

收取回扣宜審慎

Think before accepting commission

廉政公署 ICAC


(編按：為了使導遊瞭解甚麼時候收取回扣才合法，本刊邀請了廉政公署社區關係處提供以下假設的個案及其分析。個案中的人物姓名全屬虛構，而有關分析只是就《防止賄賂條例》中的法例規定作一般解釋而已。讀者有需要的話，應當細閱有關條列並徵詢法律意見。)

(Editor's note: To help tourist guides understand when it is legal to accept commission, we have invited the Community Relations Department of the Independent Commission Against Corruption (ICAC) to provide us with the following hypothetical case and its analysis. Please note that the names of characters in the case are fictitious and that the analysis only tries to explain general legal requirements under the Prevention of Bribery Ordinance (PBO). The PBO should be reviewed in detail and legal advice sought if any need arises.)

小莉是新入行的導遊，負責接待內地訪港旅行團。一天，當她帶團到公司指定的商店購物時，一名團員看到街對面有一家珠寶店，於是迫不及待的跑了進去。那珠寶店不是旅行社的指定購物商店，但店東張老闆給她回扣，並要求她日後多帶些旅行團來購物。對方並說收取回扣是行內的一貫做法。

問題分析

任何代理人未得到其主事人的許可，而在為主事人辦理事務或業務時索取或接受利益，就會觸犯《防止賄賂條例》第九條；此外，提供利益者同樣犯法。因此，張老闆在小莉未得其僱主的許可下，就私下向她提供回扣，這已是提供非法利益，而小莉也已觸犯受賄罪。他們並且不能以行業或業務習慣等藉口為辯護理由。

此外，根據旅遊業議會的規定，凡未經旅行社向議會登記的商店，導遊一律不得帶團前往購物，以保障團員利益。在考慮過珠寶店的聲譽和服務水平後，小莉大可以向公司推薦珠寶店成為指定商店。公司應為僱員制定收受利益的指引；而在沒有指引的情況下，僱員應在合理的時間內儘快向公司管理層申報及補領批准。 

會員如需協助或索取旅行社防貪貼士(中文版)及〈旅遊業專業道德實務指引〉(英文版)，請致電廉政公署，電話：2543-0000。Members may call the ICAC on 2543-0000 for assistance, publicity materials or "A Practical Guide for the Travel & Tourism Industry" (bilingual version).

Lallie is a tourist guide and new to the industry. She is responsible for receiving mainland tour groups for a travel agent. One day, when she took a tour group to a shop authorised by her travel agent, one of the tour members spotted a jewellery shop across the street and made a dash for it right away. Although the shop was not on her company's authorised list, the shop-owner, Mr Chang, gave her a commission and asked her to take more tour groups to his shop in the future. She was told that it was trade practice to do the same.

Analysis

It is an offence under Section 9 of the PBO for any agents to solicit or accept an advantage without their principal's permission when conducting their principal's affairs or business. And the person offering such an advantage also commits an offence. Therefore, Mr Chang has breached the PBO because he offered a commission to Lallie without the permission of her employer. Lallie is also in breach of the PBO as an acceptor of the illegal commission. In addition, they cannot rely on trade practice as a defence.

Moreover, according to TIC regulations, tourist guides are not allowed to take tour groups to those shops not registered with the TIC by their company for protection of group visitors. Lallie may recommend the jewellery shop to her company for inclusion in the authorised list after taking account of its reputation and service quality. Companies should formulate a guideline on the acceptance of advantages by staff. In case no such guideline is available, staff should report to the management and obtain permission as soon as reasonably possible. 