

HONG KONG TRUSTEES' ASSOCIATION

COMPETITION LAW COMPLIANCE POLICY

Competition Law Compliance Policy

Professional Associations (“PA”) serve an important function in disseminating information to members about developments relevant to their industry and promoting the industry’s interests to government and customers. There may be genuine benefits and advantages in being a member of a PA but by their very nature a PA’s membership is generally comprised of competitors and consequently both the PA and its members need to be aware of the competition risks that may arise in participating in an PA and in attending PA meetings. In particular, the exchange of non-public, commercially sensitive information between competitors, whether directly or through an intermediary such as a PA, may raise competition law issues. Examples of “commercially sensitive information” include but are not limited to:

- **Price information:** actual or future prices, discounts, increases, reduction, rebates and promotions.
- **Sales information:** quantities of products sold or services provided, market share information and terms of sales, delivery and payment.
- **Customer information:** customer lists and customer classifications.
- **Financial information:** turnover, margin and profit data and/or operating expenses.
- **Operating strategies:** business plans, marketing plans, investment plans, production plans, and planned pipeline products.

Some action points to remember:

DO’S

- ✓ Ensure that the PA’s membership is based on transparent, objective, qualitative and uniformly applied criteria.
- ✓ Ensure that industry standards set by the PA:
 - are set under an open and fair process;
 - are non-binding and effectively accessible to members and non-members; and
 - do not affect the price charged to customers.

- ✓ Ensure that members understand they must independently determine their own prices and negotiate their own contracts.
- ✓ Ensure that PA meetings that have a clear and legitimate objective.
- ✓ Consider whether it is necessary to inform or seek guidance from legal counsel:
 - of upcoming meetings, its agenda, and the list of participants;
 - of any potentially anti-competitive incidents occurring before, during, or after the meeting; and
 - of any potentially anti-competitive practices adopted by the PA, e.g. recommendations based on unclear / arbitrary / unreasonable grounds.
- ✓ Remove / anonymise / redact sensitive information. Information which is historic and disseminated in an aggregated, anonymised format is less likely to be problematic.
- ✓ Have someone take full and accurate written notes of what is discussed during the meeting.
- ✓ Review meeting minutes to ensure their accuracy and correct any inaccuracies promptly.
- ✓ Discuss only non-commercially sensitive matters.
- ✓ Clearly object to any attempt to discuss commercially sensitive information.
- ✓ Calling off / leaving the meeting immediately if commercially sensitive information is discussed and ensure that the cancellation / departure and the reason for it are recorded in the meeting minutes.
- ✓ Stay vigilant even during social events or other informal discussions.

DON'T'S

- ✗ Do not share commercially sensitive information.
- ✗ Do not recommend or agree with other members to:
 - set particular prices for products or services;

- set production targets;
 - engage in collusive tendering;
 - divide up sales territories, including by geographic areas, types of customers or types of products; or
 - engage in any activity that restricts or reduces competition, e.g. agreeing not to solicit employees from competitors, or agreeing to limit discount/promotional activities.
- ✘ Do not agree to 'reduce competition' or 'align commercial practices' due to a weak economy or in response to challenging market conditions.
 - ✘ Do not join / continue any meeting if you suspect that it may have an anti-competitive purpose.
 - ✘ Do not organise / join any meeting when its purpose is unclear.
 - ✘ Do not continue / remain at a meeting if any commercially sensitive information is discussed or disclosed by competitors.
 - ✘ Do not ignore any concerns, even if they only affect or relate to other PA members. If you have any concerns that there are breaches of competition law, please contact and discuss with legal counsel.