely inspection of the related works, kindergartens should require the contractors to inform their staff before the commencement of hidden works and put this requirement in the works contracts. If it is not practicable to do so, kindergartens may also require contractors to submit photos showing the progress and hidden works (before and after works completion) as evidence of compliance with the quality requirements or works progress. All inspection records and records submitted by the contractors should be properly maintained.

CHAPTER

4

ADMISSION OF STUDENTS



ADMISSION OF STUDENTS

1

Should children of the kindergarten's teachers and applicants referred by the Managers be given priority for student admission?

- In drawing up the policy and procedures for student admission, kindergartens should, apart from complying with the policies and requirements of the Education Bureau, ensure that the mechanism is fair and objective, and places are offered to applicants in accordance with pre-determined procedures and criteria. If the kindergarten, after due consideration, decides to adopt any referral arrangement, such an arrangement should be justifiable and publicly defensible.

CHAPTER

5

STAFF ADMINISTRATION



STAFF ADMINISTRATION

1

Retired/resigned teachers are experienced in teaching and are familiar with the kindergarten's operation. Could the kindergarten directly appoint them as substitute teachers when a need arises without going through the interview process?

- From the corruption prevention perspective, a kindergarten should lay down the policy and procedures that are in line with the principles of fairness and impartiality for its daily operations, including appointing substitute teachers. Such procedures should cover the urgent appointment of substitute teachers due to operational needs (e.g. maintain a list of pre-approved substitute teachers, and urgently appoint substitute teachers on the list based on actual circumstances). Should there be deviations from the laid-down procedures under exceptional circumstances, written justification should be provided for approval by the designated authority and proper documentation should be maintained.

2

Further to the above question, if there are a number of qualified teachers on the pre-approved list suitable for the appointment as the substitute teacher, how can the kindergarten make a selection?

- A kindergarten should ensure that the fundamental principles of fairness and openness are observed in its various operations. A kindergarten should establish a mechanism to select substitute teachers, having regard to various considerations such as operational needs. If the number of qualified/suitable teachers on the pre-approved list exceeds the required number, one of the common approaches is to appoint substitute teachers on a rotational basis.

