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The HKICPA's Standard Setting Department welcomes your comments and feedback on this paper, which should be sent to commentletters@hkicpa.org.hk.

Illustrative examples on referral fees

In this publication, we provide examples to illustrate application of principles in COE on some common situations in Hong Kong related to payment of commission/referral fees. This publication identifies key considerations for practising members in payment of commission/referral fee described in the background information and illustrate the application of Section 900.13 of Chapter C of the COE. Other considerations and analysis may be necessary for different fact patterns.

Extract of authoritative literature

Practising members should not give any commission, fee or reward to a third party, unless he/she is either their employee or another professional accountant, in return for the introduction of a client. [Section 900.13 of Chapter C of the COE]

A self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if a professional accountant pays or receives a referral fee or receives a commission relating to a client. Such referral fees or commissions include, for example:

- A fee paid to another professional accountant for the purposes of obtaining new client work when the client continues as a client of the existing accountant but requires specialist services not offered by that accountant.
- A fee received for referring a continuing client to another professional accountant or other expert where the existing accountant does not provide the specific professional service required by the client.
- A commission received from a third party (for example, a software vendor) in



connection with the sale of goods or services to a client.

Examples of actions that might be safeguards to address such a self-interest threat include:

- Obtaining an advance agreement from the client for commission arrangements in connection with the sale by another party of goods or services to the client might address a self-interest threat.
- Disclosing to clients any referral fees or commission arrangements paid to, or received from, another professional accountant or third party for recommending services or products might address a self-interest threat. [Section 330.5 A1 to A2 of Chapter A of the COE]

Members should note that under the Prevention of Bribery Ordinance (POBO) (Cap.201)1a, there are provisions governing acceptance of any advantage (e.g. gift, loan, fee, commission, employment, service, favour) by someone who is in an agent principal relationship with another person. For example, if an agent receives an advantage from another for doing something or showing favour to another in relation to the affairs or business of the agent's principal (who may be the agent's employer or in some other relationships with the agent which involve trust and confidence), the permission of the principal should be obtained first before receiving the advantage in order to avoid the risk of contravening the POBO.

The same principle applies to someone who is offering an advantage to another person who is in an agent-principal relationship with some other person: before offering an advantage, the payer should ensure that the agent has obtained permission from his principal for receiving the advantage. Whether an agent-principal relationship exists in any given situation depends on the facts of each case. Members should consult their own legal advisors as and when necessary. [Section 250.5 A1 to A2 of Chapter A of the COE]

Case information

Mr. X is a practising member of HKICPA. In order to expand his business, he is seeking business by referrals actively. Recently, he is considering if payment of referral fee to a referrer is allowed in each of the following scenarios:

Scenarios	Referrer	Type of client
1	Mr.X's employee	Audit client
2	An local agent who is not a Hong Kong Professional Accountant ¹	Audit client
3	A partner of a non-Hong Kong accounting firm who is not a Hong Kong Professional Accountant	Audit client
4	Mr. X's friend who is a Hong Kong Professional Accountant.	Audit client
5	Mr. X's friend who is a Hong Kong Professional Accountant.	Corporate finance client

Question: Can Mr.X pay referral fee to the referrer in each scenario?

Analysis:

Scenario 1

As the audit engagement is referred by his employee, Mr.X is not prohibited to pay commission, fee or reward to his employee in return for the introduction of a client, under the provision of Section 900.13 of Chapter C of the COE, but still subject to constraints in other provisions under the COE such as Section 330.5 and Section 250.5A of Chapter A of COE.

Scenario 2

The audit client is referred by an local agent who is not a Hong Kong Professional Accountant. Hence, Mr.X should not give any commission, fee or reward to the local agent in return for the introduction of a client according the provision of the Section 900.13 of Chapter C of the COE.

Scenario 3

Based on the same reasoning as for scenario 2, since the partner of the non-Hong Kong accounting firm is neither a Hong Kong Professional Accountant nor an

¹ Hong Kong Professional Accountant is defined as a person registered as a certified public accountant by virtue of section 22 of Professional Accountants Ordinance.



employee of Mr.X, thus Mr.X should not give any commission, fee or reward to the partner of a non-Hong Kong accounting firm in return for the introduction of a client.

Scenario 4

As the audit client is referred by his friend, who is a Hong Kong Professional Accountant, Mr.X is not prohibited to pay commission, fee or reward to his friend in return for the introduction of a client, under the provision of Section 900.13 of Chapter C of the COE, but still subject to constraints in other provisions under the COE such as Section 330.5 and Section 250.5A of Chapter A of COE.

Scenario 5

Since the corporate finance client is referred by his friend, who is a Hong Kong Professional Accountant, Mr.X is not prohibited to pay commission, fee or reward to his friend in return for the introduction of a client, under the provision of Section 900.13 of Chapter C of the COE, but still subject to constraints in other provisions under the COE such as Section 330.5 and Section 250.5A of Chapter A of COE.

Note:

It should be emphasized that even the payment of commission, fee or reward to referrer is not prohibited under Section 900.13 of Chapter C of the COE in certain circumstances, other applicable sections of COE, such as Section 330.5 and Section 250.5A of Chapter A of the COE should also be complied with. Professional accountants in public practice are required by *Independence Standards* to be independent when performing audits, reviews, or other assurance engagements. [Section 120.12 A1 of Chapter A of COE].

Probity is the core value of Hong Kong, a recognised clean society for many years. To deter corrupt approaches and set out clear probity standards for all levels of staff, it is advisable for every company to lay down the company's policy and rules governing acceptance and offering of advantage and entertainment in a Code of Conduct which should cover both directors and staff. Members may use the sample code of conduct provided by the ICAC for the private sector at Appendix 1 of Section A of COE as a reference.² [Section 250.5 A3 of Chapter A of the COE]

² Members may contact the Hong Kong Business Ethics Development Centre (www.hkbedc.icac.hk) of the ICAC for enquiry and advice.