

'Business Success: Integrity & Legal Compliance'

Corruption Prevention Guide for SMEs in
Guangdong, Hong Kong and Macao



Guangdong Provincial People's Procuratorate



Independent Commission Against Corruption,
HKSAR



Commission Against Corruption,
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Preface

In 1995, 1998 and 2008 the Guangdong Provincial People's Procuratorate (GDPP) and the Independent Commission Against Corruption of Hong Kong (ICAC) worked together to produce a legal guide. The Guide helps Small and Medium Enterprises (SMEs) conducting cross-boundary business in Guangdong and Hong Kong to:

- observe relevant anti-corruption legislation; and
- implement appropriate integrity management measures.

With the continued increase in economic and trade development throughout the Pearl River Delta (PRD) among Guangdong, Hong Kong and Macao, the GDPP and ICAC are now jointly publishing an updated version of the Guide. This edition is, for the first time, being compiled with additional input from the Commission Against Corruption of Macao (CCAC). The new Guide offers practical corruption prevention advice covering cross-boundary businesses in all three locations.

Benefiting from China's economic reform and trade liberalisation over the past thirty years, Guangdong, Hong Kong and Macao each with their own competitive edge have enjoyed significant economic advancement. Official statistics show that Hong Kong is the largest external investor in Guangdong Province. By the end of 2010, Guangdong had attracted a total investment in excess of USD160 billion from 110,000 Hong Kong-funded enterprises, and a total in excess of USD5 billion from over 8,000 Macao-funded enterprises. Moreover, in terms of Guangdong-funded enterprises, 1,600 and 150 were established in Hong Kong and Macao, respectively. Following the signing and implementation of the *Framework Agreement on Hong Kong/Guangdong Co-operation* and the *Framework Agreement on Macao/Guangdong Co-operation*, coupled with the launch of the *National 12th Five-Year Plan*, new models of business cooperation and development have flourished in Hong Kong, Macao and the Greater PRD. This has provided opportunities for SMEs to restructure and upgrade their operations while actively exploring the huge potential for domestic sales and business expansion across mainland China.

To grasp business opportunities in the ever changing and highly competitive marketplace, SMEs in all three locations should not only strengthen their business competitiveness but also boost their 'integrity capital' and familiarise themselves with local legislation to avoid inadvertent breach of the law. They should also adopt effective corruption prevention measures to safeguard the enterprises' legitimate interests and further boost their corporate brand.

In recent years, the Central Government of the mainland China has placed increasing emphasis on both the prevention and punishment of bribery offences. It has also mapped out a series of anti-corruption measures for implementation by all levels of party committees, governments in addition to the disciplinary supervisory and procuratorial bodies. Combating commercial bribery was set as a key priority in 2008 and anti-bribery efforts have been stepped up year after year since then. In 2012, a dedicated project entitled *Three Fights and Two New Establishments* was launched in Guangdong with several key objectives:

- fighting against fraud and monopoly;
- fighting against the manufacture and sale of counterfeits;
- fighting against commercial bribery;
- establishing a social credit system; and
- establishing a market monitoring system.

To clamp down on corruption and bribery acts more effectively, provisions concerning those offences covered by the *Criminal Law of the People's Republic of China* were amended to address the issue of legal application. Furthermore, judicial interpretation is now made by the Supreme People's Court and the Supreme People's Procuratorate. The Macao Special Administrative Region, having close ties with Guangdong and Hong Kong, also enacted the law *Prevention and Suppression of Bribery in the Private Sector* on 1 March 2010 to help prevent bribery in private enterprises in Macao. It is therefore more important than ever that SMEs understand the latest developments in relevant anti-corruption and anti-bribery laws in locations where they are investing.

These include provisions governing corruption and bribery offences under the following legislation:

- *Criminal Law of the People's Republic of China;*
- *Prevention of Bribery Ordinance* of Hong Kong; and
- *Penal Code and Prevention and Suppression of Bribery in the Private Sector* of Macao.

A close partnership has been forged among the GDPP of China, ICAC of Hong Kong and CCAC of Macao in conducting reviews of developments in the PRD and proactively initiating anti-corruption/bribery measures in respect of cross-boundary businesses. One such initiative was the conference recently held in September 2011 for SMEs in Guangdong, Hong Kong and Macao entitled 'Integrity and Professionalism — Key to Business Success'. The event, jointly organised by the ICAC, GDPP and CCAC, aimed to help cross-boundary SMEs better understand the business environment in the PRD, anti-corruption laws and regulations as well as the latest anti-corruption strategies in the three locations. Key topics raised at the Conference are included in the 'Frequently asked questions' section in Chapter 11 of this Guide.

While the economic development in Guangdong, Hong Kong and Macao has seen phenomenal achievements, anti-corruption agencies in all three locations have also demonstrated determination in the fight against corruption and bribery with a view to building up a level playing field as well as upholding the rule of law and integrity. As a follow-up to the Conference, this Guide aims to provide additional timely, effective and practical information to cross-boundary SMEs operating in the PRD — helping their business reach new heights founded on an 'integrity culture'.



Guangdong Provincial People's Procuratorate



Independent Commission Against Corruption,
HKSAR



Commission Against Corruption,
Macao SAR

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Introduction

Safeguarding stakeholders' interests

This Guide provides SMEs engaged in cross-boundary business in Guangdong, Hong Kong and Macao with information on how best they can act to prevent corruption and conduct their business affairs with integrity. This will help such businesses avoid breaches of the anti-corruption and anti-bribery laws in all three locations as well as unnecessary disputes and lawsuits.

Putting integrity management into practice

SMEs can further use this Guide to proactively put in place integrity management measures in their organisations. Underlying principles conveyed include:

- Businesses should understand prevailing business cultures in places in which they invest, comply with local market regulations and operate their businesses strictly according to the law.
- Enterprises should establish a system of integrity governance to gain the trust of shareholders, business partners, clients, employees and creditors. Such a system is also instrumental in facilitating robust long-term development, raising future capital and eventually allowing an organisation to go public.
- Companies should establish an integrity-based personnel management system — both for recruitment and effective team building. This will not only boost staff loyalty and retention but also attract talents. Staff should, therefore, possess not only job-related know-how and skills, but also high ethical standard.
- Enterprise leaders should promote a corporate culture of integrity and lead by example. They must avoid conflicts of interest, fulfil employer responsibilities, implement effective monitoring system in addition to continuously enhance corporate management and 'early warning' systems. Such measures will strengthen corporate reputation by reducing operating costs as well as minimising the risk of corruption and bribery.

Reader-friendly style and presentation

This Guide uses everyday language and seeks to avoid complex legal terminology. Extracts from relevant anti-corruption and anti-bribery laws have been placed in appendices for more detailed reference. While some provisions of the laws and regulations mentioned are not directly related to corruption or bribery, they remain at the heart of all lawful business transactions, and so are briefly introduced with their main clauses highlighted. To enable readers to track any updates to laws and regulations, websites where the original and updated information can be found are also cited.



Case studies

This Guide includes many case studies showing how and why SMEs can become embroiled in corruption, bribery or ethical dilemmas. These case studies aim to highlight the importance of managing staff integrity and explain the relevant legal provisions in each example.

Enhancing management skills

The case study in Chapter 7 gets right to the heart of the management skills required for detecting signs of corruption and bribery within an organisation. The chapter details how managers can take appropriate corruption prevention measures and develop the necessary skills to effectively manage staff integrity. Such measures help protect the legal rights and interests of businesses and minimise corruption risks.

The Guide as a reference source

This Guide provides general advice only and does not cover all possible scenarios. The legal explanations offered are broad and often in summary form — in no way are they a substitute for the original laws or legal opinions. Readers should further note that no official English translation exists for many of the laws and statutes referred to from mainland China. In such cases, we have offered a literal translation which is as accurate as possible, but we strongly recommend that readers consult the original version in Chinese to clarify the exact intent and scope of any legal provisions. Independent legal advice should be sought whenever necessary.

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Part one

Understanding and abiding by the law





Given that mainland China, Hong Kong and Macao have their own laws and systems, businesspersons need to be thoroughly acquainted with the respective legal provisions and economic policies in each of the three locations when making cross-boundary investments.

Above all, to protect themselves from unnecessary disputes, litigation or contravention of the anti-bribery and anti-corruption laws, businesspersons should not blindly follow so-called 'customary practices'. Instead, they must always strive to uphold the principles of fairness and integrity.

Principles and spirit of legislation

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, among other important issues, sets out the constitutional framework of Hong Kong's legal system. This invokes the essential nature of impartiality of the judiciary and its independence from the executive and administrative arms of the Government. Under the principle of 'One Country, Two Systems', the legal system of Hong Kong is based on the common law and supplemented by a number of local ordinances.

The *Prevention of Bribery Ordinance* (Cap. 201) (PBO) aims to keep a fair and corruption-free society, thus safeguarding legitimate interests of both employers and employees.

Summary of the law

Corruption and bribery constitute the same offence

The business sector, government departments and public bodies in Hong Kong are all subject to the PBO which clearly defines 'bribery'. Under the law, 'bribery' refers to the acts of both offering and/or accepting bribes.

In accordance with the PBO, accepting a bribe means that an 'agent' (usually an employee) corruptly accepts an advantage in relation to the business of his/her 'principal' (usually his/her employer) without permission. Offering a bribe occurs when an 'offeror' (individual offering an advantage) offers such an advantage to an agent in return for him/her performing favours in relation to his/her work duties.

The party accepting bribes can be any employee in the private sector, a government department or a public body, as well as any person acting for another, while the offeror can be any person.

Any agent who uses a false document with the intent to deceive or mislead his/her principal also contravenes the PBO.

'Customary practice' in any profession, trade, vocation or business is not a defence for offering and accepting an advantage. The principal's permission is the main factor to be considered by the court.

Both the offeror and the acceptor of a bribe are guilty of an offence once they have reached a verbal agreement, even if the purpose is not achieved.

Bribery involving private sector employees

In Hong Kong, any private sector employee who accepts an advantage in relation to his/her employer's business without obtaining his/her employer's permission is guilty of an offence. Therefore, before offering any advantage — such as a gift — to private sector employees, businesses should ensure that the recipient has obtained permission from his/her employer, or else the advantage should be directly given to and dealt with by the employer. Otherwise, the businessperson concerned may have committed the offence of offering a bribe.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Private sector employees soliciting or accepting bribes Section 9(1)	<ul style="list-style-type: none">Any agentwithout the permission of his/her principalsolicits or accepts any advantageto affect his/her doing or forbearing to do any act in relation to his/her principal's affairs	<ul style="list-style-type: none">An employee should not solicit or accept any advantage relating to his/her work without the permission of his/her employer
Offering bribes to private sector employees Section 9(2)	<ul style="list-style-type: none">Any personwithout the permission of an agent's principaloffers any advantage to the agentas an inducement to or reward for the agent's doing or forbearing to do any act in relation to his/her principal's affairs	<ul style="list-style-type: none">Before offering any advantage to a private sector employee, make sure the employee has the prior permission of his/her employer to receive the advantage, or the advantage can be directly given to and dealt with by the employer

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Using false documents to deceive an employer Section 9(3)	<ul style="list-style-type: none"> Any agent with an intent to deceive his/her principal in respect of which his/her principal is interested uses any false, erroneous or defective receipt, account or other document to mislead his/her principal 	<ul style="list-style-type: none"> An employee may also contravene the PBO if he/she uses false document to deceive his/her principal even though the employee has not received any advantage

Bribery involving public servants

Apart from trade partners, businesspersons may also have contact with government officers or employees of public bodies. It should be noted that those public servants are strictly governed by the PBO which prohibits them from accepting advantages in relation to their duties.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to public servants Section 4(1)	<ul style="list-style-type: none"> Any person in Hong Kong or elsewhere without lawful authority or reasonable excuse offers any advantage to any public servant to affect the public servant to perform or not to perform his/her duties 	<ul style="list-style-type: none"> Do not offer any advantage to public servants in return for their showing favours in relation to their duties Public servants are also prohibited by law from soliciting any advantage in return for showing favours in relation to their duties

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to public servants with a view to using influence in the procuring or execution of a contract Section 5(1)	<ul style="list-style-type: none"> Any person without lawful authority or reasonable excuse offers any advantage to any public servant as an inducement to or reward for the public servant's giving assistance or using influence in the procuring or execution of any contract with the government or a public body 	<ul style="list-style-type: none"> Do not offer any advantage to public servants as a reward for or inducement to their abuse of office for securing a contract
Offering advantages to public servants in the course of business Section 8(1) & (2)	<ul style="list-style-type: none"> Any person without lawful authority or reasonable excuse offers any advantage to a public servant while having dealings with the government or a public body 	<ul style="list-style-type: none"> Offering any advantage to any public servant while having dealings with the government or any public body is a criminal offence even though there is no intent to bribe and/or no special request has been made

Bribery in relation to tenders and auctions of government departments or public bodies

When taking part in any tender or auction conducted by a government department or public body, businesspersons must not offer any advantage to any person to induce them to: withdraw, not make a tender or not bid at an auction.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to induce another person to withdraw or not to make a tender Section 6(1)	<ul style="list-style-type: none"> Any person without lawful authority or reasonable excuse offers any advantage to any other person in return for the withdrawal of or refraining from the making of a tender, for any contract with the government or a public body 	<ul style="list-style-type: none"> Do not offer any advantage to any tenderer in return for his/her withdrawal of or refraining from the making of a tender

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Offering bribes to induce another person not to bid at an auction Section 7(1)	<ul style="list-style-type: none"> • Any person • without lawful authority or reasonable excuse • offers any advantage to any other person • in return for his/her refraining from bidding at any auction conducted by the government or a public body 	<ul style="list-style-type: none"> • Do not offer any advantage to any person in return for his/her refraining from bidding at an auction

Legal requirements for upholding a high standard of integrity in the civil service

Businesspersons must not offer any public servant any advantage in relation to the latter's official capacity or authority. The greatest caution should be exercised when establishing close relationships with government officers even if such contacts are in no way related to their official capacity. This is because a government officer is not allowed to solicit or accept any advantage without the general or special permission of the Chief Executive of the Hong Kong, irrespective of whether the advantage is solicited or accepted in the officer's official or private capacity. Otherwise, the officer may be guilty of an offence under Section 3 of the PBO.

Section 3 of the PBO seeks to ensure that the civil service maintains a high standard of integrity. Such a high standard is necessary because government officers possess powers and influence which are not available to ordinary citizens. Moreover, the legislation aims to prevent government officers from falling prey to any sweetening-up processes in privately accepting advantages which may cause them to lose their objectivity in the course of their duties.

Offence and related provisions of the PBO	Summary of the law	Points for businesspersons
Government officers soliciting or accepting advantages Section 3	<ul style="list-style-type: none"> Any government officer without the general or special permission of the Chief Executive solicits or accepts any advantage <p>* <i>The general permission is stipulated in the Acceptance of Advantages (Chief Executive's Permission) Notice (AAN). Except for 'restricted advantages', permission has been given by the Chief Executive to accept any advantages as long as they do not relate to any public matters. 'Restricted advantages' refer to gifts (money or in kind), discounts, passages and loans of money.</i></p>	<ul style="list-style-type: none"> Even if it is not related to public matters, and there is no intention to bribe, businesspersons should not offer gifts, discounts, passages and loans of money to government officers

As far as 'restricted advantages' are concerned, government officers are not allowed to solicit/accept any gift, discount, passage or loan of money from any person or organisation with which they have official dealings. In accordance with the AAN, government officers may accept the following if there is no corrupt motive:

- gifts, discounts, passages or loans of money from relatives;
- gifts, discounts, passages or loans of money from traders, commercial establishments/associations on the same terms as if they are offered to non-government officers;
- on a special occasion where gifts are traditionally and normally given or exchanged, a gift/passage of value not exceeding HKD3,000 from a close personal friend or not exceeding HKD1,500 from any other person; on any other occasion, a gift/passage of value not exceeding HKD500 from a close personal friend or not exceeding HKD250 from any other person; and
- a loan of not more than HKD3,000 from a close personal friend, or not exceeding HKD1,500 from any other person, and which is repaid within 30 days.

If an advantage exceeds the limits stipulated above — even if the government officer solicits/accepts the advantage in a private capacity, or they accept the advantage without any corrupt intent — they may still have committed an offence under Section 3 of the PBO.

In addition to the legislation regulating the solicitation or acceptance of advantages, government officers are also bound by various provisions stipulated in the Civil Service Bureau Circulars, Civil Service Regulations and departmental instructions and guidelines on conduct and discipline. All these provisions apply to acceptance of entertainment, conflict of interest, investments, outside work and employment taken up after leaving the government. Such requirements help ensure that government officers consistently perform their duties with integrity and fairness and provide the public with excellent and professional service.

Terms and definitions

Agent

Generally an employee or entrusted party. If a company appoints a person or another company to act for it in the course of business, that person or company becomes the agent or entrusted party, regardless of whether the appointment is full-time or part-time and whether or not the entrusted party receives a fixed salary or a fee from the company. The term 'agent' also includes individual directors of a company.

Principal

Generally an employer. In the private sector, 'employer' generally means the owner or the board of directors of a company.

Principal's permission

The permission or agreement given by a principal (generally an employer) for an agent (generally an employee) to accept an advantage in the course of duty. Normally, such permission must be obtained before an advantage is offered, solicited or accepted. If any advantage is offered or accepted without prior permission, the employee must seek retrospective permission from his/her employer as soon as reasonably practicable.

Public servant

A public servant means a government officer or an employee of a public body; it also covers any permanent or temporary, paid or unpaid employees.

Public body

A public body means the government, the Executive Council, Legislative Council, District Councils and any committees or other body appointed by the Chief Executive in Council. It also covers major service providers given a franchise by the government, organisations spending or being given substantial public funds and those organisations specially appointed by the government. A list of public bodies is contained in Schedule 1 of the PBO.

Advantage

An advantage means money, gifts, loans, rewards, commissions, employment, contracts, service, favours and discharge of liability, whether in whole or in part, but excludes entertainment.

Entertainment

Entertainment means any food or drink for consumption on the occasion when it is provided and any other entertainment, for example, a singing or dancing performance, provided at the same time. Although the PBO does not prohibit the acceptance of entertainment, the government, public bodies and many companies nevertheless set out guidelines limiting the circumstances under which employees may accept entertainment.

Maximum penalties for committing bribery offences

Offence	Maximum penalty
Bribery involving the private sector Section 9 <ul style="list-style-type: none">• Private sector employees soliciting or accepting bribes• Offering bribes to private sector employees• Using false documents to deceive an employer	Imprisonment for 7 years and a fine of HKD500,000 In cases involving other serious crimes, the court may order the confiscation of the criminal proceeds subject to the legislation concerned
Bribery involving public servants Section 4 <ul style="list-style-type: none">• Offering bribes to public servants• Public servants soliciting or accepting bribes Section 8 <ul style="list-style-type: none">• Offering advantages to public servants in the course of business	
Bribery in relation to auctions of government departments or public bodies Section 7 <ul style="list-style-type: none">• Offering bribes to induce another person not to bid at an auction	

Offence	Maximum penalty
Bribery in relation to contracts and tenders of government departments or public bodies Section 5 <ul style="list-style-type: none"> Offering bribes to public servants with a view to using influence in the procuring or execution of a contract Section 6 <ul style="list-style-type: none"> Offering bribes to induce another person to withdraw or not to make a tender 	Imprisonment for 10 years and a fine of HKD500,000
Legal requirements for upholding a high standard of integrity in the civil service Section 3 <ul style="list-style-type: none"> Government officers soliciting or accepting advantages 	Imprisonment for 1 year and a fine of HKD100,000

The above information is a summary of the PBO provisions. For extracts of the PBO, please refer to Appendix 1 or download the full text from the ICAC website: www.icac.org.hk.

Common law offence — misconduct in public office

Public officers are entrusted by the public with powers to perform duties which are closely related to the daily lives of members of the public. They are thus expected to exercise their powers with due care, in the best interests of the community, with integrity and fidelity, and in a manner completely free from corruption.

The common law has long recognised this expectation. Corrupt practices and cases of serious misconduct committed by a public officer may not be merely dealt with as a disciplinary matter. The officer concerned may also be criminally liable for misconduct in public office under the common law. As with 'accepting an advantage' under the PBO, 'misconduct in public office' is also a criminal offence which carries a maximum penalty of seven years' imprisonment. Businesspersons should exercise prudence to avoid possible involvement in such a case of misconduct in public office.

Law	Extracts from the judgement*	Points for businesspersons
The offence of misconduct in public office under the common law	<ul style="list-style-type: none"> • A public official • in the course of or in relation to his/her public office • wilfully misconducts himself/ herself, by act or omission, for example, by wilfully neglecting or failing to perform his/her duty • without reasonable excuse or justification, and • where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities 	<ul style="list-style-type: none"> • Under no circumstances should businesspersons ask public officials for favours or assistance in relation to their official duties • Businesspersons should be cautious when a public servant proposes that they jointly or cooperatively bid for a contract offered by a government or a public body. They should clarify if the public servant concerned has declared this conflict of interest to his/her department/ organisation.

* Extracted from the judgement handed down by the Court of Final Appeal of the Hong Kong Special Administrative Region ([2005] 8 HKCFAR 192).

Case studies

The following cases illustrate the major points of law under the PBO and related regulations. Businesspersons may draw lessons from these scenarios which have been adapted from real cases.

Case 1

In his early years, Mr Chow started a joint venture with three of his friends. They set up a chemical engineering company in Hong Kong and a chemical manufacturing factory in Guangdong. They were all directors of the company, each of them holding 25% of the company shares.

As Mr Chow had substantial experience in operating factories in mainland China and had developed an extensive business network in Hong Kong and mainland China — especially with mainland suppliers and government officials — he offered to manage the mainland factory. Besides being a shareholder, Mr Chow became the paid General Manager of the mainland factory and was in charge of the business there.

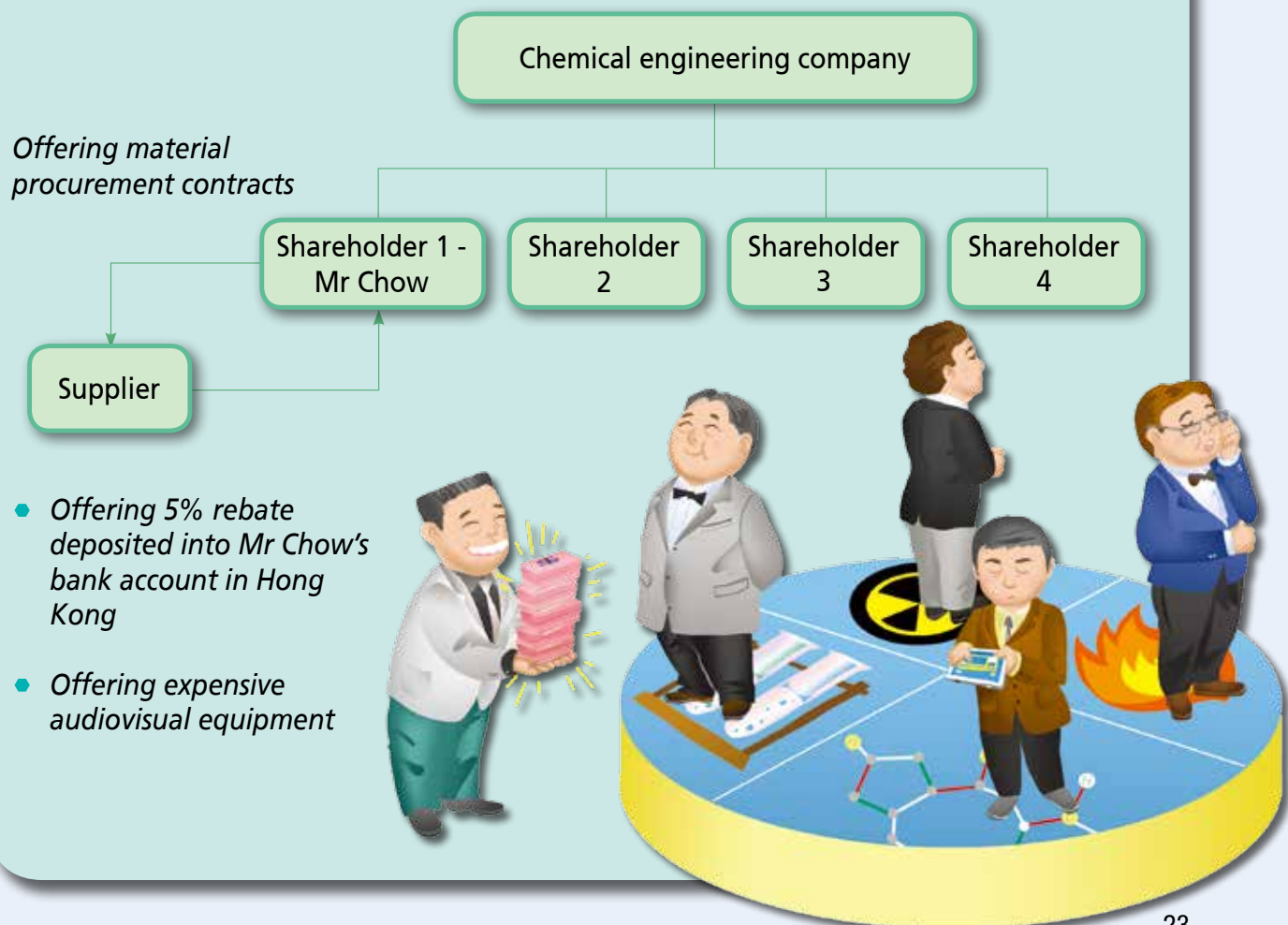
Mr Chow often boasted that the success of the mainland factory was due to his networking clout. At the same time, he kept grumbling that he had to cover the enormous entertainment expenses with his own money.

As the General Manager of the mainland factory, Mr Chow was entrusted with key procurement decisions. When one of his Hong Kong suppliers learned that Mr Chow had recently bought a property in mainland China, he presented Mr Chow with an expensive audiovisual set-up, hoping that this gift would secure a contract for the supply of chemical raw materials. This seemingly thoughtful present soon brought its reward in the form of a first order from Mr Chow. To secure future business, the supplier also offered 5% of the transaction amount as a rebate to Mr Chow at his request. Subsequently, the bribe money was deposited into Mr Chow's bank account in Hong Kong.

The case was brought to the attention of the ICAC. During an interview, Mr Chow claimed that as a shareholder and General Manager of the mainland factory, he had the right to receive rebates from suppliers. He also stressed that he had verbally notified two of the shareholders that the rebates were to help cover his entertainment expenses in mainland China. It was later found out that Mr Chow had casually mentioned his huge entertainment expenses to only two shareholders, while the third shareholder had been kept totally uninformed.

ICAC enquiries revealed that Mr Chow had received rebates of HKD50,000 within a few months. The judge ruled that there were insufficient grounds for arguing that the rebates received were for covering the entertainment costs, and that the defendant was merely using this contention to conceal his corrupt act. Mr Chow was found guilty of accepting bribes, contrary to Section 9 of the PBO, and the supplier was convicted of offering bribes.

Key features



Analysis and key legal points

Individual shareholders or directors of SMEs are also agents

Under the PBO, the principal of a company is the entire Board of Directors, while individual shareholders or directors are considered as agents (see page18). In this case, Mr Chow was an 'agent' as he was one of the shareholders and the paid General Manager of the factory. Prior to any solicitation or acceptance of any advantage in the course of business, Mr Chow should have obtained permission from the Board of Directors.

The principal's permission should be definite and given in advance

In accordance with Section 9 of the PBO (see page13), an agent must have obtained their principal's permission before soliciting or accepting any advantage. Otherwise, the agent has to apply for permission as soon as reasonably practicable after the acceptance. In addition for such permission to be lawful, the principal must have carefully considered the application before granting permission.

As Mr Chow's company had not stated clearly in advance whether or not its staff members could accept advantages in relation to their duties, Mr Chow was considered not to have obtained the company's permission to accept the rebate at the material time. Moreover, he had not applied for retrospective approval from his company, and his acceptance of the rebates was not known to and approved by all shareholders. In fact, one of the shareholders knew nothing about the matter until the ICAC's investigation, and he was actually opposed to Mr Chow's acceptance of the rebates. Thus Mr Chow accepted the rebates without the principal's permission.

During the investigation, Mr Chow claimed that he had notified other shareholders that the rebates concerned were used to cover the entertainment expenses incurred in mainland China. As noted earlier, he had, in fact, only casually brought this matter to the attention of just two of the shareholders. Furthermore, the arrangement had not been discussed at any board meeting or formally approved, and there was no record of the accepted rebates, nor how they were dealt with. The court ruled that there was no substantial grounds of defence for claiming that Mr Chow had obtained permission of the principal. As a result, Mr Chow was convicted of accepting bribes.

Takeaway advice:

- *Companies should take the initiative to formulate rules and regulations governing the acceptance of advantages by their board members and staff.*
- *Companies should also state clearly in writing the company's stance and policy on the nature and maximum amount of advantages, and on what conditions staff members are permitted to accept such advantages.*
- *The procedures for declaring acceptance of advantages and the channels for making enquiries should also be laid down and made known to all staff.*

Case 2

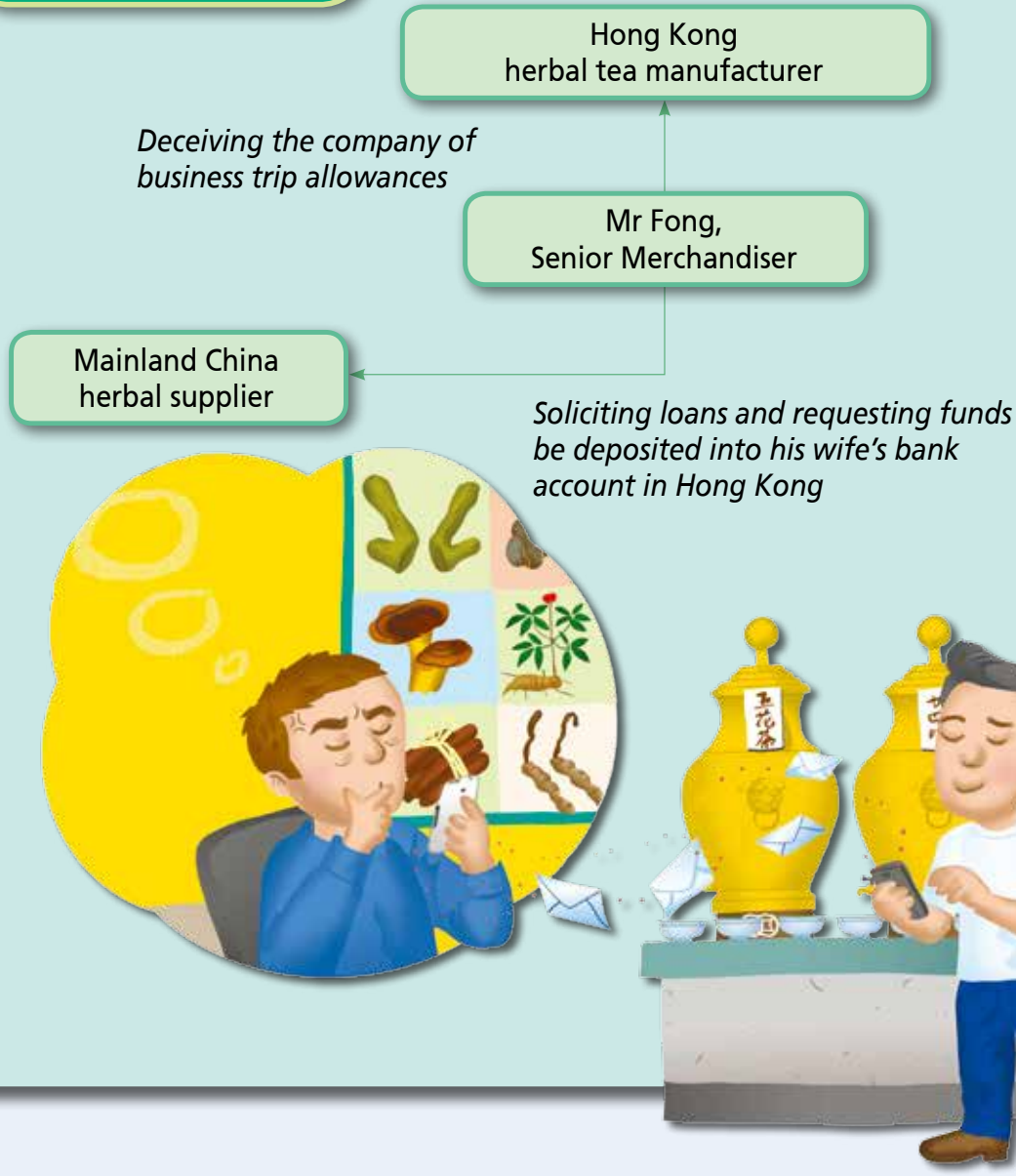
A herbal tea manufacturing company sourced herbs and other materials from various mainland suppliers. Mr Fong, a senior merchandiser of the company, was responsible for purchasing herbal materials and inventory control.

Mr Fong had been experiencing financial difficulties and, as he was in desperate need of money, sent several text messages to a mainland herbal supplier to solicit a loan of RMB10,000. Mr Fong suggested to the supplier that more purchase orders would be placed if the supplier deposited the money into his wife's bank account in Hong Kong. The supplier made no response to the request. Shortly after, Mr Fong sent another text message to the supplier, asking for another loan of RMB20,000 and threatened to cut the purchase orders if it was not granted. The supplier did not agree to his request, as it amounted to solicitation of bribes. The supplier subsequently reported the matter to the management of the herbal tea manufacturer. In view of the severity of the matter and having no tolerance for solicitation of bribes by its staff, the management immediately reported the case to the ICAC.

Subsequent enquiries revealed that Mr Fong had inflated the expenses incurred in his business trips and furnished false receipts to deceive the manufacturer about overstated business trip allowances.

The evidence was substantial and Mr Fong was charged with bribery under Section 9 of the PBO and for using false receipts to intentionally deceive his employer with a view to claiming more business trip allowances, contrary to Section 9(3) of the PBO.

Key features



Analysis and key legal points

Soliciting bribes from overseas companies is also subject to prosecution

Though the company from which Mr Fong solicited bribes was outside Hong Kong, he still committed an offence of soliciting an advantage under Section 9 of the PBO (see page 13) as he sent text messages requesting for loans to be deposited into his wife's bank account in Hong Kong in return for placing more orders. Businesspersons should be aware that if any act of bribery — including promising, agreeing, soliciting or accepting advantages without permission — takes place in Hong Kong, the case can be pursued under the PBO.

Accepting bribes, whether directly or indirectly, is against the law

Accepting bribes regardless of whether the advantage is directly given to the acceptor or indirectly delivered to a third party is against the law. In this case, if the mainland China herbal supplier had agreed to deposit the loans into Mr Fong's wife's bank account in Hong Kong, as long as it was proven that the receiving account was controlled by Mr Fong, or that he was the ultimate beneficiary, Mr Fong would be considered as having accepted the advantage.

Using falsified documents to mislead a principal constitutes an offence under the PBO

In this case, Mr Fong, as an agent (an employee), used falsified receipts with intent to mislead his principal (an employer) with a view to obtaining business trip allowances dishonestly — this contravened Section 9(3) of the PBO (see page 14).

Case 3

Mr Lee was the proprietor of a karaoke restaurant in Hong Kong. He, together with his friends, had recently opened a chain of several karaoke restaurants in Guangdong and purchased a considerable amount of related audiovisual equipment.

Though business was still in the early stages of development, Mr Lee rushed ahead with rapid business expansion. To cope with the cash flow problem, Mr Lee applied to Bank A in Hong Kong for a hire purchase loan for the audiovisual equipment. To secure a larger loan, he inflated the number and prices of the equipment in the application, and falsely represented that he had purchased some advanced brand new audiovisual equipment from an overseas supplier. The bank sent Mr Cheung, an officer of the loans department, to inspect Lee's karaoke restaurant in Guangdong. Mr Lee took the opportunity to play the good host to Mr Cheung. Claiming that it was a way to extend hospitality, Mr Lee also presented Mr Cheung with expensive dried seafood and spirits.

After returning to Hong Kong, Mr Lee once again hosted a lavish feast for Mr Cheung. During the meal, after learning that Mr Cheung had recently become a father, Mr Lee immediately gave him a 'red packet' containing several thousand Hong Kong dollars. Mr Lee explicitly expressed his hope that Mr Cheung could help him secure the loan. Mr Cheung initially refused the red packet, but upon Mr Lee's insistence finally accepted it.

Two weeks later, as the loan still had not been approved and the karaoke business showed no signs of improvement, Mr Lee started to worry and became agitated. Shortly after that, Ms Wong, a friend of Lee in mainland China, asked him to help her deal with a considerable sum of money using his company's bank account. Ms Wong requested Mr Lee to remit the money to several designated accounts. In return, Ms Wong promised to reward Mr Lee by helping him with his business in mainland China on the condition that he did not ask anything about the source of the money.

Subsequently, Mr Cheung reported to the bank that Mr Lee had offered him expensive dried seafood, spirits and the red packet containing several thousand dollars. The bank referred the incident to the ICAC. Eventually, Mr Lee was convicted of the offence of offering advantages, contrary to Section 9 of the PBO. Moreover, as the money Mr Lee handled on behalf of Ms Wong was actually criminal proceeds, he was also found guilty of money laundering under the *Organised and Serious Crimes Ordinance*.

Key features

Bank in Hong Kong

*Declaring acceptance
of advantages*

Mr Cheung,
Loans Officer of
Bank A

Mr Lee,
proprietor of a
karaoke restaurant

Ms Wong,
Mr Lee's friend in
mainland China

*Offering entertainment
and advantages (expensive
dried seafood, spirits and
a red packet containing
several thousand Hong
Kong dollars)*

*Assisting in money
laundering*



Analysis and key legal points

Bribery still exists even if the purpose of the bribe is not achieved

According to Section 11 of the PBO, as long as the offeror of bribes intends to induce the acceptor to extend his/her favour(s), both parties commit bribery even if the acceptor claims that he/she 'did not actually have the power to do so', 'did not intend to do so' or 'did not, in fact, do so'. Hence, Mr Lee had committed the offence of offering bribes and could not claim in his defence that the purpose of the bribes had not been carried out. Similarly, if Mr Cheung had accepted the red packet without declaring it to the bank, he would also have committed an offence even if he had not ultimately helped Mr Lee.

'Customary trade practice' is no defence

Entertainment means the provision of food and drink for immediate consumption, whereas dried seafood, spirits or red packets are advantages. The offeror cannot offer bribes in excuse of 'an established custom in the trade' or 'trade practice'. According to Section 19 of the PBO, the court will not accept such defence on the part of either the offeror or the acceptor, but will only consider whether or not the acceptor has the permission of the principal.

Bank employees in Hong Kong are governed by industry regulations

According to the guidelines laid down in the Supervisory Policy Manual — Code of Conduct (the Code) issued by the Hong Kong Monetary Authority, a bank employee must declare any advantage received in the course of business. In this case, Mr Cheung made a declaration in compliance with the Code which eventually revealed Mr Lee's corrupt acts in the guise of gifts and a red packet.

Under the PBO, the provision of food and drink for immediate consumption may be construed as entertainment (see page19), but not an advantage. While the acceptance of mere entertainment does not constitute an offence, entertainment that is in any way luxurious is very likely a prelude to corruption or bribery. Hence, the Code further stipulates that a bank employee can only accept normal business entertainment such as an ordinary meal. Businesspersons should pay special attention to the above requirements when having business dealings with bank employees.

Assisting in money laundering is also an offence

In the above case, Mr Lee committed the offence of money laundering, contrary to Section 25(1) of the Organised and Serious Crimes Ordinance, as he agreed to use his account to assist in laundering Ms Wong's money which he knew had come from an unspecified source. In accordance with Section 25(A) of the same Ordinance, any person who fails to report to the Joint Financial Intelligence Unit knowing or suspecting that another person is involved with money laundering is liable upon conviction to a fine and imprisonment.

Case 4 Mr Fung came to know Mr Ho, Assistant Trade Controls Officer of the Customs and Excise Department (C&E), twenty years ago when they both joined C&E. Several years ago, Mr Fung left C&E to take over the running of a garment company and factory in mainland China from his father. On learning that Mr Ho was working in the C&E's Textiles Tactical Strike Unit, Mr Fung began to frequently ask Mr Ho out socially, and they subsequently became close friends.

Mr Ho later divulged the financial difficulties he was experiencing to Mr Fung, after suffering heavy losses on the stock market, Mr Ho also let him know that he was having difficulty meeting his mortgage payments — as he had recently purchased a larger flat, in addition to having to pay overseas tuition fees for his son. Upon learning of his financial strife, Mr Fung wrote Mr Ho a cheque for HKD100,000 to help him out. Mr Ho was extremely grateful and promised to repay Mr Fung as soon as possible. From then on, Mr Fung started taking Mr Ho out for extravagant meals and drinks, in addition to paying for golf trips in mainland China — all under the pretext of cheering him up. Each time, it was Mr Fung who footed the huge bills.

Not long after, Ho's son returned to Hong Kong during his summer holidays in the hope of finding a summer job. Mr Fung said that he needed an intern for his factory in mainland China and offered Mr Ho's son an attractive benefits package that included generous travelling, housing and other allowances. Mr Ho's son jumped at the chance and immediately took up the job. Deeply grateful to Mr Fung for taking care of his son, Mr Ho promised to return him a favour one day.

Despite Mr Fung's continued assistance, Mr Ho was still under immense financial pressure and so Mr Fung offered him a chance to make some quick money. Mr Fung was planning to ship textiles and garments manufactured in mainland China through Hong Kong to overseas markets in order to pass them off as products made in Hong Kong. He offered Mr Ho HKD50,000 in cash and regular monthly payments — amounting to tens of thousands of Hong Kong dollars. In return, Mr Ho agreed to provide tip-offs on C&E enforcement actions at border checkpoints and help Mr Fung ship goods to Hong Kong which did not tally with their waybill descriptions. As he was up to his ears in debt, Mr Ho willingly accepted the money and provided intelligence to Mr Fung regularly.

Six months later, the scam was finally uncovered following an ICAC-intelligence-led investigation which ended with the conviction of Mr Fung and Mr Ho for offering and accepting bribes respectively.

Key features

Mr Fung
Garment manufacturer

Leaking information of enforcement actions

*Offering entertainment and advantages
(rewards comprising a loan of
HKD100,000, HKD50,000 in cash and
subsequent monthly payments amounting
to tens of thousands of dollars)*

Mr Ho
Assistant Trade Controls Officer of the C&E

Offering a summer job

Mr Ho's son



Analysis and key legal points

Offering and accepting bribes are both offences in law

Mr Ho, Assistant Trade Controls Officer, was guilty of an offence as he had accepted advantages in return for abusing his authority and leaked intelligence about C&E enforcement actions. Mr Fung had also committed a crime by offering advantages in return for Ho's assistance. In accordance with Section 4 of the PBO (see page14), the person offering a bribe and the person accepting the bribe both commit an offence. The spirit of the legislation is to forbid public servants, including government officers and employees of public bodies, abusing their authority by accepting advantages.

Mr Fung used a variety of means to please Mr Ho who was a government officer. On the surface, Mr Fung was merely 'helping a friend in need', but in reality he offered advantages including financial loans and cash rewards to garner intelligence via corruption.

Even if Mr Fung had not offered the bribes, Mr Ho would still have been found guilty of accepting HKD100,000 from him as a loan — contrary to Section 3 of the PBO (see page17) — as acceptance of such a loan violates the AAN. A government officer is permitted to accept a loan from a close personal friend, but only if it does not exceed HKD3,000 on any one occasion and is repaid within 30 days. More importantly, there must be no official dealings between the loan offeror and the department in which the government officer works.

Inappropriate handling of conflicts of interest may constitute the offence — misconduct in public office

Conflicts of interest arise where a public servant's 'private interests' contradict, or are in conflict with, the interests of his/her official duties. 'Private interests' include the financial and other interests of the public servant, his/her family, relatives, friends, any club or association of which he/she is a member, close associates, or persons to whom the public servant owes a favour or is obligated to in any way.

In this case, Mr Ho might easily have had official dealings with Mr Fung — as he was required to conduct random checks on textile products. He, however, failed to declare to his department his relationship with Mr Fung and allowed his son to take the summer job offered in Mr Fung's factory. At Fung's request, Mr Ho even went as far as to provide tip-offs on C&E enforcement actions. As his misconduct constituted a serious breach of trust placed in him by his department, he was convicted of the common law offence: misconduct in public office (see page21).

Businesspersons should be prudent when dealing with Hong Kong government officers

Mr Ho breached government regulations by accepting lavish and frequent entertainment from Mr Fung. Although entertainment, as defined in the PBO, is not classed as 'an advantage' (see page19), government officers are still not allowed to accept 'lavish' or 'frequent' entertainment.

According to the Civil Service Bureau Circulars, the Civil Service Regulations and relevant departmental conduct and disciplinary guidelines, government officers should always consider carefully whether there is a genuine need to accept entertainment. They should also ensure that the acceptance of such entertainment would not impose any obligation on them to do the host a favour; bring them/their department into disrepute; or lead to any conflict of interest.

Businesspersons should ensure that business-related entertainment is kept to a minimum when dealing with government officers. They should also avoid offering to government officers 'excessively frequent' or 'lavish' entertainment and/or social activities that might make the government officer feel obligated. In cases where a government officer is seen to be soliciting free or lavish entertainment frequently, a report should be made to the government department concerned or the ICAC.

Principles and spirit of legislation

In accordance with the Constitution of the People's Republic of China, the country operates a socialist market economy in which all market entities engaging in economic activities are equally protected by law. Corruption and bribery undermine fair competition in the business arena. This may infringe intellectual property rights of both public and private property, and undermine the integrity of the civil service.

Although quite distinct from the common law in Hong Kong and the European legal traditions in Macao, stringent written laws have been put in place in mainland China to combat corruption and bribery so as to maintain social prosperity and the rule of law. The *Criminal Law of the People's Republic of China* (CLPRC) specifies penalties for various corruption and bribery offences. The *Criminal Procedure Laws of the People's Republic of China* lay down the procedures for case-establishment, investigation, arrest, prosecution and trial of corruption and/or bribery related incidents. To enhance international cooperation in combating corruption, mainland China signed and ratified the United Nations Convention Against Corruption (UNCAC) on 27 October 2005. The UNCAC provides a legal basis under international law for mainland law enforcement authorities to prevent corrupt officials from fleeing the country. The UNCAC was put into force in mainland China in February 2006 and was simultaneously extended to cover the Hong Kong Special Administrative Region and the Macao Special Administrative Region.

Summary of the law

Corruption and bribery are different offences under the CLPRC

Corruption and bribery are different offences in mainland China. Identical acts may constitute different offences depending on the capacities of the offenders. For instance, if a State functionary takes advantage of his/her office to misappropriate, steal, deceive

— or by any illegal means — take possession of the property of a company, he/she commits a corruption offence. However, for an employee of a non-State-owned company or enterprise committing the same criminal act, the offence would be embezzlement through dereliction of duty. The same distinction is drawn between the offences of misappropriation of public funds and misappropriation of a private party's funds; and also between State functionaries accepting bribes and non-State employees accepting bribes.

Corruption can thus be viewed as either any criminal act committed by a State functionary who takes advantage of his/her office to misappropriate, steal, deceive or — by any illegal means — take possession of the public money or property. Any individual or private party that conspires with State functionaries to commit such corrupt acts are also considered accomplices.

Bribery is broadly defined as occurring when State functionaries abuse their official status to solicit or accept money and/or property. Any individuals or private parties that offer or introduce bribes to State functionaries are also deemed to have committed the offence of bribery.

As with the laws of Hong Kong and Macao, offering and accepting bribes in commercial dealings is also prohibited under the CLPRC. The party accepting a bribe in a commercial activity may be any employee of a company, enterprise or any other unit; while the offeror can be any person.

Division of work between State Procuratorate and Public Security Bureau

As far as legal procedures are concerned, corruption and bribery cases involving State functionaries and their accomplices are handled and investigated by the State Procuratorate. Cases of embezzlement — involving dereliction of duty, misappropriation of funds, and/or acceptance and offering of bribes by non-State functionaries — are handled and investigated by the Public Security Bureau (PSB). If, in the course of business, a businessperson discovers any party is involved in corruption, bribery, embezzlement or misappropriation of funds, he/she should first distinguish the capacities of the offenders and then report the case, as appropriate, to either the State Procuratorate or the PSB.

Corruption and bribery

In the course of investment and business, investors and business managers should ensure they have a thorough understanding of the CLPRC and the judicial interpretations given by the Supreme People's Court and the Supreme People's Procuratorate concerning corruption and bribery offences. They should know how to protect their legal interests against unlawful infringement and stay alert to avoid any involvement in cases of corruption or bribery.

1. Corruption, embezzlement and misappropriation offences

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Embezzlement by State functionaries Articles 382, 183(2), 271(2), 394	<ul style="list-style-type: none"> Any State functionary by taking advantage of his/her office by illegal means takes public money or property into his/her own possession (Article 382(1)) 	<ul style="list-style-type: none"> Non-State functionaries involved in the appropriation of public money or property are regarded as accomplices to the crime of corruption, even if they have not gained any benefit.
	<ul style="list-style-type: none"> Any person authorised by State organs, State-owned companies, enterprises, institutions or people's organisations to administer or manage the State-owned property by taking advantage of his/her office by illegal means takes State-owned money or property into his/her own possession (Article 382(2)) 	
	<ul style="list-style-type: none"> Any employee of a State-owned insurance company or any person who is assigned by a State-owned insurance company to an insurance company which is not owned by the State to engage in public service by taking advantage of his/her office 	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
	<ul style="list-style-type: none"> deliberately fabricates the occurrence of an insured accident and falsely settles a fictitious claim swindles and takes into possession of the insured amount <p>(Article 183(2))</p>	
	<ul style="list-style-type: none"> Any employee engaging in public services in a State-owned company, enterprise or any other State-owned unit, or any person assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or any other unit which is not owned by the State to engage in public service by taking advantage of his/her office unlawfully takes possession of money or property of his/her own unit <p>(Article 271(2))</p>	
	<ul style="list-style-type: none"> Any State functionary when having an official dealing or having a dealing with a foreigner, accepts a gift involved relatively large amount and fails to hand the gift over to the State as required by the State regulations <p>(Article 394)</p>	<ul style="list-style-type: none"> For the mainland case-establishment standard on the definition of 'involved relatively large amount', please refer to 'The regulations regarding placing a case on file for direct handling by the People's Procuratorate (trial)' issued by the Supreme People's Procuratorate

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Embezzlement through dereliction of duty by employees of enterprises Article 271(1)	<ul style="list-style-type: none"> Any employee of a company, enterprise or any other unit by taking advantage of his/her position unlawfully takes possession of the money or property of his/her unit the amount involved is relatively large 	<ul style="list-style-type: none"> Any employee, whether posted to mainland China from Hong Kong or Macao or employed in mainland China, can be the subject of the offence
Illicit division of State-owned assets Article 396(1)	<ul style="list-style-type: none"> Any State organ, State-owned company, enterprise, institution or people's organisation violates the State regulations in the name of the unit, secretly dividing up State-owned assets collectively among the individuals of the unit the amount involved is relatively large 	<ul style="list-style-type: none"> Businesspersons should never take part or assist any State functionary in dividing up State-owned assets, money or property
Illicit division of fines and confiscated money or property Article 396(2)	<ul style="list-style-type: none"> Any judicial or administrative law enforcement organ violates the State regulations secretly dividing up fines or confiscated money or property which should be turned over to the State among individuals of the organ, in the name of the organ 	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Misappropriation of public funds Articles 384, 185(2), 272(2)	<ul style="list-style-type: none"> Any State functionary by taking advantage of his/her position misappropriates public funds for his/her own use for conducting illegal activities or misappropriates a relatively large amount of public funds for profit-making activities or misappropriates a relatively large amount of public funds and fails to repay them within three months <p>(Article 384)</p>	<ul style="list-style-type: none"> Businesspersons conspiring, directing or plotting a scam with a fund appropriator to misappropriate public funds will be charged and, if convicted, punished as an accomplice to the crime of misappropriation of public funds
	<ul style="list-style-type: none"> Any employee of a State-owned financial institution or any person assigned by a State-owned financial institution to a financial institution which is not owned by the State by taking advantage of his/her position misappropriates money of his/her unit or client <p>(Article 185(2))</p>	
	<ul style="list-style-type: none"> Any employee engaging in public services in a State-owned company, enterprise or any other State-owned unit, or any person assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or other unit which is not owned by the State to engage in public service by taking advantage of his/her position misappropriates the funds of his/her own unit for personal use, and the amount involved is relatively large and not repaid within three months or, if less than three months, but the amount involved is relatively large and used for profit-making or illegal activities <p>(Article 272(2))</p>	<ul style="list-style-type: none"> Businesspersons having contact with non-State-owned units may also have dealings with staff of State functionaries

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Misappropriation of a unit's funds Articles 272(1), 185(1)	<ul style="list-style-type: none"> • Any employee of a company, enterprise or any other unit • by taking advantage of his/her position • misappropriates the funds of his/her unit for personal use, and the amount involved is relatively large and not repaid within three months • or, if less than three months, but the amount involved is relatively large and is used for profit-making • or illegal activities (Article 272(1)) 	<ul style="list-style-type: none"> • Any employee, whether posted to mainland China from Hong Kong or Macao or employed in mainland China, can be the subject of the offence
	<ul style="list-style-type: none"> • Any employee of a commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other financial institution • by taking advantage of his/her position • misappropriates money of his/her unit or client (Article 185(1)) 	

2. Bribery offences

(I) Offences of accepting, offering or introducing bribes relating to State functionaries or units

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
State functionaries accepting bribes Articles 385, 163(3), 184(2), 388	<ul style="list-style-type: none"> Any State functionary by taking advantage of his/her position extorts money or property from another person or illegally accepts money or property from another person for securing benefit for that person <p>(Article 385(1))</p>	<ul style="list-style-type: none"> Businesspersons should explicitly turn down any request for bribes and report to the authorities concerned immediately
	<ul style="list-style-type: none"> Any State functionary when engaging in economic activities violates the State regulations by illegally accepting rebates or service charge of various description and taking them into his/her own possession <p>(Article 385(2))</p>	
	<ul style="list-style-type: none"> Any employee who is engaged in public services in any State-owned company, enterprise or any other State-owned unit or anyone is assigned by any State-owned company or enterprise or any other State-owned unit to any non-State-owned company or enterprise or any other unit to engage in public services by taking advantage of his/her position demands or illegally accepts money or property from another person for securing benefit for that person the amount involved is relatively large or when engaging in economic activities, violates the State regulations by accepting rebates or service charge of various descriptions and taking them into his/her own possession <p>(Article 163(3))</p>	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
	<ul style="list-style-type: none"> Any employee of a State-owned financial institution or any person assigned by a State-owned financial institution to a financial institution which is not owned by the State when engaging in financial activities demands or illegally accepts money or property from another person for securing benefit for that person or violates the State regulations by accepting rebates or service charges of various descriptions and taking them into his/her own possession <p>(Article 184(2))</p> <hr/> <ul style="list-style-type: none"> Any State functionary by taking advantage of his/her own functions and powers or position through another State functionary's performance of his/her duties for securing illegitimate benefit for an entrusting person extorts or accepts money or property from the entrusting person <p>(Article 388)</p>	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
State functionary using influence to accept bribes Article 388 – Part 1	<ul style="list-style-type: none"> • Any close relative of or any other person who has a close relationship with a State functionary • through the official act of the said State functionary by using the advantages generated from the authority or position of the said State functionary • or through the official act of any other State functionary by using the advantages generated from the authority or position of the said State functionary • for securing illegitimate benefit for a requester • asks or accepts money or property from the requester • the amount is relatively large or there is any other relatively serious circumstances (Article 388 – Part 1 (Paragraph 1)) 	
	<ul style="list-style-type: none"> • Any former State functionary or his/her close relative or any person closely related to him/her • through the said State functionary by using the advantages generated from the former authority or position of the said State functionary • or through the official act of any other State functionary by using the advantages generated from the authority or position of the said State functionary • for securing illegitimate benefit for a requester • asks or accepts money or property from the requester • the amount is relatively large or there is any other relatively serious circumstances (Article 388 – Part 1 (Paragraph 2)) 	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Unit accepting bribes Article 387	<ul style="list-style-type: none"> Any State organ, State-owned company, enterprise, institution or people's organisation extorts or illegally accepts money or property from another person for securing benefit for that person and the circumstances are serious (Article 387(1)) 	<ul style="list-style-type: none"> Businesspersons should turn down any request for bribes, rebates or service charges of various descriptions from State organs or State-owned units and report to the authorities concerned immediately
	<ul style="list-style-type: none"> Any State organ, State-owned company, enterprise, institution or people's organisation in economic activities secretly accepts an off-the-book rebate or service charges of various descriptions (Article 387(2)) 	
Offering bribes to State functionaries Articles 389	<ul style="list-style-type: none"> Any person for the purpose of securing illegitimate benefits gives money or property to a State functionary (Article 389(1)) 	<ul style="list-style-type: none"> Never bribe State functionaries to secure illegitimate benefits It may still be an offence if a person is being blackmailed into bribing; however, it does not amount to offering a bribe if no illegitimate benefit is obtained A bribe giver who confesses the bribery voluntarily prior to prosecution may receive a mitigated penalty or be exempted from punishment
	<ul style="list-style-type: none"> Any person in economic activities violates the State regulations by giving a relatively large amount of money or property to a State functionary or by giving rebates and service charges of various description to a State functionary (Article 389(2)) 	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Offering bribes to a unit Article 391	<ul style="list-style-type: none"> Any person for the purpose of securing illegitimate benefits gives money or property to a State organ, State-owned company, enterprise, institution or people's organisation or in economic activities, violates the State regulations by offering rebates and service charges of various description to the above units 	<ul style="list-style-type: none"> Offering an advantage to State organs, State-owned companies, enterprises, institutions or people's organisations may also constitute the offence of offering bribes
Introducing a bribe Article 392	<ul style="list-style-type: none"> Any person introduces a bribe to a State functionary the circumstances are serious 	<ul style="list-style-type: none"> Any person who lines up any bribery racket commits the offence
Unit offering bribes Article 393	<ul style="list-style-type: none"> Any unit offers a bribe for securing illegitimate benefits or violates the State regulations by giving rebates and service charges to a State functionary the circumstances are serious 	<ul style="list-style-type: none"> A bribe offered to a State functionary in the name of a company or an enterprise remains an offence

(II) Offences of offering and accepting bribes by employees of companies or enterprises in the course of business

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Non-State functionaries accepting bribes Articles 163(1), 163(2)	<ul style="list-style-type: none"> Any employee of a company, enterprise or any other unit by taking advantage of his/her position demands or illegally accepts money or property from another person for seeking benefit for that person the amount involved is considerably large (Article 163(1)) 	<ul style="list-style-type: none"> Any employee, whether posted to mainland China from Hong Kong or Macao or employed in mainland China, should not solicit or accept bribes by taking advantage of his/her position
	<ul style="list-style-type: none"> Any employee of a company, enterprise or any other unit in economic activities by taking advantage of his/her position violates the State regulations by accepting kickbacks or commissions in any disguise taking them into his/her own possession (Article 163(2)) 	
Offering bribes to non-State functionaries Article 164(1)	<ul style="list-style-type: none"> Any person for the purpose of seeking improper interests and benefits offers money or property to any employee of any company, enterprise or any other entity the amount involved is relatively large 	<ul style="list-style-type: none"> Offering bribes to any employee of a company or enterprise in mainland China may constitute an offence
Offering bribes to foreign public officers or international public organisation officials Article 164(2)	<ul style="list-style-type: none"> Any person for the purpose of seeking improper commercial interests and benefits offers money or property to foreign public officers or international public organisation officials the amount involved is relatively large 	

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Submission of documents containing false testimony Article 229(2)	<ul style="list-style-type: none"> Any member of an intermediary organisation, whose duty includes making, verifying or validating capital assessments, accounting, auditing; and/or to providing legal service demands or illegally accepts money or property from another person deliberately provides documents containing false testimony the circumstances are serious 	<ul style="list-style-type: none"> Do not follow any illegal advice given by intermediaries

3. Others

Offence and related provisions of the Criminal Law of the PRC	Summary of the law	Points for businesspersons
Holding a huge amount of property with an unidentified source Article 395(1)	<ul style="list-style-type: none"> Any State functionary whose property or expenditure obviously exceeds his/her legitimate income the difference involved is enormous or extremely enormous and he/she fails to explain the source 	
Concealing savings outside the country Article 395(2)	<ul style="list-style-type: none"> Any State functionary violates the State regulations by deliberately concealing bank savings outside the territory of China the amount involved is relatively large 	<ul style="list-style-type: none"> Businesspersons should not rashly provide their personal or their companies' bank accounts to State functionaries for handling their finances

Terms and definitions

State functionaries

By law, the following parties are all regarded as State functionaries:

- a) persons performing public duties in State bodies;
- b) persons performing public duties in State-owned companies, enterprises, institutions or people's organisations;
- c) persons who are assigned by State bodies, State-owned companies, enterprises or institutions to companies, enterprises, institutions or people's organisations which are not owned by the State to engage in public services; and
- d) other persons performing public services.

Violation of State regulations

Violation of State regulations includes violation of any of the following:

- a) laws enacted or decision made by the National People's Congress and its Standing Committee;
- b) administrative rules and regulations formulated by the State Council;
- c) administrative measures adopted and decisions or orders promulgated by the State Council.

Taking advantage of office

Concerning the offence of corruption, the term 'taking advantage of office' applies to any person:

- a) taking advantage of power involving property he/she is in charge of; and
- b) managing, or dealing with, and taking advantage of his/her office and any favourable conditions involving property he/she is managing or dealing with.

The offence of 'accepting a bribe' refers to:

- a) any person taking advantage of his/her authority involving certain public affairs that he/she is in charge of, responsible for or dealing with; and
- b) taking advantage of the office of another State functionary subordinate to, or supervised by, him/her.

Taking advantage of the convenience arising from one's own official position or authority

This term applies to any person taking advantage of influence or work connections relating to his/her position or authority even though he/she and the State functionary used by him/her have no subordinate-supervisor or other relationship in respect of his/her duties. For example, they may be State functionaries working in different departments of a unit; or State functionaries working in different units with close ties.

Public property

Public property includes:

- a) any State-owned property;
- b) any property collectively-owned by working people; and
- c) any public donation or special fund used to help alleviate poverty or on other community welfare projects.
- d) any private property that is managed, used or transported by any State body, State-owned company, enterprise, collective enterprise or public organisation — is also construed as public property.

Money or property

The term 'money or property' refers to any money and/or articles of worth including, but not limited to: any currency, gold, silver and other items with any intrinsic value.

Seeking illegitimate benefits

This term refers to those seeking assistance, favour or benefit against any law, regulation, policy or rule formulated by any department of the State Council.

Profit-making activity

This term refers to activities including, but not limited to, trading, operating an enterprise, investing in stocks and money lending.

Secret acceptance of off-the-book payments

This term refers to failure to keep truthful records of any financial account established under the accounting system — as required by law.

Company, enterprise or any other unit

- 'Company' means any non-State-owned company or holding company with limited liability set up in accordance with the *Companies Law of the People's Republic of China*.
- 'Enterprise' refers to any non-State-owned economic organisation, other than a company, engaging in any business activity lawfully.
- 'Other unit' refers to any non-State-owned social or economic organisation other than a company and enterprise.

Maximum penalties for committing corruption and bribery offences

Offence	Maximum penalty
Embezzlement by state functionaries; State functionaries accepting bribes	Death penalty
Misappropriation of public funds; offering bribes to State functionaries	Life imprisonment
Embezzlement through dereliction of duty by employees of enterprises; non-State functionaries accepting bribes	15 years' imprisonment
Submission of documents containing false testimony	10 years' imprisonment
Misappropriation of a unit's funds; offering bribes to non-State functionaries	10 years' imprisonment
Holding a huge amount of property with an unidentified source	10 years' imprisonment
Illicit division of State-owned assets; illicit division of fines and confiscated money or property	7 years' imprisonment
Unit accepting bribes; unit offering bribes	5 years' imprisonment
Offering bribes to a unit; introducing a bribe	3 years' imprisonment
Concealing savings outside the country	2 years' imprisonment

The above information is only a summary of the *Criminal Law of the People's Republic of China* concerning corruption and bribery offences. Please refer to Appendix 2 for an English translation of the relevant sections of the law.

Please refer to Appendix 3 for the documents concerning interpretations of the *Criminal Law of the People's Republic of China* given by the Standing Committee of the National People's Congress, the Supreme People's Court and the Supreme People's Procuratorate of the People's Republic of China.

Case studies

1. Corruption offences

Case 1 Mr Lee was employed by a State-owned trust and investment company as the Deputy General Manager of the Securities Trading Department. One day, he asked his subordinates, Mr Chiu and Ms Cheung, to conspire to execute secret stock transactions.

By making bogus transfer transactions, purporting to increase the account balances of certain clients, Mr Chiu and Ms Cheung created overdrafts totalling some RMB20 million against funds that should have been used for stock trading on behalf of their clients. Moreover, they made RMB9.8 million profit by selling RMB10 million worth of 7-year national bonds that the investment company had, in fact, only borrowed from a bond services institution. Later, they earned a further RMB170,000 by selling the stocks kept under another company's account.

With the above funds, Mr Chiu and Ms Cheung secretly used 14 accounts held by the company's clients to speculate in the stock market and eventually reaped a profit of over RMB8.6 million. Mr Lee further instructed Mr Chiu and Ms Cheung to withdraw these profits and deposit them into their own bank accounts. The RMB5 million profit garnered in this way was then shared out between the trio.

Key features

State-owned trust and investment company

Mr Lee,
Deputy General Manager,
Securities Trading Department

Mr Chiu

Ms Cheung

Raising funds for stock trading
in the name of the business unit

Falsely purporting to trade
stocks in the names of others

Secretly sharing stock trading
profits



Analysis and key legal points

Mr Chiu and Ms Cheung raised funds for trading stocks as instructed by their manager, Mr Lee. Since the funds were raised in the name of the business unit, any profits derived from stock trading should go directly to the Securities Trading Department.

The stock trading funds, in fact, came from clients' money and National Bond funds borrowed in the name of the department. According to the CLPRC, any property being managed, used or transported by a State body, State-owned company, enterprise, collective enterprise or public organisation shall be construed as public property (see page51). As the trio's stock trading funds primarily came from overdrafts drawn against clients' funds, and hence public property, their stock trading funds were also entirely public property. Moreover, the profits generated from such stock trading were also public property.

The trio violated the Securities Law of the PRC in falsely purporting to trade stocks in the names of others and unlawfully engaging in stock trading in their personal names. They also made bogus transfers purporting to inflate the balances of client accounts and engaged in unlawful financial transactions. The profits derived from these activities were 'illegal gains' subject to confiscation under the law. Before they were disposed of by law, such profits, which were temporarily managed by the trading department, were still categorised as public property. Hence, the trio committed offences of corruption by secretly sharing the profits derived from the department's unlawful stock trading activities (see page38).

Case 2

Mr Tien was a branch manager of a State-owned nuclear enterprise. He instructed Ms Lee, an accounting officer in the Finance Department, to transfer RMB650,000 from the enterprise to a real estate development company (Company A) under the pretext of 'business dealings'. He also asked her to issue a document in the name of the enterprise to certify that 'The payment is made by Mr Tien to Company A for purchasing one unit of a residential estate'.

Close to the end of the financial year, Mr Tien again instructed Ms Lee to use other project sums to cover the said expense of RMB650,000 for purchasing the unit. Ms Lee first established a 'Company A current account' to repay RMB200,000 back to the enterprise: of this RMB100,000 was, in fact, funds given to a subsidiary as 'hot weather allowances', and the remaining RMB100,000 was allocated as funds 'used for setting up a subsidiary'. She further made a fictitious payment of RMB460,000 for a 'special project' which was subsequently transferred to Mr Tien's personal account. After withdrawing RMB450,000 from his account, Mr Tien gave the money to Ms Lee who first repaid RMB200,000 to the company via Company A's current account. The next day, she repaid RMB250,000 in the same way as before — issuing a receipt to prove that the account now balanced. Eventually, Mr Tien lined his own pocket with the RMB650,000.

Key features

Balancing the account with payment for a bogus project, the subsidiary's hot weather allowances and the balance of funds specified for use in setting up a subsidiary

Branch of State-owned nuclear enterprise

Mr Tien,
Manager

Misappropriating RMB650,000

Ms Lee,
Accounting Officer, Finance Department

Transferring RMB650,000 to pay for property purchased by Mr Tien

Company A
(a real estate development company)



Analysis and key legal points

Misappropriation of State-owned property by taking advantage of office

In judging whether an act performed by a State functionary constitutes corruption, a key element to be considered is whether he/she has taken advantage of his/her office to misappropriate State-owned property. A State functionary is considered to have taken advantage of his/her office under two situations:

- 1. Taking advantage of his/her office involving public property that he/she is in charge of, managing or dealing with.*
- 2. Taking advantage of his/her office involving State-owned property that he/she has been appointed to manage or operate. If the offender is a State functionary who has taken advantage of his/her office to misappropriate State-owned property, he/she shall be guilty of corruption (see page38).*

To ascertain an offender's capacity and duty, a key factor is whether he/she has actually exercised his/her authority in handling and/or managing such public property.

In this case, Mr Tien was clearly a State functionary. As manager of a State-owned enterprise, he was given authority to control the public property of the State-owned enterprise. He committed corruption as his act, namely misappropriation of RMB650,000, was closely related to his duties.

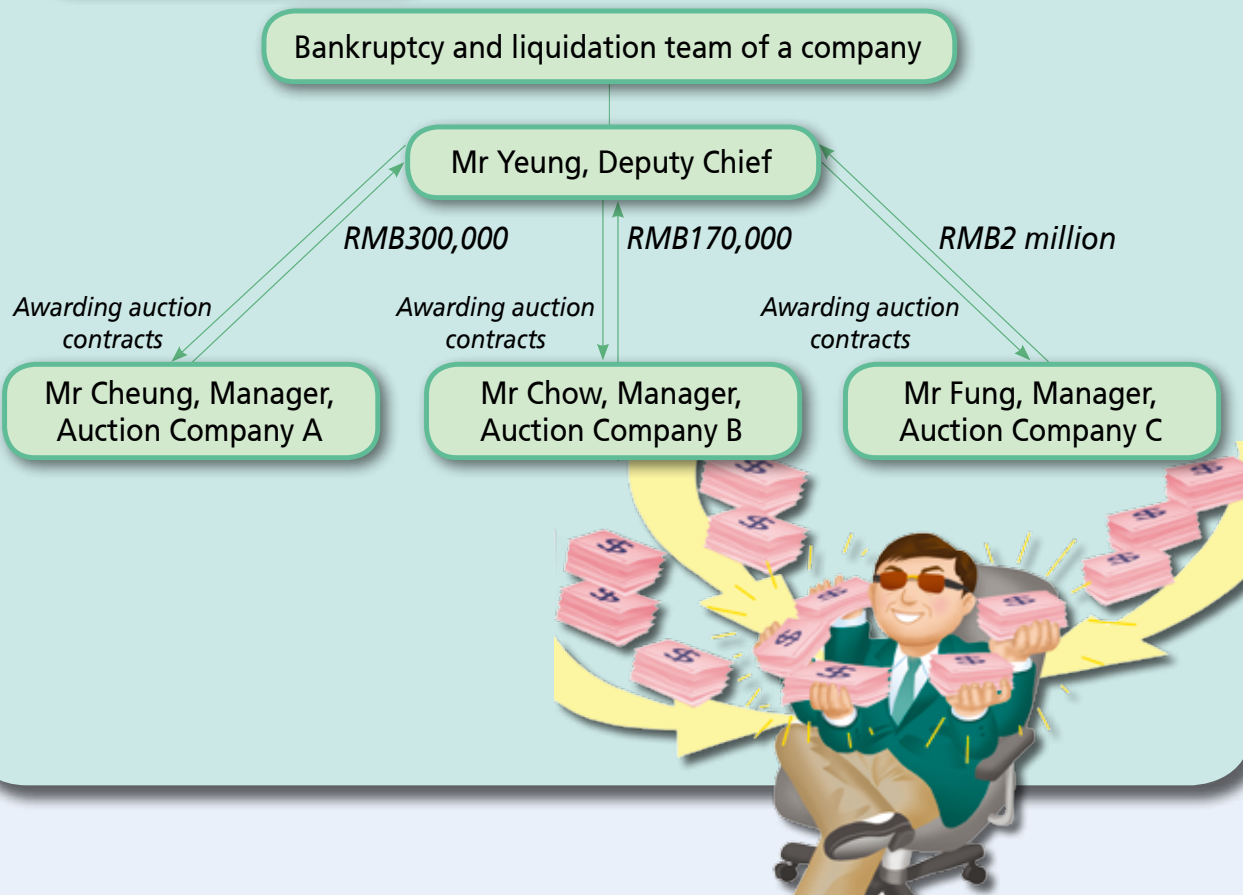
Ms Lee, an accounting officer in the company, was in charge of keeping the public property in safe custody. She took advantage of her office and assisted Mr Tien in making false accounting entries. Though Ms Lee was not a State functionary, she was an accomplice to the corruption as she conspired with Mr Tien, a State functionary, in the corruption scam (see page38).

2. Bribery offences

Case 3 An insolvent company, having been put into liquidation by the People's Bank of China, was subsequently declared bankrupt by the court. To deal with the bankruptcy and liquidation matters of the company, the court ordered the establishment of a liquidation team. The team comprised officers from various government departments and Mr Yeung was appointed as the Deputy Chief.

Once the company entered the bankruptcy and liquidation process, its assets were arranged ready to be sold by auction. Eager to secure the auction contracts due to be awarded by the liquidation team, the managers of three auction companies A, B and C: Mr Cheung, Mr Chow and Mr Fung, respectively — each offered money to Mr Yeung. On separate occasions, Mr Yeung received RMB300,000, RMB170,000 and RMB2 million, from the three respective managers. In total, Mr Cheung received RMB2.47 million from the trio in return for awarding repeated auction contracts to the three auction companies.

Key features



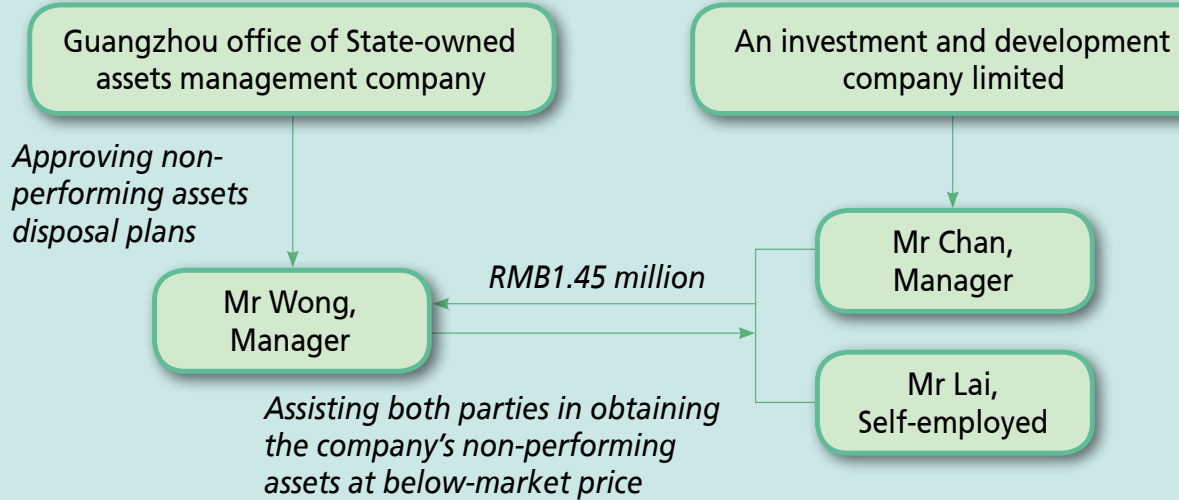
Analysis and key legal points

In accordance with Section 385(1) of the CLPRC, any State functionary who solicits or illegally accepts money or property from any person in return for securing benefit for that person shall be guilty of the offence of accepting a bribe (see page43). If the recipient of the bribe is a State functionary, he/she will have compromised the integrity of his/her duties performed as a State functionary. In this respect, he/she will be deemed to have committed the offence by taking advantage of his/her position to solicit or illegally accept money or property from any person in return for securing benefit for that person with a criminal intent.

In the said case, by taking advantage of his position as Deputy Chief of the bankruptcy and liquidation team, Mr Yeung accepted huge payments from the three auction companies during the bankruptcy and liquidation process in return for awarding the auction contracts to them — clearly committing the offence of 'accepting bribes'.

Case 4 A State-owned assets management company was holding a considerable amount of non-performing assets. Mr Wong, being Manager of the company's Guangzhou office, was in charge of approving the disposal plans for such non-performing assets. Intending to acquire the non-performing assets at lower prices, two independent parties offered a total of RMB1.45 million to Mr Wong on separate occasions: Mr Chan — manager of an investment and development limited company, and Mr Lai — self-employed. As a result, Mr Wong took advantage of his position to assist both parties in obtaining the non-performing assets at below-market rates.

Key features



Analysis and key legal points

Section 385(1) of the CLPRC provides that any State functionary who solicits or illegally accepts money or property from any person in return for securing benefit for that person shall be guilty of the offence of accepting a bribe (see page43). In the above case, Mr Wong, as the manager of a State-owned enterprise, took advantage of his position. In approving disposal plans for non-performing assets, he accepted huge payments from others in return for offering them non-performing assets from the bankrupt company at below-market price. Thus, he committed the offence of 'accepting bribes'.

Case 5 Mr Lam was the Sales Manager of Company A, a foreign air services corporation based in Guangdong. Airline B, a State-owned company, and Company A jointly acted as the chartering and ticket sales agent of State-owned airlines.

To secure more business and maximise profits, Mr Lam offered a total of RMB480,000 to Mr Chow and Mr Kung the General Manager and Deputy General Manager of Airline B, respectively. Subsequently, Mr Lam's company obtained a substantial profit of RMB15 million.

After investigation by the State Procuratorate, it was revealed that the RMB480,000 paid by Mr Lam had been included in Company A's account. Furthermore, the bribe was endorsed by the company's Responsible Person. The State Procuratorate considered the circumstances of the corruption case involving Company A quite serious and Company A was also suspected of committing the offence of 'unit offering a bribe'. As a result, Mr Lam and Company A's Responsible Person were both found guilty of the criminal offences, with Company A also being ordered to pay a substantial fine.

Key features

Company A, foreign air services corporation

Airline B, State-owned company

Gaining profit of RMB15 million from chartering and ticket sales agent business

Mr Lam,
Sales Manager

Mr Chow,
General Manager

Mr Kung,
Deputy General Manager

Payments of RMB480,000 endorsed by company's Responsible Person



Analysis and key legal points

Case-establishment requirements for offence of 'unit offering a bribe'

The offence of unit offering a bribe refers to any company, enterprise, institution, body or organisation offers a bribe or violating State regulations by offering any rebate or service charge to a State functionary with a view to securing illegitimate benefit for the unit and the circumstances involved are serious (see page47). In this case, Mr Lam's company bribed State functionaries in order to secure more business and exorbitant profits. In such cases, where the amount of bribes meets case-establishment requirements, this is classed as a 'unit offering a bribe'. The unit, if convicted, will under the law be ordered to pay a fine, and any persons directly in charge of and/or responsible for such criminal acts will also be punished. In this way, Mr Lam and the company's Responsible Person were both punished in accordance with the law and Company A was also ordered to pay a substantial fine.

Principles and spirit of legislation

Under the principle of 'One Country, Two Systems' embodied in the Basic Law of the Macao Special Administrative Region of the People's Republic of China, the Macao Special Administrative Region has its own legal system and independent judicial power — including the power of final adjudication.

The legal system of Macao generally follows the European legal traditions with written legislation as the main source of the law. In Macao, anti-bribery provisions are stipulated in the *Penal Code*, the law entitled *Prevention and Suppression of Bribery in the Private Sector*, and are supplemented with additional separate statutes. The legal proceedings of criminal acts are laid down in the *Penal Procedure Code*.

Summary of the law

The Commission Against Corruption of Macao (CCAC) is dedicated to fighting corruption and tackling bribery and corruption-facilitated fraud offences involving the private and public sectors, according to the *Penal Code* and the *Penal Procedure Code*. Pursuant to Article 59 of the Basic Law of the Macao Special Administrative Region, the CCAC shall function independently and be directly accountable to the Chief Executive.

Corruption covers acts of both offering and accepting bribes

Under the laws of Macao, corruption has a broad definition which covers both the offering and acceptance of bribes. Bribery offences involving the private sector are defined in the law entitled *Prevention and Suppression of Bribery in the Private Sector*, whereas duty-related and fraud offences involving civil servants are included in the *Penal Code*.

The acceptance of an illegitimate advantage by any person working in a private entity as a reward for acting in breach of his/her duty constitutes the offence of 'accepting bribes in the private sector'.

Offering an illegitimate advantage to any person working in a private entity in return for showing a favour in relation to his/her duty constitutes the offence of 'offering a bribe in the private sector'.

If a bribery offence involving the private sector has endangered the health or life of any person or led to unfair competition, and it occurred under a situation where the assets or services concerned were acquired — in whole or in part — with public funds, the offence shall be construed as a public crime. In such cases, law enforcement authorities are empowered to investigate even if the matter is not pursued by the victim. For offences other than the above, the no-complaint-no-action principle applies. In other words, no investigation will be conducted by the law enforcement authorities unless the victim lodges a complaint against the parties concerned for criminal liability.

Any civil servant who solicits or accepts an illegitimate advantage as a reward for doing, or refraining from doing, an act in relation to his/her duty — regardless of whether this act constitutes a breach of duty — will be guilty of 'accepting bribes'. Offering an illegitimate advantage to any civil servant in return for showing a favour in relation to his/her duty constitutes the offence of 'offering bribes'.

In relation to bribery offences committed by civil servants or private sector employees, the actual offering and/or acceptance of advantages is not the most crucial element of the offence. A crime is still committed even if 'the intent' of offering or accepting an advantage is expressed to another party.

Bribery offences in private sector

In Macao, any person working in a private entity — including an employee, entrusted person or agent — has certain obligations (fiduciary duty) to his/her employer, entrusting person or principal. Any person breaching his/her fiduciary duty for personal gain commits an offence under the *Penal Code*. To protect their legal interests, Hong Kong and mainland businesspersons operating businesses in Macao should ensure they have a thorough understanding of the relevant legislation — seeking advice from the CCAC and/or legal experts. They should also report any alleged unlawful acts involving corruption directly to the CCAC.

Offence and related legal provisions	Summary of the law	Points for businesspersons
<p>Accepting bribes in the private sector Article 3 - Prevention and Suppression of Bribery in the Private Sector</p>	<ul style="list-style-type: none"> • Any person who performs his/her professional duties in any entity in the private sector, including the personnel of management or administration • personally or through an intermediary with his/her consent or ratification • for himself/herself or a third party • solicits or accepts an undue pecuniary or non-pecuniary advantage, or the promise of such advantage • as a reward for acting or refraining from acting, in violation of his/her functional duties 	<ul style="list-style-type: none"> • Employees must not solicit or accept illegal advantages in relation to work, and act against the company rules, or perform any act prejudicial to the interests of their employers
<p>Offering bribes in the private sector Article 4 - Prevention and Suppression of Bribery in the Private Sector</p>	<ul style="list-style-type: none"> • Any person • personally or through an intermediary with his/her consent or ratification • gives or promises to give the person who performs his/her professional duties in any entity in the private entity, or a third party with the knowledge of that person, an undue pecuniary or non-pecuniary advantage • as a reward for acting or refraining from acting, in violation of his/her functional duties 	<ul style="list-style-type: none"> • Businesspersons should not offer illegal advantages to employees in the private sector in return for their acting against the company rules and prejudicing interests of their employers

Other fraud offences involving public and private sectors

The CCAC is empowered to investigate fraud cases involving corruption in the public and private sectors.

Offence and related legal provisions	Summary of the law	Points for businesspersons
Abuse of trust Article 199 - Penal Code	<ul style="list-style-type: none"> Any person unlawfully appropriates any chattel entrusted to him/her by other than transfer of ownership 	<ul style="list-style-type: none"> Any person who seeks personal gain by misappropriating another person's property constitutes a breach of trust, for which he/she shall be criminally liable
Fraud Article 211 - Penal Code	<ul style="list-style-type: none"> Any person with the intent of obtaining for himself/herself or a third person an unlawful material misleads or deceives another person by fraudulent means induces that person to perform an act prejudicial to his/her own or any other person's property 	<ul style="list-style-type: none"> Any person who seeks personal gain by fraudulent means and causes prejudice to another person's property shall be criminally liable
Embezzlement Article 217 - Penal Code	<ul style="list-style-type: none"> Any person entrusted by law with the duty of disposing of, managing or safeguarding the property of others with the intent to cause substantial pecuniary damage to such property abuses his/her power or seriously violates his/her duty by causing substantial pecuniary damage to such property 	<ul style="list-style-type: none"> The fiduciary duty owed to the employer, the entrusting person or the principal must be performed accordingly Under the Macao <i>Penal Code</i>, a huge amount is a sum exceeding MOP30,000, while a considerably huge amount is a sum exceeding MOP150,000

Offence and related legal provisions	Summary of the law	Points for businesspersons
Forgery of documents Article 244 - Penal Code and the subsequent provisions	<ul style="list-style-type: none"> • Any person • with the intent to cause damage or loss to another person or to the Special Administrative Region of Macao, or to obtain an unlawful benefit for himself/herself or for another • commits the following acts: <ul style="list-style-type: none"> – produce a counterfeit document, falsify or alter a document, or abuse the signature of another person to produce a counterfeit document – falsely enter a legally relevant fact into a document; or – use a document referred to in preceding points, produced, falsified or changed by another person 	<ul style="list-style-type: none"> • Never assist or conspire with others to make any false documents

Duty-related crimes committed by civil servants

Businesspersons with operations in Macao may have regular dealings with various government departments in the natural course of business including: applying for business licences, handling import and export commodities and tariff formalities. To ensure full compliance with all legal requirements, businesspersons should be aware of legislation in relation to duty-related offences involving public servants.

Offence and related legal provisions	Summary of the law	Points for businesspersons
Passive corruption to perform illicit acts Article 337 - Penal Code	<ul style="list-style-type: none"> Any public servant directly or through an intermediary, with his/her consent or ratification solicits or accepts, for himself/herself or for another, an undue advantage or a promise of such an advantage, pecuniary or non-pecuniary to act or refrain from acting in breach of his/her official duties 	<ul style="list-style-type: none"> A public servant is prohibited by law from soliciting or accepting any advantage from any person as a reward for showing a favour in relation to his/her duty It is an offence even if the showing of the favour does not constitute a breach of the public servant's official duty In cases where a public servant solicits a bribe, a report should be made to the CCAC as soon as possible
Passive corruption to perform licit acts Article 338 - Penal Code	<ul style="list-style-type: none"> Any public servant directly or through an intermediary, with his/her consent or ratification solicits or accepts, for himself/herself or for another, an undue advantage or a promise of such an advantage, pecuniary or non-pecuniary to act or refrain from acting not in a breach of his/her official duties 	

Offence and related legal provisions	Summary of the law	Points for businesspersons
Active corruption Article 339(1) - Penal Code	<ul style="list-style-type: none"> Any person directly or through an intermediary, with his/her consent or ratification gives or promises an undue advantage, pecuniary or non-pecuniary, to a public servant or to a third party with the public servant's knowledge to act or refrain from acting in breach of that public servant's official duties 	<ul style="list-style-type: none"> Must not offer any advantage to a public servant in return for a favour in relation to his/her duty It is an offence even if the showing of the favour does not constitute a breach of the public servant's duty
Active corruption Article 339(2) - Penal Code	<ul style="list-style-type: none"> Any person directly or through an intermediary, with his/her consent or ratification gives or promises an undue advantage, pecuniary or non-pecuniary, to a public servant or to a third party with the public servant's knowledge to act or refrain from acting not in a breach of that public servant's official duties 	
Embezzlement Article 340(1) - Penal Code	<ul style="list-style-type: none"> Any public servant for his/her benefits or the benefit of another person unlawfully appropriates money or any chattel, either public or private entrusted to him/her, or in his/her possession or to which he/she has access by virtue of his/her position 	<ul style="list-style-type: none"> Never take part or assist any public servant in the misappropriation of property managed by him, or to which he/she may have access by virtue of his/her position

Offence and related legal provisions	Summary of the law	Points for businesspersons
Unlawful economic advantage Article 342(1) - Penal Code	<ul style="list-style-type: none"> Any public servant with the intent of obtaining for himself/herself or a third person an unlawful economic advantage in a legal act in which he/she participates by virtue of his/her position, damages the property interests for which in whole or in part, he/she has the duty to administer, monitor, safeguard or effect 	<ul style="list-style-type: none"> Never take part or assist any public servant in the seeking of personal gain by prejudicing the interests of property handled by him/her by virtue of his/her duty
Abuse of power Article 347 - Penal Code	<ul style="list-style-type: none"> Any public servant with intent of obtaining for himself/herself or a third person an unlawful benefit or to cause damage to another person abuses the powers or violates the duties inherent to his/her functions 	<ul style="list-style-type: none"> Never take part or assist any public servant in abusing his/her duty

Terms and definitions

Person working in the private sector

Any person, other than a public servant prescribed in the *Penal Code*, who works for an individual, a private enterprise, organisation or institution, regardless of the existence of any supervisor-and-subordinate relationship, or any specific duty or position, such as an employee, entrusted person or agent in any private enterprise, organisation or institution.

Duty of a person working in the private sector

Any duty that a person shall fulfil by law (such as the provisions against improper competition under the *Commercial Code* and those specifying an employee's duty in the *Labour Relations Law*) or according to the requirements lawfully laid down by the party concerned in respect of certain activities (such as the requirements contained in a staff code of conduct or an employment contract).

Unfair competition

Any unfair competition, namely any act of competition that objectively involving irregular business activities and breaches of trust.

Advantage

Including any pecuniary and non-pecuniary advantage.

Pecuniary advantage

Any advantage with a monetary value, such as a gift, money, loan, entertainment, reward, commission, favour, discount, gift voucher, service, passage, accommodation, etc.

Non-pecuniary advantage

Any advantage without a monetary value, such as a school place or employment.

Public servant

As prescribed in Article 336 of the *Penal Code*, a public servant includes an office holder of a body or department with public powers; a person who performs, takes part in performing or assists in performing public functions; any member of staff at any level of a public body or enterprise with capital wholly or mostly coming from public funds; a public utility licensed company, a public property licensed company or a franchised company.

An officer who performs duties in relation to the financing business of a credit institution (such as a bank) will be construed as a public servant pursuant to Article 3(3) of Law No.10/2000 of 14 August 2000, as amended by Law No. 4/2012 of 26 March 2012.

Any person who assists or conspires with a public servant to commit a duty-related offence will be dealt with as a public servant.

Maximum penalties for committing bribery offences

Offence	Maximum penalty
Accepting bribes in the private sector	3 years' imprisonment
Offering bribes in the private sector	2 years' imprisonment
Passive corruption to perform illicit acts (by a public servant)	8 years' imprisonment
Passive corruption to perform licit acts (by a public servant)	2 years' imprisonment
Active corruption (to a public servant)	3 years' imprisonment
Embezzlement (by a public servant)	8 years' imprisonment
Unlawful economic advantage	5 years' imprisonment
Abuse of power	3 years' imprisonment
Abuse of trust	8 years' imprisonment
Fraud	10 years' imprisonment
Embezzlement	3 years' imprisonment
Forgery of documents	5 years' imprisonment

Please refer to Appendix 5 for legal provisions in relation to bribery offences in Macao.

Case studies

Case 1 Company A, a construction and engineering firm with limited liability in Macao, had recently submitted a public works tender for the construction of a bridge.

To secure the contract for the project, Mr Chan, Responsible Person of Company A, reached an agreement with the government official in charge of awarding the contract. It was agreed that Mr Chan would pay the official MOP20 million in return for him helping Company A secure the contract. Subsequently, in his capacity as an official in charge of the public works, the official performed a number of acts contrary to his duty during the process of tendering and awarding the contract.

The incident was later revealed and after investigation resulted in Mr Chan being convicted of 'offering a bribe to a public servant for the performance of an illicit act'.

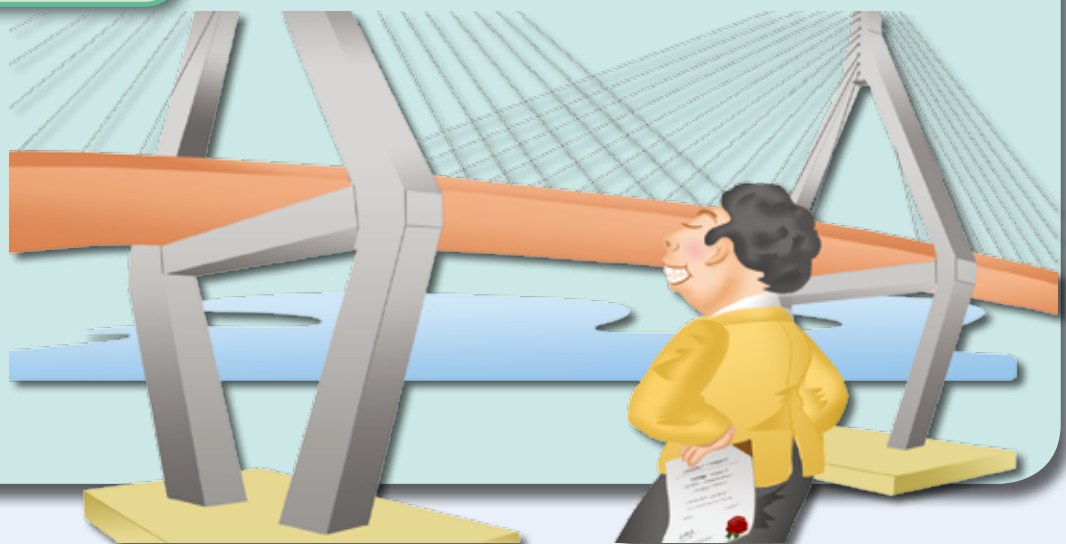
Key features

Mr Chan,
Responsible Person,
Company A
(construction and
engineering firm)

*Awarding public works contract
for construction of bridge*

MOP20 million

Government official in
charge of public works



Analysis and key legal points

- Any person, who offers a bribe — whether he/she does so directly or indirectly via solicitation — commits an offence under the Macao **Penal Code**.
- Under the **Penal Code**, offences involving the offering of bribes are divided into two categories (see page 69):
 - ♦ offering bribes for the performance of licit acts (i.e. bribery to perform legal acts); and
 - ♦ offering bribes for the performance of illicit acts (i.e. bribery to perform illegal acts).
- Public servants are prohibited by law from accepting any advantage in the course of discharging their duties.

Case 2

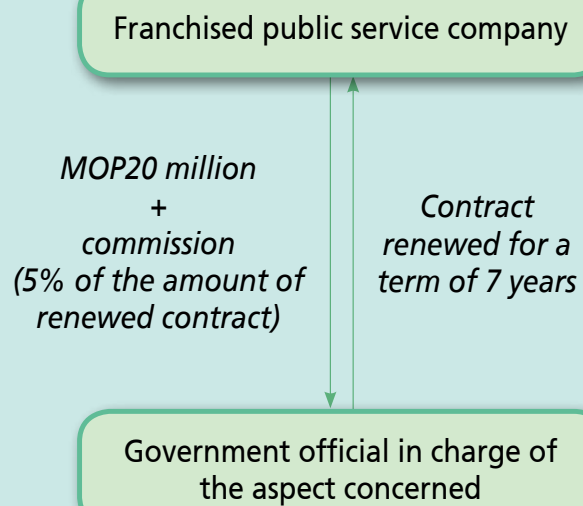
Company A, a private company, had been awarded a term contract for the provision of a public service by the government. As the current term contract was due to expire, the government was considering whether to renew the existing contract or open it for tender.

In order to continue with the provision of service, Company A put great effort in persuading the government to renew the contract. As a result, Mr Wong, the Responsible Person of Company A, reached an agreement with the government official in charge of the matter. The agreement reached stated that if the government renewed the contract with Company A, Mr Wong would, in return, offer the government official MOP20 million plus a commission equivalent to 5% of the value of the renewed contract.

Eventually, the government awarded the contract to Company A for a term of seven years and the contract value reached some MOP920 million.

The government official was arrested after the scam was revealed. Subsequent inquiries confirmed that the advantage involved was not actually offered or accepted, nevertheless, Mr Wong was still convicted of offering a bribe to a public servant for the performance of an illicit act.

Key features



Analysis and key legal points

The actual offering and acceptance of an advantage is not a crucial element in the offences of offering and accepting bribes. In fact, a crime is committed even if 'the intent' of offering or accepting an advantage is expressed to another party.

*Please refer to **Articles 337 to 339 of the Penal Code**.*

Case 3

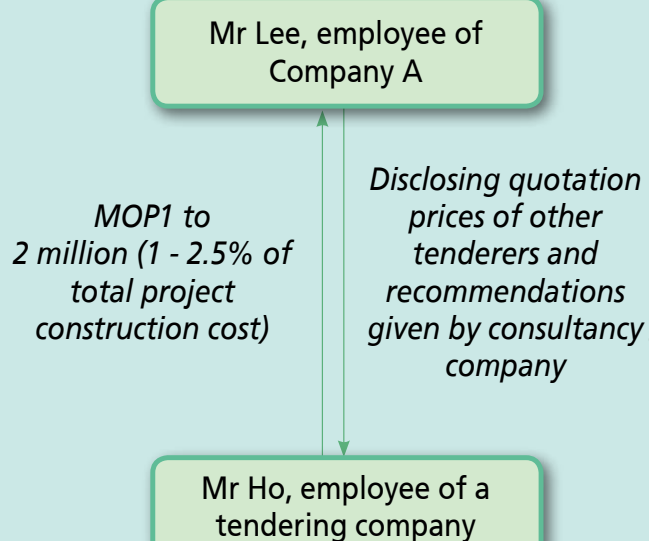
Company A was planning to carry out a large-scale residential development project on a piece of land in Macao that was owned by their company. The Company decided to select a contractor by open tender.

Mr Lee, one of the supervising officers of Company A, was responsible for overseeing the project. By virtue of his position, Mr Lee had access to the business secrets, including the quotation prices offered by other tenderers and recommendations given by the consultancy company.

During the tendering process, Mr Lee arranged to have a meeting with Mr Ho, who was employed by one of the tendering companies. Mr Lee claimed that he could disclose business secrets concerning the project to Mr Ho on condition that Mr Ho's company, after winning the contract, would pay him 1 – 2.5% of the project construction cost, which would bring him an estimated reward of MOP1 – 2 million.

Following disclosure of the bribery scam, Mr Lee was arrested by the CCAC and eventually prosecuted by the Public Prosecutions Office.

Key features



Analysis and key legal points

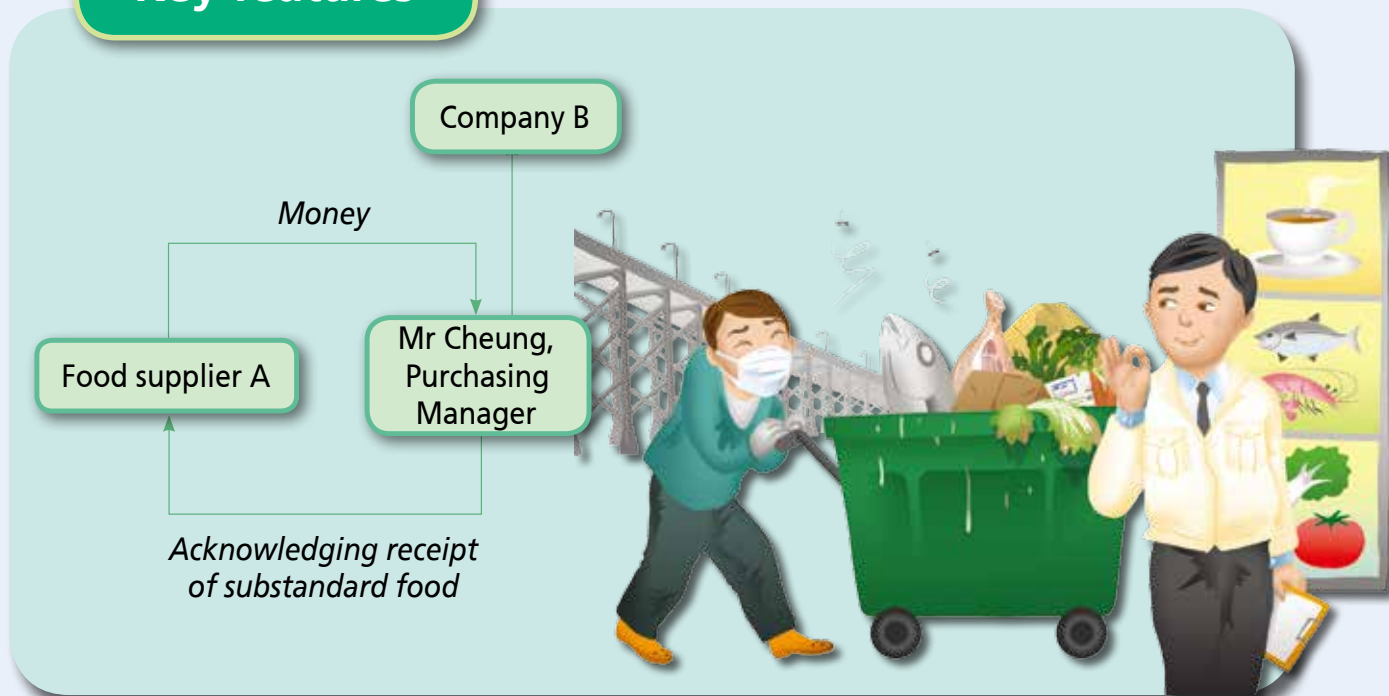
*Under the **Prevention and Suppression of Bribery in the Private Sector** of Law No. 19/2009 of 17 August 2009, enacted on 1 March 2010, both offering and accepting bribes in the private sector are criminal acts.*

In essence, the law states that any person working for an individual, a private enterprise, organisation or institution who solicits, accepts or agrees to accept an advantage — financial or otherwise — which he/she should not accept, as a reward for the performance of an illicit act commits the offence of accepting bribes in the private sector. The person offering, or promising to offer, such an advantage also commits the offence of offering bribes in the private sector (see page 65).

Case 4 Company A supplied food to Company B in Macao under a contract between both parties. Mr Cheung was the Purchasing Manager of Company B.

Company A supplied Company B with a batch of food which was unfit for sale owing to its poor quality. After checking the food, Mr Cheung discovered that it was, in fact, substandard. Instead of returning the food to Company A, he acknowledged receipt of it — at the request of Company A. Company A agreed to pay Mr Cheung a sum of money for accepting this substandard product. Following a series of complaints from customers regarding the food quality, the entire batch of food had to be disposed of, with Company B having to bear a huge financial loss.

Key features



Analysis and key legal points

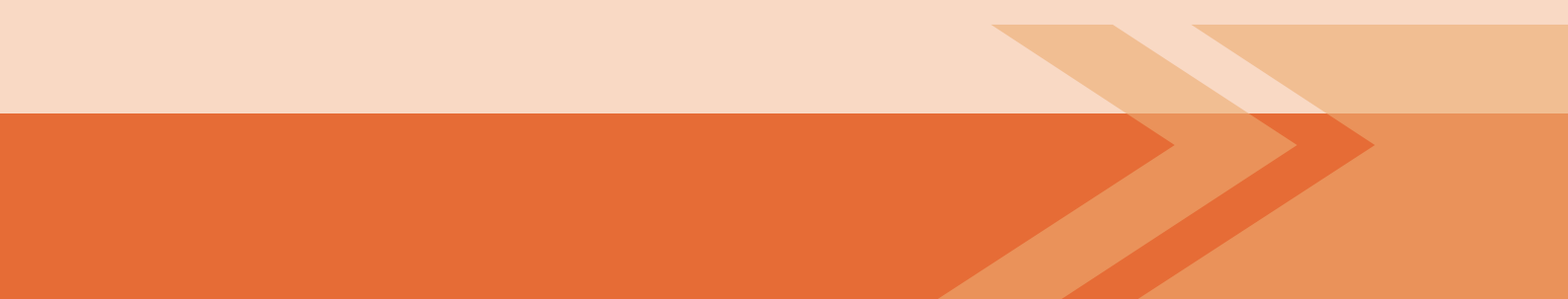
*In addition to the offering and acceptance of bribes in the private sector, the Macao **Penal Code** also covers criminal breach of trust committed by persons providing services to others — in particular employees, entrusted persons and agents — such as cases of embezzlement.*

*In accordance with the **Penal Code**, any person entrusted by law with the duty of disposing of, managing or safeguarding another person's property who intends to cause substantial damage to such property, commits a serious breach of his/her ethical duties and is guilty of the offence of embezzlement (see page66).*

Part two

Understanding yourself and others





While it is important to understand and abide by the law when carrying out cross-boundary business, SMEs also need to understand themselves. If SMEs can take the initiative to understand their own strengths and weaknesses, stay alert to possible acts of corruption and bribery, critically assess the corruption risks in their operations and management, as well as formulate effective preventive measures — they will be well positioned to combat all aspects of corruption and bribery.

Apart from understanding themselves, it is also important for SMEs to understand others. Understanding others, in turn, brings a fuller understanding of the business environment, including investment procedures and the government regulatory system of the place of investment. It also involves understanding the importance of setting ethical business principles in all agreements, and resolving business disputes through legal means.

If SMEs can fully understand themselves and others, they will be able to excel in their business and to end up on the winning side.

Strengths and challenges of SMEs

To understand themselves, SMEs must engage in SWOT analysis to help gain a comprehensive understanding of their Strengths and Weaknesses, as well as appreciating the Opportunities and Threats that lie ahead of them in the course of business.

Strengths

- Operational flexibility, close market feel and adaptability allow rapid responses to changing market needs.
- Typically funded by a proprietor or a group of like-minded people sharing common goals, developing mutual trust and adopting a hands-on approach to business.
- Usually have simple organisational structures — allowing management to keep abreast of different departments' operations. This facilitates ease of cost control and managing overall operational issues.

Weaknesses

- Due to limited resources, operators are usually more concerned with minimising costs and maximising profits. As a result, proper management is often overlooked and effective risk management neglected.
- Operations usually seek to achieve speed, convenience and high efficiency. Working styles differ from person to person and often change over time and there may be a lack of clear guidelines, standard operating procedures and control systems — increasing the risk of corruption and bribery.
- The lack of systems and controls may also pave the way for abuse of the trust between management and staff — which in turn may damage the company's reputation and bottom line.

Opportunities

- In the wake of the PRC's 12-5 Plan, mainland China's economy has entered into a new phase of policy adjustments across a wide variety of industries. A complementary mechanism has also been developed for use in Guangdong, Hong Kong and Macao to help foster new business opportunities for SMEs.
- In tandem with the PRC's goal of expanding domestic consumption for economic development, SMEs are also being encouraged to expand their brands throughout the PRC to meet the growing needs of mainland consumers for quality products and services.

- With the massive popularity of internet and online trading platforms, SMEs can take advantage of low-cost, high-efficiency online platforms for market expansion and trading their products and services throughout the PRC.

Threats

- When faced with the uncertain global economic environment and immense operational pressures, SMEs may be tempted to resort to offering bribes to help ensure their short-term survival.
- Recent continuous increases in expenses incurred from salary costs, land, raw materials and exchange rates coupled with cash flow problems arising in obtaining account receivables have all created an extremely challenging business environment for SMEs.
- SMEs have to face the challenges of managing legal, regulatory and cultural differences in different markets in addition to the difficulties involved in remotely managing businesses.

Corruption and bribery — key risks

Regardless of the nature of their business, most SMEs have various work functions including: purchasing, sales and marketing, inventory and stock control, accounting and finance, personnel and administration. Below is a list of common malpractices identified in these work areas.

Purchasing

Selection of suppliers and contractors

- Appointing companies — wholly or partially owned by themselves or their close relatives — as suppliers or contractors.
- Setting up bogus companies to purchase goods from other suppliers and re-sell them to their employing companies at a higher price in order to pocket the difference.
- Selecting suppliers or contractors who are willing to provide advantages to them.

Negotiations with suppliers and contractors

- Soliciting commissions from suppliers or contractors as a reward for allowing overcharging and/or accepting substandard goods and services, placing orders for goods or services with them.
- Leaking valuable information, such as tender information and quotations of other tenderers, in the hope of helping favoured suppliers or contractors to secure the contract or order.
- Accepting advantages from suppliers or contractors as a reward for making false representations in order to secure greater profits for them — at the expense of the company putting out the tender.

Making purchases

- Splitting orders to avoid exceeding financial limits set by the company or being discovered to having made excessive purchases.
- Altering order prices to pocket the price difference.
- Staff acquiring goods from suppliers in the name of the employing company for use in their own private company. Likewise, staff utilising the employing company's credit limit to buy goods for their own private company.
- Frequently using 'urgent' or special requisitions as a pretext to circumvent normal procurement procedures.

Sales and marketing

Handling customer orders

- Diverting company business to competitors or secret associates.
- Disclosing customer information to third parties — such as competitors or debt collectors — without permission.

Selling discounted items

- Pocketing customer discounts.
- Offering discounts to non-qualified customers.
- Pocketing bulk-purchase discounts by grouping orders together and processing them as bulk purchases.
- Making bulk purchases at staff price then reselling to retailers for profit.

Commissions and bonuses

- Conspiring with colleagues to falsify sales records in order to fraudulently obtain commission or bonus payments — only granted upon achieving specific sales targets.

Allocating goods or services

- Allocating purchases of 'high-demand' or 'low-supply' goods to parties offering bribes.
- Assisting clients, who are willing to offer advantages, to queue-jump for in-demand services.
- Accepting bribes for appointing or recommending less competitive companies as distribution agents.

Offering bribes

- Offering bribes to staff of client companies to secure business, and falsely declaring such bribes as legitimate expenditures including: entertainment expenses, client discounts or agent commissions.

Inventory and stock control

Receiving goods and stock control

- Accepting bribes for covering up non-deliveries and/or accepting substandard goods.
- Overstating loss or damage caused during delivery in order to cover up internal pilferage of goods.

Writing off stock

- Stealing goods by fraudulently writing off stock.
- Releasing goods on a first-in-last-out basis so that goods with expiry dates become write-offs, which are subsequently stolen and/or sold.

Accounting and finance

Making payments and collecting debts

- Accepting bribes in return for speeding up payments or delaying debt collection.
- Deliberately arranging double payments and making subsequent claims for reimbursement in order to provide interest-free operating funds to those offering bribes.
- Falsifying invoices and/or documentation to embezzle company funds.

Granting credit facilities and writing off bad debts

- Granting credit facilities to ineligible clients.
- Accepting debtors' advantages in return for prematurely writing off bad debts, without following appropriate debt collecting procedures.
- Instructing debtors to deposit repayments into a third party account and then embezzling such funds, which are then written off as bad debt against the company account.

Processing claims

- Conspiring to overstate claims.
- Approving reimbursements for false claims.

Personnel and administration

Staff welfare benefits

- Accepting advantages from service providers or contractors in return for giving them favours when arranging welfare benefits such as insurance and/or medical benefits.
- Accepting bribes for tolerating incorrect or exaggerated statements on claim forms, or expediting claim procedures when handling certain applications.

Daily administration

- Accepting bribes from colleagues to conspire and knowingly allow submission of fraudulent claims in respect of issues such as overtime work or sick leave, then sharing the extra wages granted to the colleagues concerned.

Recruitment, promotions and postings

- Accepting bribes for favouritism in appointments, promotions and transfers.
- Accepting bribes from subordinates in return for covering up their poor performance and/or writing favourable appraisal reports for them.

Integrity management health checklist

To ensure that their companies are operating properly and that their employees are staying on the right track, SME operators should conduct regular assessments on the 'health' of their companies. They should ensure there are sufficient monitoring systems with appropriate checks and balances in place to help plug any possible corruption loopholes. Appendix 6 provides an integrity management health checklist to help SMEs detect any potential corruption and bribery risks within their companies and implement the best preventive measures to tackle them.

Chapter 7 of this Guide provides a case study to help explain management problems which can arise due to a failure to manage corruption risks. It also introduces key principles of integrity management.

Points to note on investing in Guangdong, Hong Kong and Macao

Businesspersons, when conducting business — whether in mainland China, Hong Kong or Macao — are required to fully understand the differences in legal requirements and systems in each of the three locations. More importantly, businesspersons must observe the laws in each place.

Hong Kong

There are laws put in force in Hong Kong to ensure fair play across a wide range of different industries. Apart from understanding and observing the *Prevention of Bribery Ordinance*, businesspersons should also abide by the laws related to their respective industries and general business laws.

For enquiries please visit the Hong Kong government website: www.gov.hk

The People's Republic of China

In mainland China, there are also specific laws, rules and policies regulating business activities and commercial behaviour. The mainland China is an expansive country — spanning five time zones — and has significant variations in terms of business regulations and policies in different provinces. Businesspersons investing within mainland China should, therefore, familiarise themselves with and abide by local regulations and policies.

For relevant laws, rules and policies, please visit the following websites:

- Ministry of Commerce: www.mofcom.gov.cn
- Department of Foreign Trade and Economic Cooperation of Guangdong Province: www.gddoftec.gov.cn

Please also refer to Appendix 7 for documents relating to:

- *Law of the People's Republic of China on Foreign-Capital Enterprises*;
- Rules for the implementation of the *Law of the People's Republic of China on Foreign-Capital Enterprises*;
- *Foreign Trade Law of the People's Republic of China*; and
- *Provisions on Guiding Foreign Investment Direction*.

Macao

Macao has put in place different commercial and industrial rules and regulations governing various business practices. Businesspersons should not only understand and abide by the anti-bribery laws of Macao, but also comply with relevant industry-related legislations and business laws.

For enquiries and information, please visit the Macao Trade and Investment Promotion Institute's website: www.ipim.gov.mo

Businesspersons wishing to invest in any/all of these three locations are strongly advised to familiarise themselves with the specific investment procedures of that region in addition to the operation and requirements of the relevant government departments. Brief overviews of the investment procedures of Hong Kong, Guangdong and Macao are described in Appendix 8, Appendix 9 and Appendix 10, respectively.

For an outline of the services and contact information for specific government departments in each of the three locations, please refer to Chapter 10.

Establishing integrity-based business principles with business partners

Irrespective of being based in Hong Kong, Macao or in mainland China, SME operators should clearly state all terms and conditions for investment and cooperation in a formal contract whenever entering into an agreement with business partners — including contractors and suppliers — to ensure that all agreements reached are legally binding.

Entering into written contracts and listing conditions for cooperation

Businesspersons should clarify whether the advantages offered to an individual are lawful and whether they are directly relevant to their investment projects. If the party accepting an advantage is employed by a Hong Kong company, he/she must obtain his/her employer's prior approval before he/she can legitimately accept the advantage.

Offering bribes to a unit in mainland China also constitutes an offence. It should, however, be noted that the term 'unit' in Article 391 of the CLPRC refers only to State bodies, State-owned companies, State-owned enterprises, business units and public organisations. The term 'unit' does not include private companies or enterprises. Hence, when giving an advantage to a unit as a whole, you must clearly determine whether the receiving party is a private company or enterprise. In cases where it is not a private company or enterprise, you must pay special attention to avoid contravening the law in giving advantages. If the recipient is a representative of a non-State unit in mainland China, you should ensure that his/her acceptance of the advantage has been approved by the unit and that the advantage will accrue to the unit as a whole rather than to any individual. Otherwise, you may run the risk of committing the offence of 'offering bribes to non-State functionaries'.

In Macao, if an employee accepts unlawful advantages as the reward for violating his/her job obligations, he/she will commit the offence of 'accepting bribes in the private sector'.

Businesspersons should also pay special attention to the following issues when entering into contracts for investment projects:

1. Define any offer of advantages in the contract

An investor may sometimes need to legitimately enhance his/her competitive edge by proposing lawful advantages to a business partner, whether an enterprise or a unit. When he/she sets up a factory, for example, he/she may offer to provide shuttle buses for workers commuting between the workplace and their living quarters. He/she may also arrange overseas study tours or training courses for the staff of his/her mainland business partners. As these advantages are intrinsic to the project, the investor should guard against any suspicion of bribery by spelling them out clearly in the contract and limiting himself/herself to offering only these specified advantages.

2. Define how payments and commissions are to be made

Should representatives of trade partners ask investors to pay commissions in a specific way, for example, depositing money into offshore company accounts, investors should state the method of payment clearly in all contracts and invoices. Payments should normally be restricted to traceable payments such as crossed cheques and telegraphic remittances. Cash payments should never be made, whether in a direct way or via a third party.

3. Report corruption and bribery

For any irregularities encountered during contractual negotiations, such as a representative of the counterparty soliciting an advantage for himself/herself or on behalf of other people before striking a business deal, the investor should immediately report the case to the senior management of the company or relevant local anti-corruption agency.

Declaring your stance as an integrity-based business

To put integrity management into practice, entrepreneurs are advised to formulate a code of conduct for the company and notify all suppliers, contractors and clients about the company's corruption prevention policy. Such a practice not only enhances policy transparency, but also helps boost the company reputation and reduces the risks of corruption and misunderstandings due to ambiguous policies on acceptance of advantages.

Please refer to Chapter 8 for details about formulating a code of conduct and advice on communicating with business partners.

Resolving business disputes lawfully

When disputes arise in the course of business, SMEs should first seek assistance from their local government. If the issue lies outside the scope of any government departments and no criminal element is involved, such as in a civil case, a lawyer can be appointed to help resolve the situation and/or claim compensation through a civil lawsuit.

Businesspersons should never resort to exploiting connections with influential individuals, whether by a backdoor route or by the indiscriminate use of middlemen. The following means are useful in resolving business disputes in a lawful way:

Mutual negotiation

In general, most business disputes can be resolved through mutual negotiation. This not only maintains harmony between the two sides, but also saves the trouble and costs of protracted arbitration and/or litigation. Moreover, this approach provides greater flexibility and is more conducive to any future cooperation and dealings.

Arbitration

Arbitration is often employed to resolve commercial disputes, particularly those involving international commercial transactions. The advantage of arbitration is that it is professional and effective. On a voluntary and equal basis, the parties concerned agree in writing to refer their disputes to an arbitration organisation acceptable to both sides for adjudication and a binding verdict.

The People's Republic of China

There are two main foreign economic arbitration organisations in mainland China — both are non-government arbitration bodies:

1. The China International Economic and Trade Arbitration Commission; and
2. The China Maritime Arbitration Commission

The legally binding effect of arbitration agreements has been confirmed by international treaties. Most treaties and protocols signed between mainland China and foreign countries — on commercial and maritime matters, trade agreements and delivery terms — contain provisions for arbitration. Arbitration agreements are now widely accepted and recognised by most countries and regions around the world.

Courts may, however, refuse to process cases that involve arbitration agreements. Article 257 of the *Civil Procedure Law of the People's Republic of China* clearly stipulates that no person who is party to a dispute concerning foreign economic relations, trade, transportation and/or maritime matters shall put his/her case to the People's Court if the dispute involves a contract that contains an arbitration clause or if the parties concerned have already entered into a written agreement to the effect that the dispute be referred to a PRC foreign economic arbitration organisation or any other arbitration organisation. Nevertheless, Article 5 of the *Arbitration Law of the People's Republic of China* stipulates that, if the arbitration agreement is invalid, then either party can initiate litigation in the People's Court.

Hong Kong

In Hong Kong, disputes can also be resolved through arbitration. According to the *Arbitration Ordinance*, which came into effect on 1 June 2011, the *Model Law on International Commercial Arbitration*, enforced by the United Nations Commission on International Trade Law (UNCITAL), applies to all arbitrations made in Hong Kong. This reconciliation of differences between local and international arbitration systems has made things significantly easier for business operators.

In accordance with *the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention)* and the signing of the Mutual Enforcement of Arbitral Awards with mainland China, arbitral awards made in Hong Kong are automatically enforceable in over 140 jurisdictions. The *Mutual Enforcement of Arbitral Awards* endorsed by the Central Government of the PRC and Hong Kong in 1999 contains stipulations similar to those in the *New York Convention*.

Macao

In Macao, the World Trade Centre (WTC) Macao Arbitration Centre is responsible for handling foreign commercial arbitration matters and is governed by the internal regulations of the WTC Macao Arbitration Centre.

The validity of arbitral awards is governed by certain regulatory documents promulgated in Macao, including the *New York Convention* stipulated in March 2007. If business organisations choose to conduct arbitration in Macao, the arbitral awards will be automatically enforced in all countries and regions that are signatories to the *New York Convention*. In addition, with Macao's signing of the *Mutual Enforcement of Arbitral Awards* with mainland China in October 2007, application to the court for endorsement and enforcement of an award can be made either in mainland China or Macao.

Litigation

Aggrieved parties may file suit in a court which presides over the appropriate jurisdiction to resolve their disputes through judicial process.

The People's Republic of China

According to PRC law, the Intermediate People's Courts are the courts of first instance in handling cases involving overseas parties. Hence, legal proceedings in business disputes should be initiated at such courts.

If the case involves economic crimes, it should be reported to the appropriate authorities. If the case is a general criminal case, it should be reported to the local Public Security Bureau.

Hong Kong

Business operators in Hong Kong may file a lawsuit either to the High Court or District Court for monetary claims — depending on the amount of claims. The High Court has unlimited jurisdiction in civil matters while the District Court has civil jurisdiction to hear monetary claims over HKD50,000, but not more than HKD1 million.

Courts in Hong Kong have the responsibility to resolve disputes of parties who have the right to pursue or defend a legal action by themselves, or have the right to seek legal representation from lawyers or barristers to state the case, point of law and statement of facts for the court's judgment.

Macao


There is no designated court in Macao to deal with cases involving foreign interests. The courts of the Macao SAR are structured in three levels: the Court of First Instance, the Court of Second Instance and the Court of Final Appeal. The Primary Court with the support of the Court of First Instance is the preliminary hearing court with general jurisdictions. This means cases not yet classified under the law for court hearing are tried by the Primary Court. For civil cases involving commercial contract disputes, parties concerned should take legal proceedings to the Primary Court.

The Court of Second Instance is vested with exclusive jurisdiction on the assessment and endorsement of judgments made by courts or arbitration institutions which are outside of Macao. In respect of verdicts reached in courts or arbitration institutions which are outside of Macao, businesspersons can make a direct application to the Court of Second Instance for endorsement in Macao.

Part three

Putting theory into practice





To effectively avoid risks of corruption and bribery, businesspersons must thoroughly understand the laws and systems of each location where an investment is located and/or business is carried out. This must be coupled with careful analysis of the likely risks and causes of corruption and bribery during business operations and throughout relevant business management processes.

This awareness must also be accompanied by action. To enhance a company's competitive edge, businesspersons should proactively formulate comprehensive and ethical management systems, enhance the moral awareness of all employees and foster a 'zero tolerance' attitude towards corruption and bribery.

Case study

If corruption and bribery faced by enterprises are not properly handled, they can result in loss of reputation, loss of money, operational difficulties, and eventually lead to the complete collapse of a business. Most incidents of corruption and bribery do not suddenly emerge overnight, but rather are preceded by a number of tell-tale signs. Management, therefore, should stay alert at all times for even the smallest hint of malpractice.

The following case^{*} has been included as it illustrates the major areas of concern in integrity management and the techniques which managers should acquire in practice. Moreover, it details the common causes of corruption and bribery to help managers put integrity management into practice by introducing appropriate

preventive measures. All characters appearing in the following case study are fictitious and any resemblance to real persons, living or dead, is purely coincidental.

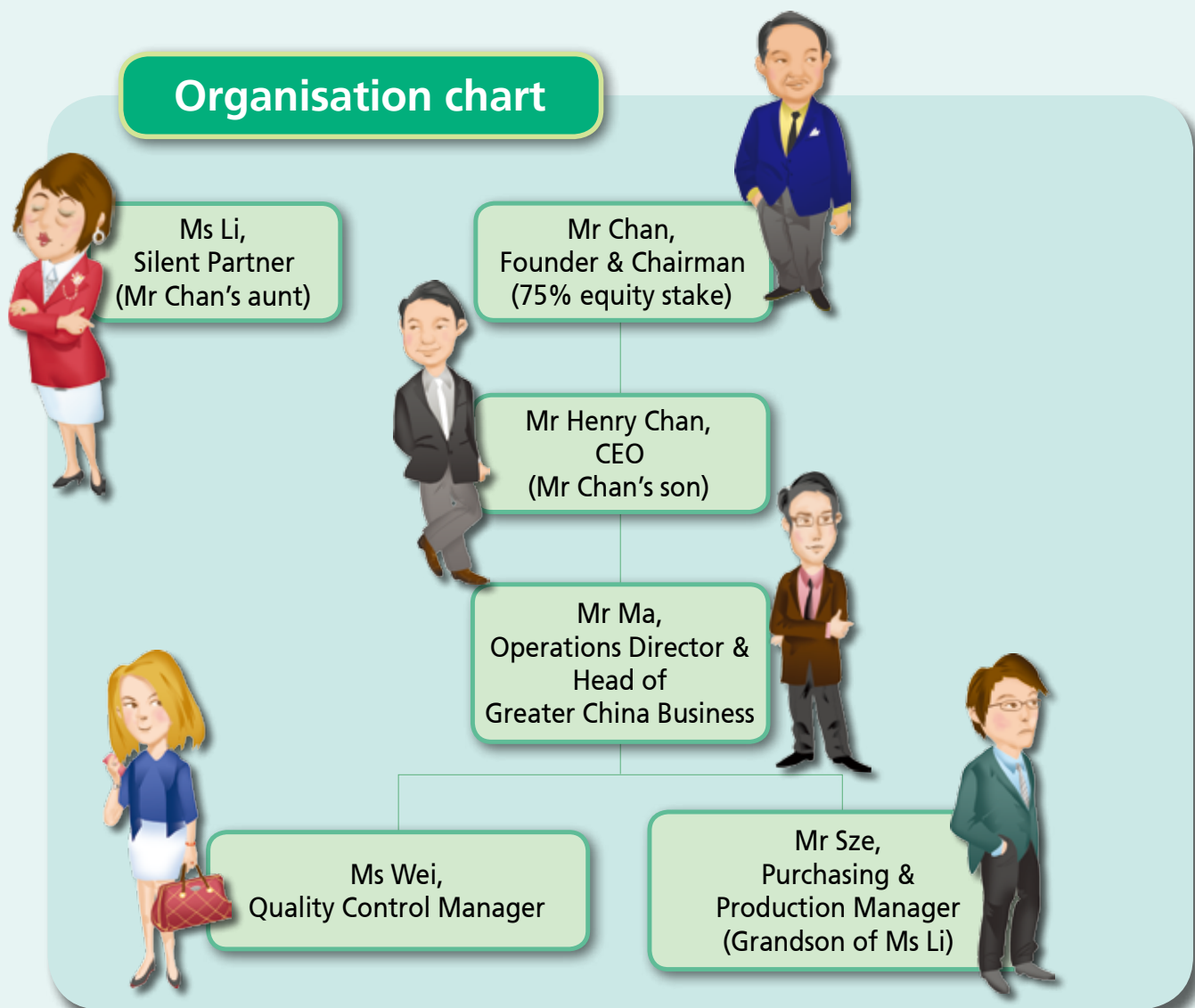


^{*} Case adapted from: *Kitchen Best: Ethics when Doing Cross-Boundary Business in Southern China*, Grace Loo, 2011 — prepared for the ICAC, Hong Kong by the Asia Case Research Centre, the University of Hong Kong.

Company background

Kitchen Best Appliance Company Limited (Kitchen Best) was a home electrical appliances company based in Hong Kong. The company, founded by Hong Kong businessman Mr Chan in the mid 1980s, specialised in the manufacturing and marketing of kitchen appliances such as rice cookers, pressure cookers and electric water dispensers. While the company had an office and showroom in Hong Kong, its factory was located in Foshan in Guangdong Province, China.

Kitchen Best grew rapidly and, apart from serving the Asian market, also started to serve other markets including Europe and the US through various trading companies and sourcing agents in Hong Kong. The headcount at the company expanded from 80 to 1,500, with approximately 30 staff working in management, logistics and administration in Hong Kong, and the rest based in the Foshan factory.



Management team

In the early days after Kitchen Best was established, Mr Chan personally oversaw all aspects of the business, and important decisions could not be made without his involvement and approval. He had close relationships with most of his senior staff and ran the business with a paternalistic style that was well-liked and respected by his workers. In recent years, except for managing relationships with certain key customers and suppliers, Mr Chan began to leave the day-to-day management of the company to his son Henry Chan.

Henry graduated with a Master's Degree in Business Administration from an American university. After taking up the role of Chief Executive, he brought a more western and less paternalistic management style to the company. To expand the company's reach in the European and American markets, he frequently travelled overseas to attend exhibitions and trade fairs and spent most of his time in Hong Kong liaising with customers. Henry would only visit the Foshan factory on Fridays and at weekends to meet with his senior management and suppliers. He relied heavily on the expertise of his senior management and their close connections with the clients and suppliers to manage daily operations of the mainland factory.

Mr Ma was from mainland China and had been with Kitchen Best more or less from the very beginning, and had worked his way up from a production line labourer to his current role — overseeing the entire factory operations. Mr Ma was Mr Chan's right-hand man and responsible for managing Kitchen Best's China and Macao accounts.

Kitchen appliances distributor — Shago

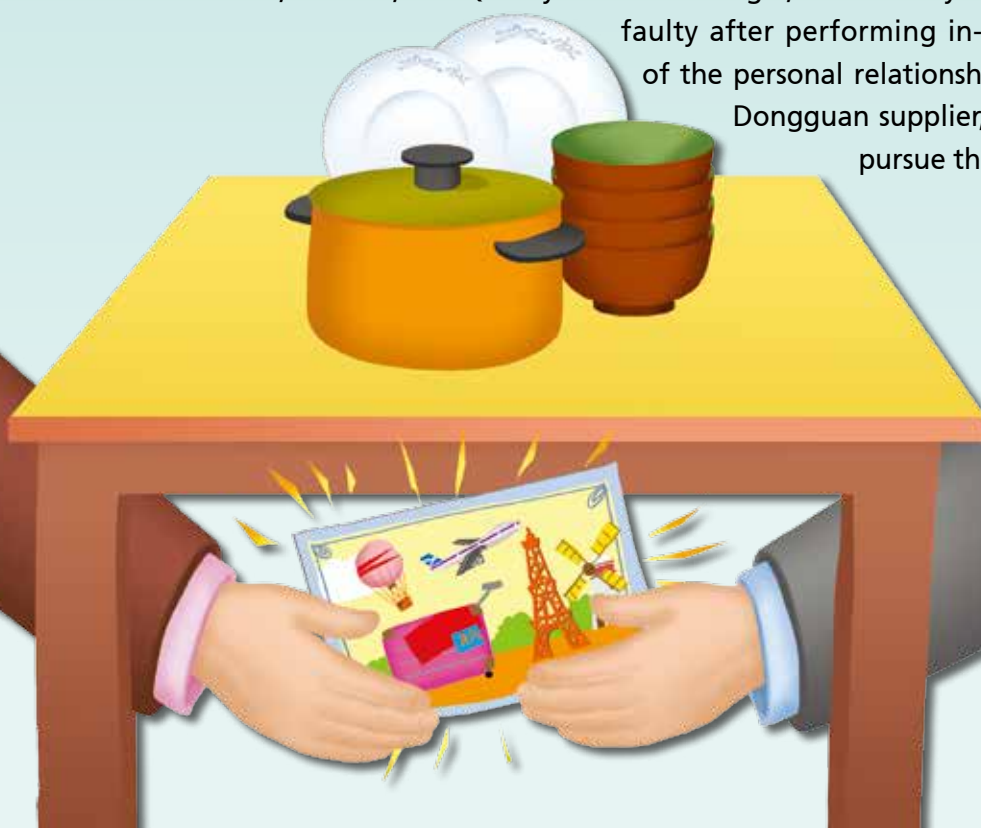
Shago, a major distributor of kitchen appliances in Singapore, Malaysia, Thailand and Indonesia had been working with Kitchen Best for over eight years. Last year, Shago placed production orders for a range of appliances for its 40th Anniversary collection with Kitchen Best. Some of these appliances came with a special gift set of microwavable tableware. Shago asked Kitchen Best to help source these gifts on its behalf.

After these appliances — with gift sets — had been distributed in the market, Shago soon received customer complaints that the bowls and plates in the gift sets were not microwavable. Shago immediately lodged a complaint and demanded both a refund and compensation from Kitchen Best.

Henry received the complaint and subsequent investigation revealed that Mr Sze, Kitchen Best's Purchasing and Production Manager, had been responsible for purchasing the gift sets. Mr Sze was the grandson of Ms Li, another shareholder in Kitchen Best, and had joined Kitchen Best upon her recommendation.

Henry had noticed that Mr Sze had been engaging in frequent wining and dining with company suppliers and, moreover, that — although Mr Sze was not a skillful gambler — he always purported to win when he gambled with them. Henry believed these were just casual private entertainment activities after work, and as such he saw no need to interfere.

It was found that Mr Sze had awarded the contract for supply of the gift sets to a factory in Dongguan owned by his brother-in-law and was offered a free package tour to Europe in return. In fact, Ms Wei, the Quality Control Manager, had already discovered the gift sets were faulty after performing in-house testing, but mindful of the personal relationship between Mr Sze and the Dongguan supplier, decided not to report it or pursue the matter any further.



Haus de Metro retail chain

Recently, Kitchen Best received an anonymous letter stating that a shipment for the German retail chain, Haus de Metro (HdM), did not meet the company's safety requirements, contrary to the satisfactory testing report received by Kitchen Best.

Kitchen Best had subcontracted HdM's order for electric water dispensers to Qinghua Electrical Appliance Limited (Qinghua) — another Foshan-based home appliances manufacturer — as its own production lines were fully occupied. At the end of production, Kitchen Best arranged for Keemark Testing Services (Keemark), an independent testing agency based in Hong Kong, to conduct product testing and inspection as required by HdM.

Keemark sent its inspection team, comprising a Hong Kong team leader and several members from the Guangdong sub-office, to conduct a site inspection at Qinghua's factory and collect random samples for laboratory testing. Qinghua had ordered paint of inferior quality for the production of the outer casing of the electric water dispenser in order to minimise production costs. Hence, Qinghua's proprietor was nervous that the samples might fail to meet the EU's Restriction on Hazardous Substances standards which limit the use of harmful substances in the manufacturing of electrical and electronic products. To pass the test, Qinghua's proprietor made a deal with the team leader of Keemark, who allowed Qinghua to interfere with the sample drawing and substitute the random samples with some selected ones for laboratory testing. In return, the proprietor deposited a financial bribe into the team leader's wife's bank account in Hong Kong.

Although Henry was fully aware of this matter, he remained silent to avoid rocking the boat.



Honghua Appliances

Honghua Appliances (Honghua) is a Macao-based group that owned a home appliances retail chain in southern China. Sales generated from Honghua comprised around 5% of Kitchen Best's revenues and they were considered a key customer because they had plans to expand their retail business to other parts of China and hence great future potential.

Through wining and dining, Mr Ma had, over time, built a close relationship with Mr Lau, a Macao citizen who served as Honghua's General Manager for Greater China. Through kickbacks paid into Mr Lau's personal account in Macao, Mr Ma had enticed Mr Lau to direct Honghua's Purchasing Manager to place orders of kitchen appliances with Kitchen Best.

Two months ago, an injection of foreign capital led to a change in Honghua's management. The new management found the practice of under-the-table money unacceptable and fired two managers for receiving kickbacks from suppliers. The company also decided to re-evaluate all its suppliers to ensure that they were competitive. Kitchen Best's co-operation with Honghua was at risk of becoming insecure, as it was not as competitive in delivery time or product development capacity as other suppliers.



Trouble brewing

All along, Kitchen Best had no clear guidelines or vetting procedures for expenses incurred from wining and dining or entertainment provided to suppliers and customers. In fact, Mr Ma regularly used kickbacks, entertainment and gift-giving to help facilitate opening and maintaining accounts. Expenses for such activities were reimbursed to Mr Ma through fake invoices booked as 'entertainment expenses'. Up to that stage, Mr Chan had turned a blind eye to such practices as long as Mr Ma was able to generate new business relationships and maintain them.

Although Henry had reservations about such practices and had never openly endorsed them, he did not actively try to stop them because he found it difficult to deal with mainland customers due to his own cultural barriers, and he viewed such practices as an inevitable part of conducting business in China. To make matters worse, while Henry was trying to salvage the Honghua account, he discovered that Mr Ma had not only been reimbursing such expenses but had also been inflating the amount for his own personal gain.



This year is a turning point for Henry and Kitchen Best, which will enable him to closely examine the company's operations and future development. What exactly should he do to put things back on track? How can he better monitor the business operations across the border? How can he better monitor the conduct of staff with vastly different backgrounds and cultural values?

Case analysis

Supervisory ineptitude — a breeding ground for unscrupulous corporate cultures

Many SME proprietors like to try and do everything hands on at start up. As their business grows, however, they find themselves unable to oversee all the different job functions and end up delegating a lot of work to their subordinates. This is an inevitable phase in the growth of a company — with management delegating power to trusted subordinates. This trust should, however, never be allowed to become 'unconditional' simply by virtue of current or previous 'good working/personal relationships'. If bribery or corrupt practices creep in as a result of lax supervision, it can rapidly eat into your company's hard-earned profits and severely damage its reputation.

In this case, Mr Chan had close relationships with most of his senior staff. After the factory operation stabilised, he left operations management to his son and his trusted mainland employees, only occasionally visiting when problems arose. This was a key mistake: Henry Chan relied too heavily on his senior management and would only visit the Foshan factory on Fridays and weekends to meet them. Since the company lacked effective controls and had no clear guidelines on the acceptance and offering of advantages, its employees could easily have had the false impression that the company took no stance on such matters and that they could handle them as best they saw fit. As a result, Mr Ma and Mr Sze saw many opportunities for corruption under this regime.

Recommendations

Every company or enterprise has its own specific internal operating procedures. When a company is set up, initially certain procedures may simply be based on personal preference or convenience. As the company keeps growing, these work procedures should be periodically reviewed and system controls should be introduced company-wide to each work process to help limit corruption and malpractice.

Since Mr Chan and Henry did not stay very long each week in the Foshan factory, it was important that checks and balances be incorporated into the daily operations for detection and prevention of improper and corrupt practices — especially in the areas of procurement, sales and marketing, and accounting.

Procurement

To prevent staff such as Mr Sze from selecting a supplier that was owned by a relative, or accepting advantages from suppliers for purchasing substandard goods, Henry should consider controlling the use of suppliers by drawing up a list of approved suppliers and contractors. Kitchen Best should also formulate a policy prohibiting employees from accepting any advantages from suppliers to avoid unfairness. Duties for negotiating a purchase, deciding on a purchase, and inspecting goods delivered should be segregated to help guard against malpractice.

Sales and marketing

Pressure from sales competition can easily lead to employees cutting corners to acquire new business and it may be tempting to build relationships and secure new orders through wining and dining and offering kickbacks as Mr Ma did. Kitchen Best should formulate clear guidelines on offering and accepting advantages and entertainment. Henry should regularly meet and receive feedback from key customers and establish a complaint channel in order to detect any irregularities at an early stage.

Accounting

Mr Ma was able to claim reimbursement of entertainment expenses from the company via inflated invoices, which was a reflection on the lax accounting control system at Kitchen Best. Instead, Kitchen Best should provide clear guidelines on employee expense reimbursement. These could include: setting a maximum limit for each reimbursement of staff at different levels, requesting prior approval for reimbursement of entertainment expenses, verification of receipts by the claimant's supervisor and settling of payments using a corporate credit card.

Tolerating bribery leads to eventual disaster

SME operators naturally wish their businesses to succeed and generate profit. If they, however, concentrate exclusively on performance and overlook the possibility that some employees may use illegal means to achieve their business objectives, or even turn a blind eye to observed corruption and bribery offences, they are courting with a business disaster.

All illegitimate acts in this case are listed below:

- 1. Mr Sze, the Purchasing and Production Manager, was offered a free package tour to Europe in return for his placing orders with his brother-in-law for the microwavable tableware gift sets ordered by the Malaysian distributor Shago. Mr Sze committed the offence of 'acceptance of bribes by non-State functionaries' under the Criminal Law of the People's Republic of China (see page48).*
- 2. Kitchen Best's contractor Qinghua bribed the team leader of a testing agency in Hong Kong via financial bribes deposited into the team leader's wife's Hong Kong bank account to ensure that their electric water dispensers with substandard paint could 'pass' safety tests. Both parties committed offences of 'offering a bribe' and 'accepting a bribe', respectively, under the Prevention of Bribery Ordinance of Hong Kong (see page13).*
- 3. Operations Director, Mr Ma, used falsified invoices for reimbursement of expenses for gift-giving and entertainment to customers, contrary to Section 9(3) of the Prevention of Bribery Ordinance (see page14).*
- 4. Mr Ma gave monetary advantages to Mr Lau, Honghua's General Manager for Greater China, by depositing bribes into Mr Lau's personal account in Macao to persuade Mr Lau to direct Honghua's Purchasing Manager to place orders for home appliances with Kitchen Best. Mr Ma's act contravened the law, Prevention and Suppression of Bribery in the Private Sector in Macao (see page65).*

Though Henry knew Mr Sze was the mastermind behind the microwavable tableware incident, he remained indifferent and chose not to act. In the Qinghua incident, Henry simply buried his head in the sand to steer clear of trouble. Mr Chan and Henry both turned a blind eye to Mr Ma's acts and took no action to try and prevent Mr Ma from doing so. Their silence finally meant that Kitchen Best ended up in very deep water.

Recommendations

If a company tolerates dishonest staff and allows them to continue with malpractices, this encourages a culture of favouritism and flattery. This spreads easily to other employees, who will also begin to flout laws and disregard regulations. Ultimately, staff morale dwindles and many loyal and truthful staff will leave the company in despair, eventually draining the company of its best talent.

In this case, Henry did not take decisive action against Qinghua's staff bribing the testing agency to get around testing requirements. This action not only misled his employees into thinking that the company tolerated such acts, but also arose suspicion that Kitchen Best had also been involved in such illegal dealings.

Henry should have immediately reported the acts of bribery to the appropriate law enforcement agency. He should also impose some types of penalty on Qinghua such as refraining from subcontracting to Qinghua for an appropriate time period.

Henry should be impartial and prompt in dealing with any corrupt practices, in order to convey a clear message of 'zero tolerance' of corruption to his employees and create a culture where staff like Ms Wei are encouraged to speak up about corrupt activities, or simply when things go wrong, such as the issue of the faulty tableware.

As long as employees at all levels abide by the law and value integrity, illegitimate acts and unethical behaviour will not emerge.

Turning a blind eye to conflicts of interest

Allowing an employee to award contracts to suppliers owned by himself/herself or owned by his/her relative, without declaring any conflict of interest, can lead to suspicion of favouritism and is unfair to other suppliers. Lack of competition, favouritism and allowing illegal dealings to occur also affects the quality of goods or services provided, and may jeopardise the interests of the company.

In this case, Mr Sze, the Purchasing and Production Manager, had awarded the order for microwavable tableware gift sets to a factory in Dongguan, owned by his brother-in-law, an apparent conflict of interest. Despite their quality issues, the gift sets were still sent out to customers. As a result, Kitchen Best was not only required to make a full refund, but also compensation.

Recommendations

Kitchen Best should provide adequate guidance to its employees on how to deal with conflicts of interest. The best solution is to prevent employees from getting involved in any situations where conflict of interest could arise, and protect them from potential temptations of corruption and bribery. Where a conflict of interest is unavoidable, if circumstances permit, the employee concerned should not take part in the decision-making process, instead, his/her duties should be delegated to another employee and/or the process should be closely supervised by an independent person.

Kitchen Best should issue clear guidelines to employees on how to handle conflicts of interest, and should also consider asking the suppliers who take part in tendering exercises to declare any relationships with any of the company's employees. This will serve as a cross-check on internal declarations, enable managers to gather more information, and help staff handle potential conflict of interest.



Management are accountable when they smell trouble

The moral standard of employees is often revealed in their attitudes towards work and their behaviours. Supervisors can spot the tell-tale signs easily by observing people carefully. Even when these behaviours do not actually contravene the law, supervisors may be courting with disaster if they fail to take preventive measures, do not warn employees with integrity problems, or appear interested in petty gains.

In this case, Henry allowed Mr Ma to use gifts, kickbacks and wining and dining to help consolidate client relationships. Mr Sze, the Purchasing and Production Manager, accepted frequent entertainment from suppliers and even enjoyed gambling with them, but Henry saw nothing wrong with this either. Although the lifestyle of a subordinate is his/her personal choice and entertainment is an acceptable form of business and social behaviour — excessively 'close' relationships, especially those involving money, are likely to result in an employee placing himself/herself in a position of obligation which may affect his/her objectivity in dealing with suppliers.

Recommendations

Managers cannot realistically be held accountable for every single mistake committed by their subordinates as a result of minor negligence or insufficient experience, but if they are unaware of, or tolerate, serious, frequent and/or common acts of misconduct, they are shirking their responsibilities.

Moreover, if they turn a blind eye to obvious signs of wrongdoing, their supervising abilities as managers will soon be brought into question. Managers should pay due attention to the everyday work of their subordinates. They should be alert for any warning signs of corruption and bribery by subordinates including:

- a) how they handle small favours offered by suppliers or customers;
- b) whether they are involved in unnecessary or excessively frequent social activities; and
- c) whether they have any monetary dealings with individual suppliers or customers.

The edge that SMEs possess lies in the flexibility of their operations. The conduct of a manager can exert a subtle influence on other employees — and management style, governance philosophies and ways of running the business all easily coalesce into a corporate culture.

As a leader of the company, Henry should serve as a role model and demonstrate his determination to cultivate an ethical corporate culture — adopting a 'zero tolerance' attitude towards malpractice.

In conclusion, Henry should take decisive measures to immediately stop malpractice by employees and report them to the appropriate law enforcement agencies.

Then, he must adopt a new integrity-based management style with well established systems and procedures, as well as strengthening corporate governance. He should also formulate an effective code of conduct for staff as building a corporate culture of integrity is essential to the future success of any company.

The above case highlights the risks of corruption and bribery caused by mismanagement from different perspectives. The owners of SMEs must adopt integrity management measures by taking immediate and resolute action against corrupt practices. In this way, SMEs can protect the company's interests and reputation in addition to enhancing their competitive advantage.

Integrity-based management systems

Integrity-based management systems come in all shapes and sizes and, by consolidating examples from successful enterprises with the ICAC's expertise in this field, there are four key principles common to all systems:

- 1. Formulating a code of conduct**
- 2. Implementing system controls**
- 3. Managing staff integrity**
- 4. Cultivating an ethical culture**

1. Formulating a code of conduct

By formulating a code of conduct, a company can establish a uniform standard of conduct and ethics for its staff. An effective code not only reduces the incidence of corruption, fraud and conflict of interest, but also enhances the trust and confidence of customers, suppliers, contractors and all parties who have business dealings with the enterprise. In formulating and implementing such a code, businesspersons should ensure it contains the following three critical components:

- Clear standpoint
- Comprehensive coverage
- Effective enforcement

Clear standpoint

SMEs with cross-boundary business operations in Guangdong, Hong Kong and Macao should educate their partners and staff at all levels in the organisation on the importance of strict adherence to the law. They should regularly issue clear instructions reminding all partners and staff that contracts and methods of cooperation with third parties should be worked out in exact accordance with the local laws when conducting business in mainland China, Hong Kong and/or Macao. They should also be warned against using bribery as a means of securing business, or accepting illegal advantages for personal gain. In addition, codes of conduct for businesses in Guangdong, Macao and Hong Kong should be in line with the company's overall business practices and management philosophy, while taking into account local rules and policies.

Comprehensive coverage

When drawing up a code of conduct, businesspersons should follow the legal requirements of the jurisdiction in question, as well as the company's own business practices.

The code should cover the following key topics:

- policy on accepting and offering advantages in relation to company business;
- guidelines for handling conflict of interest;
- restrictions on leaking corporate information;
- guidelines on staff acceptance, and offering, of entertainment;
- guidelines on outside employment;
- company stance on staff engaging in high-risk activities such as gambling and borrowing money;
- disciplinary action against parties who violate the code;
- channels for reporting misconduct and relevant handling procedures; and
- handling of staff who are offered, or solicit, bribes.

Some companies issue the code in the form of a separate handbook, while others incorporate it into their staff manual or letter of appointment. Some companies prefer to issue it as a declaration or notice.

For further information about formulating a code of conduct, please refer to:

- Appendix 11: sample code of conduct
- Appendix 12: sample declaration of company code of conduct
- Appendix 13: typical clauses related to code of conduct, for incorporation into existing employment contracts

The code of conduct should also cover the responsibilities and standards of behaviour expected of company directors. For instance, directors should act in accordance with their ethical roles and protect the company's reputation. They should declare any conflict of interest to the Board of Directors and demonstrate integrity management through their own leadership style and by top-down role modelling.

To make sure that the code of conduct can be effectively enforced, SMEs should regularly review and revise the code in order to meet the organisation's changing needs and circumstances.

Effective enforcement

For a code of conduct to become effective, a crucial point is that the company must consistently enforce it and remain scrupulously fair in the way it hands out awards and administers penalties.

In whatever form a company chooses to announce its code of conduct, managers should make sure that all employees, whether working locally or overseas, understand the provisions and spirit of the code. Besides, managers should be vigilant against subordinates' non-compliance with company policies or guidelines on the pretext of 'customary practices' or 'cultural differences' for the purpose of securing personal gain.

In relation to festive seasons, companies should issue notices well in advance to remind staff of the company's policy on accepting advantages and only through the exemplary roles played by the top management can the code be effectively enforced. In addition, companies should communicate this policy clearly to their partners, suppliers, contractors and other stakeholders in order to enhance transparency and reduce malpractice due to misunderstanding. Such practice will not only demonstrate that the companies attach great importance to integrity governance and business reputation, but also eliminate the possibility of employees looking for personal gain.

Please refer to Appendix 14 for a sample letter to suppliers and companies having business dealings.

2. Strengthening system controls

Running a business in Guangdong, Hong Kong and Macao inevitably involves managing operations from a distance. To curb corruption and ensure effective operation of their management systems, SMEs should take proactive action by implementing effective system controls with checks and balances — particularly in corruption-prone areas such as purchasing, sales and marketing, administration and accounting.

To be effective, system controls require the establishment of internal operational procedures, delineation of clear responsibilities and appropriate supervision. This enables employees to follow the same work procedures and discharge their duties in a uniform manner no matter where they work.

When SMEs are first set up, their work procedures may be relatively simple. With the development of the company, they will need to be systematised to reduce corruption and malpractice in the course of cross-boundary business activities.

To effectively implement system controls, businesses should ensure they:

- A. Define job responsibilities
- B. Maintain proper records
- C. Protect sensitive information
- D. Establish work procedures
- E. Set up a monitoring system
- F. Provide channels for complaints
- G. Conduct periodic reviews

Seven-point plan for implementing system controls

A. Define job responsibilities

Clearly define and let staff know their roles, authorities, responsibilities and obligations.

B. Maintain proper records

Maintain proper and accurate records to facilitate random checks. This is particularly important when managers have to commute between the three places — allowing them to stay in touch with operations in each location and quickly determine relevant staff responsibilities, should problems arise.

C. Protect sensitive information

Keep confidential documents, including client information, in secure custody. This prevents staff from stealing such information for personal gain. Confidential data stored in computers should also be rigorously protected.

Require employees to sign a confidentiality undertaking and let them have a full understanding of the company's stance and their legal liability for leaking confidential information.

D. Establish work procedures

Clearly state the work procedures that staff should follow when discharging their duties.

E. Set up a monitoring system

Incorporate checks and balances into the system of control to ensure that company regulations and procedures are properly followed. Examples include countersigning, random checks, internal audits and vetting by an independent third party.

F. Provide channels for complaints

Set up channels for complaints for staff, customers, suppliers and others. This not only benefits internal and external customers, but also helps management in the early detection of procedural loopholes or malpractices.

G. Conduct periodic reviews

Review and improve system controls periodically to minimise corruption loopholes.

For system controls and checks and balances in respective functional areas, please refer to the section entitled 'Preventing corruption: practical tips' later in this chapter.

3.

Managing staff integrity

Corruption and malpractice cannot be prevented if employees lack the required qualities and skills. Managing staff integrity is not only the duty of the training or compliance department, but very much the responsibility of all members of the management. Hence, managers should actively keep a close watch on the performance and conduct of their subordinates and provide suitable guidance in order to nip any problems in the bud.

Detection — early warning signs

Be alert to warning signs like unexplained alterations in documents, documents missing or out of sequence, and employees being chased by loan sharks. These may all well be early tell-tale signs of corruption and malpractice.

Handling conflict of interest

By helping staff handle conflict of interest in an appropriate manner, it is possible to reduce opportunities for corruption and malpractice. A conflict of interest arises when the private interests of a staff member compete or conflict with the interests of his/her official duties. Private interests include the interests of the staff member themselves and those of their family members, relatives, friends, clubs and societies to which they belong, as well as people to whom they owe a favour or are obligated to in any way.

Common situations where conflict of interest arise include:

- approving tenders or quotations submitted by relatives or close friends;
- purchasing services or products from companies owned by relatives or friends;
- developing private business relationships or having private financial dealings with clients of the company;
- engaging in outside work or investment which is in conflict with the interests of the company;
- accepting frequent or lavish entertainment from contractors; and
- hiring relatives as company employees.

The basic rule in handling conflict of interest is to avoid these situations as far as possible; or at least make a declaration to steer clear of suspicion where a conflict of interest is unavoidable. The declaration mechanism should apply to all grades of staff, including directors, managers and frontline staff.

If anyone is unsure whether a particular situation involves a conflict of interest, the prudent course of action is to follow the 'report when in doubt' principle. By making a declaration, staff concerned cannot only avoid suspicion, but also allow management to better understand the circumstances around the conflict and determine the most appropriate course of action. Examples are disallowing the staff member concerned from engaging in work which may give rise to a conflict of interest, or transfer him/her to an alternative post.

Appraisal of staff integrity

To enhance ethical standards of their staff, managers should include ethics in the criteria for staff recruitment, appraisal and promotion. When holding recruitment exercises and appraising staff members, companies should consider setting up staff administration procedures covering recruitment, training, monitoring and counselling, performance appraisal and disciplinary rules. Qualities such as 'loyalty' and 'honesty' should be incorporated into the required core competencies. Managers may refer to a checklist of core competencies for assessing staff performance in Appendix 15.

In addition, scenario type questions about integrity should be incorporated in staff interviews to test the ethical leanings of the candidates. The ethics aptitude test in Appendix 16 contains examples of such questions. These should, however, be used for general reference only — where a company requires an in-depth assessment — it should employ professional services if resources permit.

4. Cultivating an ethical culture

In the long-term, companies should cultivate an integrity-based ethical corporate culture and lead staff members into adopting ethical practices in their day-to-day duties so as to reduce the risks of corruption and bribery. To establish an ethical corporate culture, management should heed the following four points:

- A. Act as a role model
- B. Convey 'zero tolerance' messages
- C. Handle complaints promptly and protect complainants
- D. Provide ethics training

A. Act as a role model

It is the duty of a manager to provide clear directives to his/her subordinates on company policy by acting as a role model. This is all the more true for SMEs, where the management typically enjoys a very close relationship with staff. The conduct and behaviour of senior management has a much greater impact on staff than rules and regulations.

B. Convey 'zero tolerance' messages

All managers should exercise vigilant monitoring and control of corrupt practices. Any suspected, or identified, corruption or malpractice should be dealt with quickly and impartially — since any hesitation could be construed as tacit acceptance or even tolerance of such acts. One of the management's consistent messages should be 'zero tolerance'.

C. Handle complaints promptly and protect complainants

When handling internal complaints, managers should encourage staff at all levels, and business partners, to report anything they know pertaining to suspected, or identified, corruption or malpractice. A mechanism should also be set up to protect such complainants.

Companies must stress to staff that:

- all complaints are treated in strict confidence;
- complaints will be referred to relevant law enforcement agencies if they involve criminal elements;
- complaints are treated impartially and without prejudice; and
- reposting arrangements for complainants will be considered, if necessary.

Please refer to Chapter 10 for contact information of the Guangdong Provincial People's Procuratorate, the Independent Commission Against Corruption of Hong Kong and the Commission Against Corruption of Macao.

D. Provide ethics training

In order to successfully nurture an ethical corporate culture, a company needs the support of both its people and the management system itself. Training can improve employees' understanding of statutory provisions and integrity rules and, through open discussions with staff, management can better understand their concerns and render assistance where necessary.



Preventing corruption: practical tips

To effectively handle the challenges of remotely managing cross-boundary businesses and related staff from a distance, management should establish appropriate supervision and system controls particularly in corruption-prone areas to prevent malpractice from the outset.

This has been confirmed by research conducted by the ICAC into the prevention of corruption and bribery and has proven a highly-successful strategy in many businesses with cross-boundary operations.

Purchasing

The scope of duties in purchasing goods and services is extremely diverse in typical business transactions. It includes the selection of suppliers and contractors, inviting tenders, negotiation with intermediaries, making payments and receiving goods. The following table details key Dos and Don'ts that should be considered when establishing a procurement procedure.

Dos	Don'ts
Procurement principles and policy	
<ul style="list-style-type: none"> Specify procurement methods and the minimum number of quotations required for goods/services of different values and nature (e.g. quotation or tendering) with corresponding levels of approving authority. As far as practicable, segregate duties for negotiating a purchase, deciding on purchase and inspecting goods delivered. Issue letters to suppliers informing them of the company's policy and stance on the acceptance of advantages by staff. 	<ul style="list-style-type: none"> Fail to lay down procurement policies or guidelines, which allows staff to freely choose procurement methods and suppliers in order to obtain quotations.

Dos	Don'ts
Selection of suppliers/contractors	
<ul style="list-style-type: none">• Maintain a list of approved suppliers for frequently purchased goods/services and lay down the criteria for inclusion of suppliers in the list. Regularly review the list to ensure that there are only qualified suppliers on it.• Ensure that suppliers on the approved list are invited for bidding according to the fair share principle, and justifications must be provided for any deviations from this principle.• Evaluate the performance of suppliers by collecting feedback from users at regular intervals and take it into account in future procurement exercises.• Check business and company registration records for details of suppliers to ensure that they are not owned or operated by staff or their family members.	<ul style="list-style-type: none">• Allow individual directors or staff members to:<ul style="list-style-type: none">— appoint a supplier operated by themselves, their close relatives or friends without first declaring 'an interest' to the company.— set up a 'shell company' to purchase goods from other suppliers at a lower price and resell them to their employer at a higher price to pocket the price difference.— route through an 'intermediary company' to recommend goods or services and solicit a rebate from the acquainted 'intermediary company'.
Quotation/tendering procedures	
<ul style="list-style-type: none">• Require written quotations, where practicable, and clearly document any verbal quotations.• Include the specifications of the required goods/services in invitation for quotations or tenders and clearly state the closing date of quotations/tenders.• Take security measures to prevent access to, disclosure of, or tampering with quotation/tender information before their closing date.	<ul style="list-style-type: none">• Fail to draw up clear specifications of the required goods/services.• Place quotations/tenders submitted by the suppliers anywhere indiscriminately before bid opening.

Dos	Don'ts
Inspection and acceptance of goods	
<ul style="list-style-type: none">• Require the inspection officer to sign and certify the quality and quantity of goods received and verify these against the order.• Where resources allow, deploy staff from the procurement department and the user department to jointly inspect goods.	<ul style="list-style-type: none">• Allow staff to sign for the acceptance of goods/services which do not conform to the specifications or quantities stated in the order before they have checked the goods/services.• Appoint procurement officers to receive and/or inspect goods without a witness present.• Fail to keep proper receiving records, which would then make investigation difficult in case of any mistakes or wrongdoing.
Verification and auditing	
<ul style="list-style-type: none">• Conduct random checks on quotations from suppliers including those of unsuccessful suppliers; contact those suppliers which do not submit a quotation to understand the reasons and put them on record.• Check invoices and receipts kept by purchasing and accounting departments; investigate the causes of irregularities and put them on record.• Keep performance records to facilitate checks as to whether they consistently meet company standards.• Investigate complaints from suppliers and document the results of any such investigations.	<ul style="list-style-type: none">• Fail to keep records of quotations for audit purposes. For instance, keeping no, or incomplete, records on who handles each quotation — since this makes follow-up difficult in case problems arise at a later date.• Fail to have a system to evaluate and record the performance of suppliers. For instance, whether they frequently deliver late or provide substandard goods etc.

Sales and marketing

The pressure generated by keen sales competition can lead to many different kinds of staff malpractice. For example, in the course of negotiating business and handling orders, staff may favour clients they are better acquainted with. Some staff members may even offer advantages to help secure contracts and orders while others may accept advantages to provide additional discounts or abuse the reward system.

Dos	Don'ts
Sales discounts	
<ul style="list-style-type: none">• Lay down a discount policy that includes the discounts to be enjoyed by different customers and the range of discounts that may be offered by salespersons of different levels.• Inform customers of the discount plan and the discount period concerned when launching promotional offers.• Keep sales records and randomly check buyers who have benefited from discounts and commission schemes.	<ul style="list-style-type: none">• Allow sales staff to set discounts for individual customers on their own.• Fail to publicise details of the discount plan or allow misappropriation of customer discounts by the staff offering them.• Allow staff to create sales receipts without records of the staff handling that account.• Allow staff to keep unclear, ambiguous or incomplete records.
Commissions and bonuses	
<ul style="list-style-type: none">• Formulate a policy on commissions and rebates and make it known to all sales staff, distribution agents and customers.• For an agent sourcing or purchasing items on behalf of a customer, offer sales commission to the former only after ascertaining that this is permitted by the customer.• Regularly analyse the performance of individual sales staff and the credit standing of their customers.• Conduct random checks on sales records to prevent abuse of the system of discounts and commissions.	<ul style="list-style-type: none">• Adopt an incentive programme that easily leads, or even induces, staff to commit malpractice.• Allow staff members, without permission of the management, to offer extra discounts, rebates or credits to customers to facilitate sales transactions.

Dos	Don'ts
Allocation/sale of goods in high-demand	
<ul style="list-style-type: none"> • Draw up clear and fair guidelines on the allocation of 'high-demand' and/or 'low supply' goods. • Constantly review the performance of distribution agents to ensure fair allocation. • Monitor the allocation/sale of such goods to ensure that it is done so in line with the company allocation/sale policy. 	<ul style="list-style-type: none"> • Allow staff to decide on the allocation/sale of the goods — as they may favour certain distribution agents/customers. • Allow lax supervision on goods allocation, facilitating staff keeping goods privately and reselling them for a profit.

Personnel administration

In daily administrative matters pertaining to the recruitment, promotion and staff welfare, companies should formulate criteria and procedures, as well as enhance transparency and communication channels. This will help prevent misunderstandings and discourage 'partiality' that may adversely affect staff morale and even lead to fraud and/or the provision of false information.

Dos	Don'ts
Staff recruitment, promotions and postings	
<ul style="list-style-type: none"> • Clearly set out the selection criteria for recruitment and promotion. • Lay down a policy on postings and make it known to all staff. • Conduct staff performance appraisals at regular intervals and use standard performance appraisal forms. • Place on record any acts of non-compliance of individual staff. • Open up communication channels with staff so as to help identify any irregularities in the company's operation. • Conduct exit interviews with staff leaving the company to collect and record their views. 	<ul style="list-style-type: none"> • Apply different criteria to different people, or change frequently the rules for recruitment and/or promotion. • Allow nepotism or favouritism.

Dos	Don'ts
Staff welfare	
<ul style="list-style-type: none">• Set a clear pay range and benefit package for each rank or post.• Send overtime records, certified by department heads, to the accounting department for calculation of wages, and forward them to the personnel department afterwards for compilation of statistics and supervision.• Lay down the criteria and mechanism for salary adjustments and for determining any non-standard payments such as bonuses or sales commissions.	<ul style="list-style-type: none">• Operate without clearly defined standards for staff compensation and benefits and just let line managers/supervisors decide these figures arbitrarily.• Fail to have prescribed criteria for the release of bonuses and commissions.• Fail to verify operational needs or allow staff to work unreasonable overtime hours.
Staff conduct	
<ul style="list-style-type: none">• Formulate a code of conduct for staff and a clear policy on acceptance of advantages.• Lay down disciplinary actions in respect of misconduct or irregular acts, and make the policy known to all staff.• Arrange ethics training for staff.	<ul style="list-style-type: none">• Fail to have a code of conduct or fail to communicate the code to all staff.

Inventory and stock control

Companies with cross-boundary business usually have a high demand for transportation and storage services. If their inventory is not well managed or controlled, goods may be easily misplaced or stolen — resulting in a financial loss to the company.

Dos	Don'ts
Inventory and stock control	
<ul style="list-style-type: none">• Draw up an inventory control policy to maintain stock at reasonable levels to avoid any gross imbalance between demand and supply.• Use a computer system to effectively keep inventory records including: quantity of incoming and outgoing stock, wastage or loss, and responsible persons.• Establish an authorisation system for the collection of goods.• Prohibit staff who have access rights to stock from amending inventory records.• Release stocks on a first-in-first-out basis to avoid unnecessary expiry of goods.• Install monitoring devices to restrict access to warehouses.	<ul style="list-style-type: none">• Neglect to formulate inventory replenishment procedures and set authorised limits for new purchases and/or re-purchases, since this can lead to excessive or unnecessary purchases.• Allow staff to keep confusing inventory records. For example, incomplete delivery orders, records that are not up-to-date or records can be altered by any member of staff.• Allow lax controls over receipt or release of goods. For example, having no control over who can access the warehouse.• Fail to clearly segregate staff duties and responsibilities. For example, allow inflow and outflow of goods to be controlled by the same person who amends the inventory records.• Fail to indicate the expiry date or deadline for write-offs, since this may easily cause errors and induce corruption.

	Dos	Don'ts	
Writing off stock			
<ul style="list-style-type: none"> • Lay down systems, procedures and handling methods for writing off stock, and the approving authorities. • Prior to approval, require that supervisors, or assigned independent staff, conduct random checks on any items recommended for disposal. • Keep proper write-off records. 	<ul style="list-style-type: none"> • Allow staff to write off stock without going through proper approval procedures and random checks. • Allow staff to keep incomplete write-off records. 	Monitoring and inspection	
<ul style="list-style-type: none"> • Assign an independent team of staff to conduct periodic stocktaking exercises and random checks to ensure that the physical inventory of goods tallies with book records. • Follow up and trace any irregularities. • Ensure that, before any change of personnel, the staff member concerned checks the inventory and signs to confirm the information is accurate before the official transfer. Also keep the relevant documents on file. 	<ul style="list-style-type: none"> • Rely on the warehouse records prepared by warehouse staff and fail to set up an independent inspection system to verify inventory information. • Allow staff to frequently write off missing stock without a detailed follow up of such discrepancies in inventory records. 		

Finance/accounting

To minimise loopholes that permit abuse of expenditure, theft of company funds and/or concealment of bad debts; companies should put in place monitoring systems, clearly segregate staff duties and have frequent checks and balances when handling accounts. Different personnel should be assigned to a) make payments and b) write off bad debts.

Dos	Don'ts
Making payments and collecting debts	
<ul style="list-style-type: none">• Set clear procedures for making payments and collecting debts :<ul style="list-style-type: none">— use serial numbers on all requisition forms, purchase orders, invoices and receipts in order to provide a cross-reference.— require 'paid' stamps and signatures on all invoices and relevant documents immediately after payment is made in order to prevent staff from making double payments deliberately and allowing certain suppliers to obtain interest-free operating funds.	<ul style="list-style-type: none">• Give signed blank cheques to staff for convenience sake.• Allow staff to pay in cash or collect payments through an unknown third party.• Fail to keep receipts and invoices properly<ul style="list-style-type: none">— as this makes investigation extremely difficult when problems arise.
Granting credit facilities and writing off bad debts	
<ul style="list-style-type: none">• Set clear credit policies, including ceiling amounts and eligibility requirements for customers. Any requests that deviate from prescribed policies should only be handled by senior management.• Set clear criteria and procedures for issuing reminders on debts.• Before writing off bad debts, adopt other practicable measures to pursue debtors and submit them to senior management for endorsement.	<ul style="list-style-type: none">• Fail to set a standard policy.• Omit monitoring measures.

Dos**Don'ts****Processing claims for reimbursement**

- Set up a petty cash account for routine small purchases and miscellaneous expenses :
 - require claimants submit claim forms approved by their superiors before granting reimbursement.
 - set an upper limit for each petty cash request with different authorisation levels for different grades of staff.
 - obtain prior approval for any petty cash requests that exceed prescribed limits.
 - use company credit cards to purchase miscellaneous items in order to minimise the opportunities for using fake invoices or falsely reporting expenditures.
- Enhance control and audit of 'high-risk' expenses such as entertainment expenses.
- Fail to submit relevant invoices or receipts or without endorsement by supervisors or management when making claims for reimbursement.
- Allow staff to use their personal bank accounts to deal with any company transactions.

Management of information systems

Inappropriate handling or leakage of company and/or client information will tarnish the company's reputation and may also lead to unrecoverable losses. This is especially true in a world where information technology is now so advanced that modern-day information flows are not only instant, but also extremely far reaching. Once information has been leaked, it is almost impossible to get it back, so preventive measures must be put in place to help minimise this risk.


Dos		Don'ts	
Environmental controls			
<ul style="list-style-type: none">• Install secure computer systems and place documents containing sensitive information in data storage areas with appropriate security measures.• Control and monitor physical access to areas housing computer equipment.		<ul style="list-style-type: none">• Leave documents containing sensitive information and/or storage media in indiscriminate locations.• Allow staff to leave their computers on whilst unattended.	
Technical controls			
<ul style="list-style-type: none">• Use unique login IDs and associated passwords to verify the identity of each valid user and keep a traceable record of usage of the system.• Establish a comprehensive password system including password setting, transmission and adopt appropriate maintenance methods to avoid them being deciphered.• Define clearly access rights to information and use of computer systems for different levels of staff on the basis of a 'need to know' principle.• Install firewalls to automatically detect viruses or attacks from other networks, the Internet or unauthorised users.• Regularly monitor applications installed in the system and ensure that approval has been obtained from the company for the installation of all software present.• Restrict downloading and/or printing of sensitive information such as customer data.		<ul style="list-style-type: none">• Allow staff to:<ul style="list-style-type: none">— share login IDs to get into a computer system.— use easily decipherable passwords for log-in.— store sensitive information without using encryption techniques.— freely download and/or print sensitive information such as customer data.— install illegal software, or download shared or free software from an unknown source on the Internet.	

Dos	Don'ts
Administrative management	
<ul style="list-style-type: none">• Develop security policies, measures and regulations on using computer facilities and storage media, releasing information, and destruction of documents containing sensitive information.• Offer training to help staff understand the importance of information security and master security techniques.• Issue notices regularly to remind staff of the importance of security and reiterate related procedures.• Remind staff that theft or misuse of computer information may constitute a criminal offence.• Where resources allow, engage an independent professional to regularly review the security measures of the computing system.	<ul style="list-style-type: none">• Fail to implement security measures to control the use of computers, and/or the release and storage of data.• Allow staff to record their personal passwords anywhere readily accessible or write it down in an obvious location.• Allow staff to ignore security awareness — as this may make security measures in place serve no real purpose.

Part four

Ethics in action





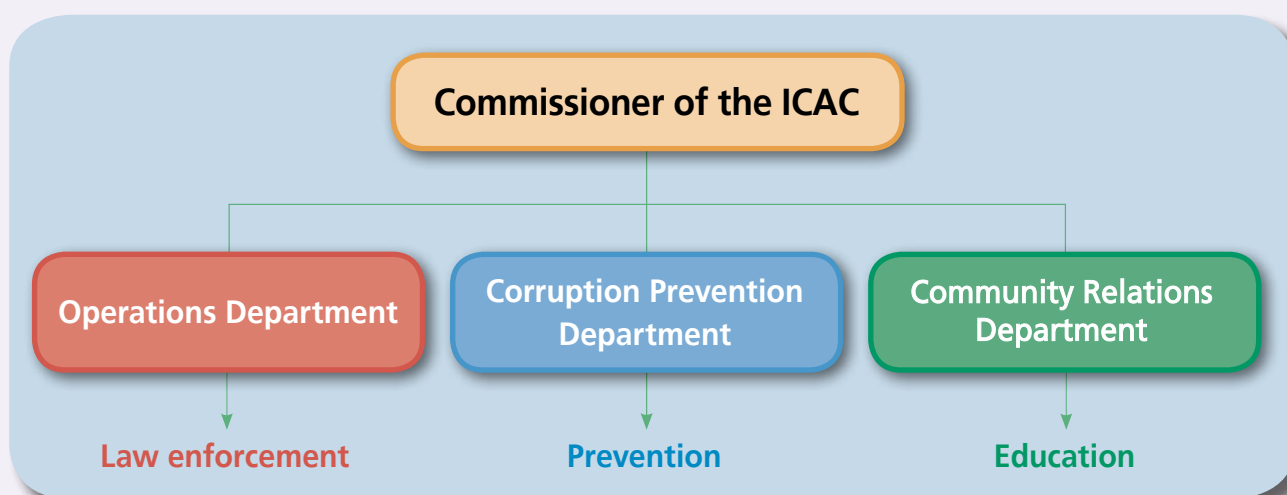
When faced with incidents of corruption and bribery, SMEs should act decisively and immediately report them to the relevant local authorities. Turning a blind eye towards such illegal acts only encourages what is an already unhealthy trend. The Guangdong Provincial People's Procuratorate, Independent Commission Against Corruption of Hong Kong and Commission Against Corruption of Macao have convenient channels for reporting corruption and bribery, and also provide educational materials and assistance to help businesses implement effective anti-corruption measures. Apart from the public sector, trade associations and supporting service providers in all three locations also render assistance to cross-boundary SMEs in different business areas.

Anti-corruption and anti-bribery work in Guangdong, Hong Kong and Macao

Hong Kong: the 'three-pronged approach' in the fight against corruption

The Independent Commission Against Corruption (ICAC) was set up in Hong Kong in 1974 to fight against corruption. Pursuant to Article 57 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, it functions independently and is accountable to the Chief Executive of Hong Kong.

The ICAC's three-pronged approach is to fight against corruption through effective law enforcement, education and prevention in order to keep Hong Kong fair and just.



Law enforcement

The ICAC is responsible for receiving, considering and investigating complaints of alleged corruption. In recent years, most of the complaints handled by the ICAC came from members of the public. The public can lodge complaints via telephone hotline, mail or in person at ICAC's 24-hour Report Centre or any ICAC Regional Offices.

The primary aim of the ICAC was originally to fight against corruption in government departments. In recent years, however, there has been an upsurge in corruption reports involving the private sector — representing more than half of the total annual corruption complaints received. These cases are varied in nature, covering a wide scope of work, and the methods used by criminals have become more sophisticated. The

ICAC Operations Department has therefore set up different task forces to deal with these different situations. Investigators may even travel abroad to collect evidence, if necessary. Any allegation of commercial bribery, if fully substantiated after investigation by the Operations Department, will be forwarded to the Secretary for Justice to decide on whether to prosecute or not.

For information on reporting corruption and making enquiries to the ICAC, please refer to Chapter 10.

Prevention

The ICAC examines the systems and procedures of government departments and public bodies in order to identify possible corruption loopholes and advise on ways to minimise opportunities for corruption.

Established in 1985, the Advisory Services Group (ASG) of the ICAC's Corruption Prevention Department has provided free and confidential advisory services to business organisations in different functional areas such as purchasing, sales and marketing, inventory and stock control, accounting and personnel administration. A brief introduction of the ASG and its contact details are provided in Chapter 10. A list of best practice modules, produced by the ASG, is also provided in Appendix 17.

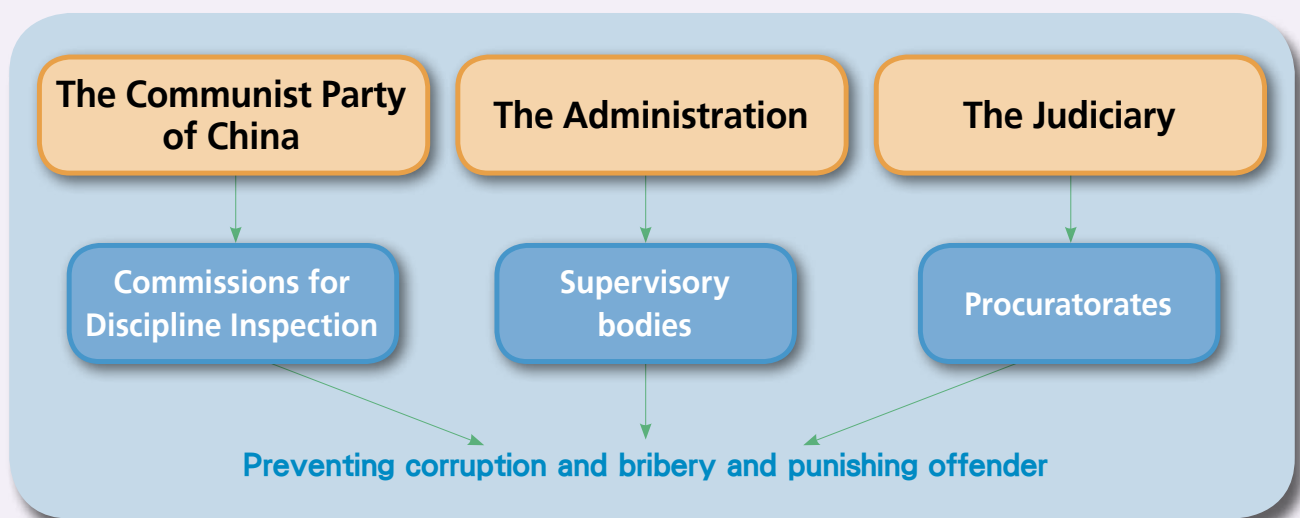
Education

Fully aware that prevention is better than cure, the Community Relations Department (CRD) of the ICAC educates the public against the dire consequences of corruption and enlists public support in combating corruption.

Commercial organisations have long been the major targets of ICAC's educational initiatives in corruption prevention. Since the number of corruption reports involving the business sector has remained high in recent years, the CRD therefore makes proactive efforts in maintaining close contacts with the business sector. The Department makes great efforts to explain anti-corruption legislations as well as the evils of corruption, and urges businesspersons to deal with corruption seriously. Apart from offering the necessary assistance in drawing up codes of conduct for staff and formulating corruption prevention measures, the CRD also provides staff training for businesses on anti-corruption laws and company codes of conduct — highlighting the importance of legal compliance when working in Hong Kong, Macao or mainland China. Businesspersons may also contact the Hong Kong Ethics Development Centre (HKEDC) which operates under the auspices of the CRD for provision of related services. An introduction to the services offered by the HKEDC is provided in Chapter 10.

People's Republic of China : joint efforts by the Communist Party, Administration and Judiciary to prevent corruption and bribery and punish offenders

In mainland China, the three organisations responsible for preventing corruption and bribery and punishing offenders are as follows:



Commissions for Discipline Inspection

The Commissions for Discipline Inspection, under the supervision of the Communist Party of China, are responsible for enforcing Party discipline. Similar commissions are also set up within the Party at the committee and organisation levels throughout mainland China. The duties and rights of these commissions include:

1. Inspecting any acts that amount to infringement of Party discipline by Party cadres, Party members and/or Party organisations; and
2. Receiving complaints, carrying out investigations and determining sanctions against Party members and Party organisations found to be infringing Party discipline.

The Commissions for Discipline Inspection only deal with cases concerning infringement of Party discipline — including corruption and bribery — by Party members, Party cadres and Party organisations. They are also responsible for handling complaints from external parties.

Supervisory bodies

The Ministry of Supervision is established under the State Council. Supervision bureau or supervision offices are also set up at each level of local governments and in State administrative institutions, enterprises and working units with the following functions:

1. Monitoring different levels of administrative functionaries, functionaries, and enterprises as well as overseeing the implementation of State policies, laws and regulations, and national economic and social development programmes carried out by leading cadres designated by State administrative bodies;
2. Investigating infringements of law and discipline to safeguard the integrity of the government; and
3. Preventing bribery, improving and strengthening administrative controls in order to enhance efficiency.

The supervisory bodies mainly impose sanctions against State functionaries who have breached regulations but have not actually committed an offence. The supervisory bodies also receive complaints from external parties.

Procuratorates

Procuratorates in mainland China are structured in the following levels:

- the Supreme People's Procuratorate;
- the People's Procuratorates at different levels; and
- other procuratorates such as the Military Procuratorate.

The People's Procuratorates are responsible for investigating corruption and bribery offences as well as deciding if a suspect should be arrested and if legal proceedings should be instituted against them. They also carry out corruption-related crime prevention activities.

Under the People's Procuratorates are departments such as anti-corruption and bribery bureaux, anti-dereliction of duty and infringement of rights bureaux, report centres and duty-related crime prevention departments. The functions of these various bodies are as follows:

Anti-corruption and bribery bureaux

1. Placing on file and investigating corruption and bribery crimes involving State functionaries; and
2. Gathering and analysing the work progress of procuratorates in their anti-corruption duties and conducting research on special topics.

Anti-dereliction of duty and infringement of rights bureaux

1. Placing on file and investigating any dereliction of duties by State functionaries and/or their abuse of authority to infringe on the human and/or democratic rights of members of the public by false imprisonment, forced confession, revenge, false incrimination, illegal search and/or use of force to extract evidence; and

2. Gathering and analysing the work progress of procuratorates in curbing dereliction of duty and infringement of rights and conducting research on special topics.

Report centres

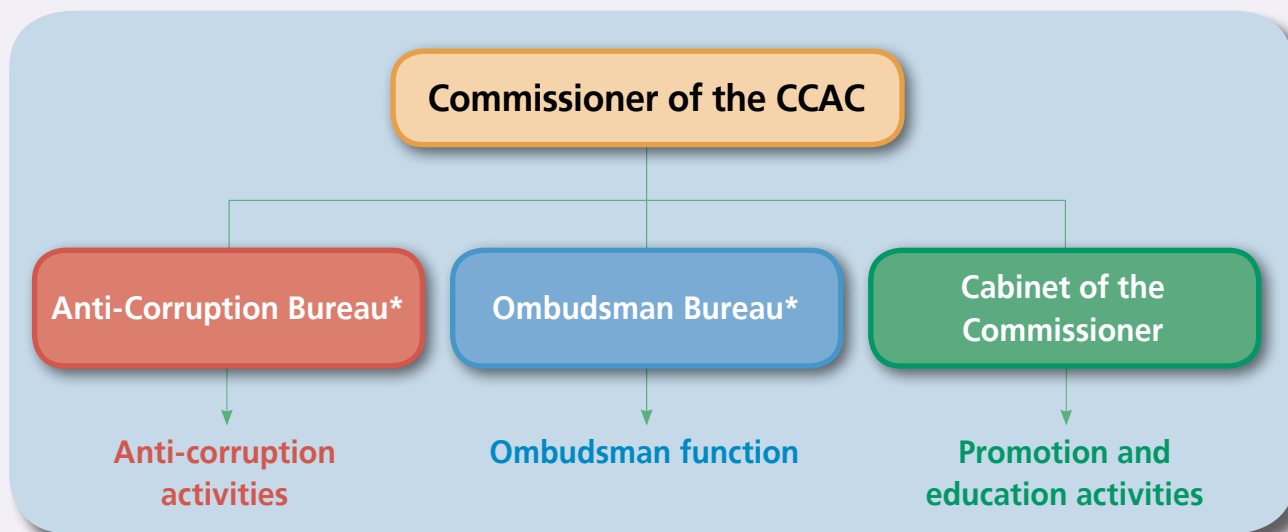
1. Receiving and handling allegations from the public or units against State functionaries regarding corruption, bribery, dereliction of duty and/or infringement of rights. They are also responsible for assisting with 'Chief Procurator Open Day' visits and working on shift to staff the 'Chief Procurator Hotline';
2. Conducting preliminary investigations on certain allegations;
3. Launching report-crime promotions; and
4. Receiving visitors.

Duty-related crime prevention departments

1. Providing consultation services on duty-related crime prevention as well as publicity and education work to enhance awareness against bribery;
2. Detecting and handling signs of duty-related crimes in the course of carrying out crime prevention duties;
3. Handling enquiries about bribery offences;
4. Conducting research on causes of common duty-related crimes, and providing suggestions on preventive measures for units involved in these crimes; and
5. Analysing the characteristics and patterns of duty-related crimes, issuing research reports on prevention of such crimes and proposing relevant preventive measures.

Macao: the dual approach to build integrity of Commission Against Corruption (CCAC)

The Macao Special Administrative Region (SAR) was established on 20 December 1999 and on the same day it authorised the establishment of the CCAC in accordance with Article 59 of the Basic Law. The CCAC functions independently and its Commissioner is accountable to the Chief Executive of the Macao SAR. Driven by the goal of exerting 'supervision on integrity', 'supervision on law-enforcement' and 'supervision on effectiveness', the CCAC is dedicated to fighting corruption and carrying out an ombudsman function — adopting the paradigm of law-abidingness and impartiality to enhance the integrity building in the Macao SAR whilst upholding social justice through a dual approach of anti-corruption and prevention.



* The Commissioner is assisted by two Deputy Commissioners who are designated as directors of the respective bureaux.

Headed by the Commissioner, the CCAC of Macao comprises three functional bureaux: the Anti-Corruption Bureau, Ombudsman Bureau and Cabinet of the Commissioner responsible for combating corruption; handling complaints on public administration, i.e. supervision of the administration; and promotion of preventive education, respectively.

Anti-corruption

The Anti-Corruption Bureau is responsible for combating corruption, conducting investigations into crimes of corruption and corruption-related fraud. It is also responsible for the clampdown on bribery in elections — in curbing acts of corruption and fraud related to elections and voter registration held for relevant bodies in the Macao SAR. Cases of government officials' declaration of assets and interests are also received and managed by the CCAC.

Cases, upon completion of investigation by the CCAC, will be referred to the Public Prosecutions Office of Macao to decide on whether to prosecute or not.

For ways to lodge corruption complaints with and make enquiries to the CCAC, please refer to Chapter 10.

Ombudsman

The Ombudsman Bureau is responsible for the following functions:

- monitoring the legality and rationality of administrative behaviour and procedures of public departments;
- receiving public complaints against administrative irregularities and mismanagement;
- examining and recommending the adoption of measures to simplify the administrative procedures and improve the operation of public services; and
- studying and analysing initiatives to prevent and curb administrative illegalities, corruption and frauds committed by public servants for the purpose of safeguarding the legal interests of citizens.

Preventive education

The Community Relations Department, established under the Cabinet of the Commissioner, is responsible for:

- launching anti-corruption publicity and educational work to the community;
- reinforcing the connection between the CCAC and the society; and
- instilling in members of the public the importance of integrity and mobilising all sectors of the community to support and participate in integrity building.

Joint efforts across the Pearl River Delta to combat corruption and bribery

The ICAC has been maintaining close cooperation with the CCAC of Macao and various anti-corruption agencies in mainland China — especially the Supreme People's Procuratorate, the Guangdong Provincial People's Procuratorate (GDPP) and the Ministry of Supervision, to fight against corruption through law enforcement and preventive education.

On the operational front, the GDPP and the ICAC's Operations Department instituted a Mutual Case Assistance Scheme in 1988 under which mutual assistance was offered in interviewing witnesses and taking statements. With the increase in exchange visits among the anti-corruption agencies in recent years, since 2005 a Mutual Case Assistance Workshop has been held for law enforcers of the three places to discuss progress of the Scheme. This annual workshop provides a focus for the enhanced anti-graft cooperation among the three locations.

Officers engaged in the preventive education work from the three locations have been maintaining close liaison to exchange views and experiences through mutual visits and training seminars. The Hong Kong Mainland Liaison Office of the ICAC also acts as an intermediary to arrange exchange study tours and conduct training courses for officers of its counterparts in mainland China and Macao to enhance their understanding of each others' work.

The Ministry of Supervision, ICAC and CCAC have been organising conferences at all three locations in rotation, since 2008, to exchange experiences and strategies on combating and preventing corruption.

In 2011, the 'Integrity and Professionalism — Key to Business Success' Conference, held for SMEs in Guangdong, Hong Kong and Macao, was jointly organised by the GDPP, ICAC and CCAC. The event helped cross-boundary SMEs better understand the business environment in the region as well as the latest developments of anti-corruption policies in the three locations. Key topics concerning cross-boundary business in the three locations, which conference participants raised concerns over, are detailed in Chapter 11 to provide timely, effective and practical information on corruption prevention measures.

Services provided by government departments, public bodies, chambers of commerce and supporting organisations in Guangdong, Hong Kong and Macao

Hong Kong

Channels for enquiries and reporting suspected corruption

In Hong Kong, any person may lodge a complaint with or make an enquiry at the ICAC through the following channels. All complaints and enquiries are kept in strict confidence:

By phone: (852) 25 266 366 (24-hour hotline)

By mail: G.P.O. Box 1000, Hong Kong

In person: ICAC Report Centre, 303 Java Road, North Point, Hong Kong
(24-hour service) or any ICAC Regional Offices

ICAC Regional Office	Contact Information
Regional Office (Hong Kong East) <i>Wan Chai, Eastern District</i>	Address: G/F, Tung Wah Mansion, 201 Hennessy Road, Wan Chai, Hong Kong Tel: (852) 2519 6555
Regional Office (Hong Kong West/Islands) <i>Central & Western District, Southern District, Islands</i>	Address: G/F, Harbour Commercial Building, 124 Connaught Road Central, Sheung Wan, Hong Kong Tel: (852) 2543 0000
Regional Office (Kowloon East/Sai Kung) <i>Kwun Tong, Wong Tai Sin, Sai Kung</i>	Address: Shop No. 4, G/F, Kai Tin Building, 67 Kai Tin Road, Lam Tin, Kowloon Tel: (852) 2756 3300

ICAC Regional Office	Contact Information
Regional Office (Kowloon West) <i>Kowloon City, Yau Tsim Mong, Sham Shui Po</i>	Address: G/F, Nathan Commercial Building, 434-436 Nathan Road, Yau Ma Tei, Kowloon Tel: (852) 2780 8080
Regional Office (New Territories East) <i>Shatin, Tai Po, North District</i>	Address: G06-G13, G/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories Tel: (852) 2606 1144
Regional Office (New Territories South West) <i>Tsuen Wan, Kwai Tsing</i>	Address: Shop B1, G/F, Tsuen Kam Centre, 300-350 Castle Peak Road, Tsuen Wan, New Territories Tel: (852) 2493 7733
Regional Office (New Territories North West) <i>Yuen Long, Tuen Mun</i>	Address: G/F, Fu Hing Building, 230 Castle Peak Road, Yuen Long, New Territories Tel: (852) 2459 0459

For the latest information on ICAC services, please visit the ICAC website (www.icac.org.hk) or email to crd@icac.org.hk. It is not advisable to report corruption via electronic means due to security reasons.

Corruption prevention education

Hong Kong Ethics Development Centre



香港道德發展中心

- The Hong Kong Ethics Development Centre (HKEDC) is a non-profit-making organisation established under the auspices of the Community Relations Department of the ICAC.
- It was set up in May 1995 in response to request from the business community.
- It aims to promote business and related ethics in Hong Kong on a long term basis.
- It helps enterprises to:
 - promote an ethical corporate culture and good corporate governance;
 - reduce costs arising from corruption, fraud, conflict of interest and malpractice; and
 - enhance profits and productivity through trust, goodwill and loyalty from customers, suppliers and employees.

- The Hong Kong Ethics Development Advisory Committee is responsible for guiding the work of the HKEDC. The chairperson and members of the Committee include representatives from six leading chambers of commerce in Hong Kong:
 - Federation of Hong Kong Industries
 - The American Chamber of Commerce in Hong Kong
 - The Chinese General Chamber of Commerce
 - The Chinese Manufacturers' Association of Hong Kong
 - The Hong Kong Chinese Enterprises Association
 - The Hong Kong General Chamber of Commerce
- A team of experienced officers offers a full range of corporate ethics consultancy services:
 - business and professional ethics training
 - codes of conduct
 - practical guides on ethics
 - training packages on business and professional ethics
- The HKEDC organises a wide range of activities to promote ethics management and best practices:
 - seminars
 - continuous professional development courses
 - train-the-trainers workshops
 - international conferences
- HKEDC operates a resource centre and a website on ethics-related reference materials.
- Contact information:

Address: 8/F, 303 Java Road, North Point, Hong Kong

Tel: (852) 2587 9812

Fax: (852) 2519 7762

Email: hkedc@crd.icac.org.hk

Website: www.icac.org.hk/hkedc



Advisory Services Group of the Corruption Prevention Department

- Provides free and confidential corruption prevention services, so as to improve practices related to procurement, store management, sales, accounting, staff administration and information system security, as well as to enhance internal controls and plug corruption loopholes.
- Offers adequate recommendations on corruption prevention to cater for the needs of clients.
- Responds to clients' request for services within two working days as pledged and handles all information provided by clients in strict confidence.
- Clients are free to decide whether to accept recommendations and how they are implemented.
- Contact information:
Address: 5/F, 303 Java Road, North Point, Hong Kong
Tel: (852) 2526 6363
Fax: (852) 2522 0505
Email: asg@cpd.icac.org.hk

Licence issuing services

To operate a business in Hong Kong, various licences are required according to the nature of the business. Please refer to Appendix 18 for details about different licensing authorities.

Consultation and support services

In Hong Kong, government departments, public bodies and some of the chambers of commerce provide assistance to new investors or SME operators investing in Hong Kong. Please refer to Appendix 18 for details of these institutions. You may also refer to Appendix 21 for information about public services in Hong Kong.

Consulting or appointing professionals

When encountering difficulties in operating cross-boundary business, business operators should seek advice from legal consultants or institutions serving overseas businesses in order to solve the problems through legal means. Businesses can appoint professionals, such as a solicitor or an accountant, to help handle business matters.

For lists of professionally qualified institutions and practitioners in the legal or accounting field of Hong Kong, please visit the websites of the Law Society of Hong Kong (www.hklawsoc.org.hk) and the Hong Kong Institute of Certified Public Accountants (www.hkicpa.org.hk) respectively.

Guangdong

Channels for reporting suspected corruption and bribery

In mainland China, any person can report corruption or bribery to the Commissions for Discipline Inspection, supervisory bodies and People's Procuratorates by email, phone, mail or in person. It is encouraged by the government to furnish full personal particulars when lodging a complaint. Details of all reports will be kept in confidence. The Guangdong Provincial People's Procuratorate (GDPP), People's Procuratorates of other cities and their branches can be contacted via the following telephone numbers (adding the number 12309 after the area code), addresses, area codes and postal codes:

Unit	Address	Tel (Domestic)	Tel (Long Distance)	Postal Code
Guangdong Provincial People's Procuratorate – Report Centre	Zhujiang Xin Cheng Huaqiang Road, Guangzhou	020	8620	510623
Guangzhou City People's Procuratorate – Report Centre	66 Huangpu Main Road West, Guangzhou	020	8620	510623
Shenzhen City People's Procuratorate – Report Centre	1008 Hongling Road North, Luohu District, Shenzhen	0755	86755	510823
Zhuhai City People's Procuratorate – Report Centre	166 Xianghua Road, Xiangzhou District, Zhuhai	0756	86756	519000
Shantou City People's Procuratorate – Report Centre	28 Huangshan Road, Shantou	0754	86754	515041
Shaoguan City People's Procuratorate – Report Centre	71, Gongye Road West, Wujiang District, Shaoguan	0751	86751	512028
Heyuan City People's Procuratorate – Report Centre	7, Jianshe Main Road East, XinShi District, Heyuan	0762	86762	517000
Meizhou City People's Procuratorate – Report Centre	20 Meilong Road, Meizhou	0753	86753	514021
Huizhou City People's Procuratorate – Report Centre	10, Sanxing Road South, Huicheng District, Huizhou	0752	86752	516003
Shanwei City People's Procuratorate – Report Centre	Tengfei Road, City District, Shanwei	0660	86660	516600
Dongguan City People's Procuratorate – Report Centre	185 Dongcheng Road West, Dongguan	0769	86769	523129

Unit	Address	Tel (Domestic)	Tel (Long Distance)	Postal Code
Zhongshan City People's Procuratorate – Report Centre	12 Eastern District Xingzhong Road, Zhongshan	0760	86760	528403
Jiangmen City People's Procuratorate – Report Centre	100 Huangzhuang Main Road, Jiangmen	0750	86750	529000
Foshan City People's Procuratorate – Report Centre	28 Wujin Road, Chencheng District, Foshan	0757	86757	528000
Yangjiang City People's Procuratorate – Report Centre	103 Dongfang Road Section 3, Yangjiang	0662	86662	529500
Zhanjiang City People's Procuratorate – Report Centre	35 Renmen Main Road North, Qiekan District, Zhanjiang	0759	86759	524032
Maoming City People's Procuratorate – Report Centre	Main Building, 173 Yingbin San Road, Maoming	0668	86668	525000
Zhaoqing City People's Procuratorate – Report Centre	37 Duanzhou Road Section 3, Zhaoqing	0758	86758	526060
Yunfu City People's Procuratorate – Report Centre	Tiane Sub-District, Yunfu	0766	86766	527300
Qingyuan City People's Procuratorate – Report Centre	15 Lianjiang Road, Xin Cheng, Qingyuan	0763	86763	511515
Chaozhou City People's Procuratorate – Report Centre	91 Chengxin Road West, Xiangqiao District, Chaozhou	0768	86768	521000
Jieyang City People's Procuratorate – Report Centre	South-end West-side Xinhe Road, Dongshan District, Jieyang	0663	86663	522000
Guangdong Provincial People's Procuratorate – Guangzhou Railway Transport Procuratorate Branch – Report Centre	Main Building, 151 Zhongshan Yi Road, Guangzhou	020	8620	510088

Corruption prevention education

Services provided by duty-related crime prevention departments of People's Procuratorates in mainland China include:

- Free corruption prevention seminars — to promote the concept of abiding by the law and integrity
- Free corruption prevention training — to provide training for companies in order to educate various grades of their management staff on the importance of law compliance
- Free consultation services — to make recommendations on sustainable business development according to the law and government policies
- Free enquiry services — to handle enquiries concerning criminal records of bribery, so as to keep corruption and bribery at bay

Contact information of the Duty-related Crime Prevention Department of the GDPP:

Tel: (020) 8711 8432 (Domestic)

+8620 8711 8432 (Long distance)

Fax: (020) 8711 8432

Email: gdjcyfc@sina.com

Should you need any assistance when doing business or investing in Guangdong, please refer to Appendix 19 for supporting government departments and professional institutions, or Appendix 22 for public services in Guangdong.

Macao

Channels for enquiries and reporting bribery acts or administrative irregularities

For reporting any suspected or identified bribery acts or administrative irregularities, you may contact the Commission Against Corruption of Macao (CCAC) through the following ways:

24-hour Report Hotline: (853) 2836 1212

Ombudsman Hotline: (853) 2828 6606

E-mail: ccac@ccac.org.mo

In person: Complaint Centre of CCAC (Alameda Dr. Carlos d' Assumpção, Edif. "Dynasty Plaza", 14.º Andar, NAPE, Macao)

By mail: Headquarters of CCAC (Avenida Xian Xing Hai n.º 105, Centro Golden Dragon (formerly named "Edif. Zhu Kuan"), 17.º Andar, Macao)

CCAC Branch Offices	Contact
Branch Office at Areia Preta	Address: Rua 1.º de Maio, n.ºs 68-72, Edf. U Wa, r/c, Macao Telephone no.: (853) 2845 3636 Fax no.: (853) 2845 3611 Office hours: 9:00 - 19:00 (closed on Saturdays, Sundays and public holidays)
Branch Office in Taipa	Address: Rua de Nam Keng, Edf. Nova City, Bloco 4, r/c, Loja C, Taipa Telephone no.: (853) 2836 3636 Fax no.: (853) 2884 3344 Office hours: 16:00 - 20:00 (closed on Saturdays, Sundays and public holidays)

Please visit the CCAC website at www.ccac.org.mo for updates on the services provided by the CCAC.

Corruption prevention education

The CCAC provides the following free services:

1. Corruption prevention talks — introducing the anti-corruption laws of Macao. Interested parties may contact the Community Relations Department for arrangements.

Tel: (853) 2832 6300

Fax no.: (853) 2872 7906

E-mail: ccac@ccac.org.mo

2. Corruption prevention consultation — providing preventive recommendations upon request. Interested parties may contact the CCAC for advice.

Ombudsman hotline: (853) 2828 6606

Fax no.: (853) 2836 2336

E-mail: ccac@ccac.org.mo

Licence issuing services

Starting a business in Macao has to apply for a licence according to the statutory procedures. Please refer to Appendix 20 for details of the relevant licence issuing departments.

Consultation and support services

For any assistance required concerning the business operations in Macao, please refer to Appendix 20 for information of relevant government departments and Appendix 23 for public services provided in Macao.

When encountering difficulties in conducting commercial activities, businesspersons should seek advice from professionals, such as legal consultants, to solve the problems through legal means. For enquiries, please contact the Macao Lawyers Association at www.aam.org.mo.

1

Q: What should investors conducting business in mainland China or Macao know about the legal requirements as far as anti-corruption and anti-bribery issues are concerned?

- A:** — Investors doing business in mainland China or Macao must understand the provisions of the laws and regulations specific to the area where the investment is located and refrain from giving advantages to anyone in exchange for convenience in business dealings.
- In mainland China, investors should pay attention to the anti-corruption and anti-bribery provisions of *Criminal Law of the People's Republic of China* (CLPRC). Since the principles of *lex situs* (law of the place) and *lex personalis* (law of the person) apply to the CLPRC and cover all offences committed in the PRC, all businesspersons, including non-local investors engaging in trade activities in mainland China, will be punished in the same way — and to the same extent as any person from the PRC — if they break anti-corruption and/or anti-bribery laws.
 - In Macao, businesspersons should also familiarise themselves with the stipulations relating to corruption and bribery offences under the *Penal Code* of Macao. Under the Territoriality Principle and Nationality Principle of the *Penal Code* — also with the adoption of the Protective Principle and Principle of Universal Jurisdiction — Macao has jurisdiction over cases involving criminal acts wholly or partially committed within the Macao SAR. Macao authorities have jurisdiction over cases involving criminal acts committed outside the Macao SAR in which the feisor or victim is a Macao citizen and with the caveat of meeting certain statutory requirements.

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Q: What should business operators know about Hong Kong's *Prevention of Bribery Ordinance* (PBO) when they conduct business in Hong Kong?

- A:** — Any persons in Hong Kong, regardless of their nationality, are bound by the laws of Hong Kong, including the PBO. If anyone from mainland China intends to offer an advantage to another party in Hong Kong, he/she must first make clear in what capacity the party is being employed. If the other party is a government officer or an employee of a public body, it is prohibited to offer any advantage to him/her as this constitutes an offence under the law. If the other party is an employee of a private business organisation, he/she should clarify whether the acceptor has obtained his/her employer's permission to accept such advantages; otherwise, such acceptance will be in breach of the PBO.
- If any persons from mainland China or Macao wish to accept an advantage in Hong Kong in relation to their duties, they must first obtain prior approval from their employers; otherwise, such acceptance will constitute an offence under the law. Both offering and acceptance of illegal advantages are offences under the PBO. State functionaries from mainland China who accept illegal advantages in Hong Kong may also breach the CLPRC.

Q: What should businesspersons know about the law *Prevention and Suppression of Bribery in the Private Sector of Macao*?

- A:** — Anyone conducting business in Macao is bound by the law *Prevention and Suppression of Bribery in the Private Sector*. Pursuant to this law, any person performing duties on behalf of a private sector entity — such as an employee, trustee or intermediary — who gives or promises an undue advantage to an individual, private enterprise, organisation or community group as a reward for, or for refraining from, performing his/her functional duties, commits a bribery offence in the private sector. This applies, regardless of whether an employment contract is made between the parties.
- Businesspersons should note that in cases of offering a bribe, it is not necessary to prove the actual acceptance of a bribe by the other party or the actual offering of a bribe. The offence of offering a bribe is committed so long as a promise to offer a bribe is given or the request for a bribe is acceded. If a person working in a private entity expresses his/her intention to solicit a bribe or agrees to accept a bribe, he/she commits the offence of accepting a bribe in the private sector.
 - If an act of bribery in the private sector is adequate to cause damage to the health and safety of third parties, or induces any unfair competition, and/or the case involves acquisition of assets and services totally or partly from public funds, it is considered a 'public offence'. Law enforcement organisations can initiate investigations into these cases without a complaint from the victim.
 - Pursuant to the general provisions of the *Penal Code*, the time limit for reporting a crime is six months from the date on which the victim comes to knowledge of the crime and the principal offender. If the victim does not pursue the matter within the time limit, the victim will lose the rights to report the crime. However, it should be noted that the victim may still pursue the case with regard to the civil or disciplinary liability.
 - With the law *Prevention and Suppression of Bribery in the Private Sector* coming into force on 1 March 2010 — only acts carried out after that date are regulated by the law. The new law does not have any retrospective effect on acts carried out before that date.

Q: What are the issues of concern when offering commission or rebates to employees of trade partners in business dealings?

- A:** — According to the PBO of Hong Kong, commission and rebates are both considered advantages. The party accepting an advantage must seek approval from his/her principal, i.e. his/her employer, for such acceptance to be legitimate. To avoid breaking the law in Hong Kong, a person who intends to offer an advantage to an employee of a trade partner should first ensure that the company concerned allows its employees to accept such advantages.
- In mainland China, businesspersons who buy or sell products are permitted to offer explicit discounts or intermediary commissions to trade partners. Details of such offers, however, should be included in the relevant business contract. Offering rebates or handling fees of any kinds secretly and without written approval may constitute the criminal offence of 'offering a bribe to non-State functionaries'. The party accepting the advantages will therefore commit the offence of 'accepting a bribe by non-State functionaries' or the offence of 'accepting a bribe by State functionaries' if State functionaries are involved in the case.
 - Given that commissions and rebates are defined as advantages in Macao, it is therefore necessary to first ascertain if the relevant trade partners allow their employees to accept commissions, rebates or other advantages. Regardless of what advantages are offered, there should be no intent to buy over the other party as a reward for not following company rules. One should clarify with the employer, trustee, or intermediary their exact policy regarding advantage acceptance to avoid any inadvertent breach of the law.

Q: SMEs may often have to conduct business negotiations with buyers of enterprises. If the buyers demand a rebate, it is actually very difficult to verify whether they have been granted permission by their employers to accept it. How should one protect oneself from committing a corrupt offence under such circumstances?

A: — Before offering any advantages to the buyers, the best practice is to obtain the permission of the buyers' employers. However, if this is not feasible, the following points should be considered:

- whether the advantage requested is stipulated in the contract;
 - whether an official receipt will be issued by the company for accepting the rebate; and
 - whether the buyer demands payment in cash or through the bank account of a third party.
- In case the rebate demanded is not supported by documentation or the means of obtaining the rebate appears unusual, the employee is likely to be deliberately concealing such acceptance of rebate from his/her company. In other words, the risk of offering a bribe is high and the request should be declined.

Q: How can businesspersons avoid breaking the law if they wish to offer gifts to government officials during festivals?

A: — In Hong Kong, extra care should be exercised when having business dealings with government departments or public bodies. According to the PBO of Hong Kong, it is an offence if public servants accept any advantages from people with official dealings, such as gifts, red packets and tips offered on festive occasions. There are also rules set out for government officials accepting gifts in their private capacity from people whom they have official dealings with, or even from friends and relatives.

- Mainland China Law stipulates that State functionaries who have accepted gifts in economic dealings or external activities should submit them to their own units for appropriate action, and failure to do so will mean they commit a bribery offence under Article 394 of the CLPRC. Employees of a company or enterprise unit accepting gifts are required to report to their unit leaders for disposal decisions.
- In Macao, there are stringent legal provisions governing the acceptance of advantages by government officers. It is an offence for any government officer to accept illegal financial or other advantages directly or indirectly at any time when executing his/her duties.

Q: In mainland China, Hong Kong or Macao, what legal liabilities do businesspersons incur if they offer gifts or tips to officials in order to expedite approval procedures of their applications for telephone lines, electricity supply or certificates of approval?

- A:** — In mainland China, all officials handling applications for telephone lines, electricity supply or certificates of approval are State functionaries. They are thus not permitted to accept any advantages from their clients; otherwise, they will be in breach of Article 385 of the CLPRC. By the same token, people offering any advantage to State functionaries are in violation of Article 389 of the CLPRC. Both parties — the offeror and the acceptor — will be pursued for criminal liability.
- In Hong Kong, companies providing electricity and gas supply and similar utilities are public bodies bound by Section 4 of the PBO. Since public bodies generally forbid their employees from accepting advantages in relation to their duties, applicants for public utility services will commit bribery offences if they offer any advantages to such employees.
 - In Macao, employees of public utilities enterprises such as telephone, electricity and water are equivalent to government officers, as defined in the *Penal Code*. Therefore, anyone offering them advantages in return for expediting the processing of applications commits the offence of 'bribing a government officer' irrespective of whether the officer concerned is required to act in contravention of his/her official obligations or not. The acceptor of the advantage also commits the offence of 'accepting an advantage'.

Q: What should businesspersons do if they wish to subsidise their mainland business partners' overseas duty visits and travel allowances?

- A:** — In drawing up a partnership contract or agreement, businesspersons should consider clearly listing all the items related to the project including subsidies for overseas duty visits and travel allowances provided to their business partners. Contracts relating to business in mainland China should be written in accordance with all relevant laws, including provincial and municipal laws and regulations. This serves to protect the legitimate interests of businesspersons in case problems later arise.

Q: What sorts of legal sanctions will Hong Kong businesspersons face if they employ intermediaries to deliver advantages or favours in exchange for greater business convenience in mainland China or Macao?

- A:** — Under Article 389 of the CLPRC, Hong Kong businesspersons employing intermediaries to deliver advantages or favours in order to gain convenience in business dealings are liable to charges of bribery if State laws are breached. The intermediaries may also commit the offences of 'introducing bribes' and/or 'being accomplices to the crime'. The party accepting a bribe is also held criminally liable.
- In Macao, any person, who solicits or accepts an advantage personally — or through an intermediary with his/her consent or ratification — commits a criminal offence. If the transferred advantage is not permitted by the other party's employer and the motive is to make the other party betray the interests of acceptor's employer through bribery, such act constitutes the offence of 'active bribery in the private sector'.

Q: Does treating trade partners or their employees to a banquet during business negotiations in Hong Kong, Macao or in mainland China constitute the offence of 'offering an advantage'?

- A:** — Entertainment is a common social activity throughout mainland China, Hong Kong and Macao. Businesspersons, however, should not rely on providing entertainment to trade partners or their employees as a means of helping secure business. In the long run, they should strengthen their competitiveness by improving product and service quality.
- According to the provisions stipulated by discipline inspection authorities in mainland China, leaders of State-owned enterprises are prohibited from accepting gifts which may influence their impartiality in the execution of their duties.
- In Macao, though entertainment in the private sector is a common social activity, any person offering 'excessive or frequent' entertainment to trading partners or their employees in the hope of securing 'preferential treatment' in future business dealings may also commit a criminal offence. For instance, if a businessperson requests a trading partner to acknowledge receipt of his/her company's defective goods and the trading partner, agrees to this — in view of the gifts and favours he/she received from the businessperson — at the expense of his/her employer; both parties commit the crime of embezzlement.

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Q: How can a company avoid erosion of its interests resulting from employees' acceptance of frequent business entertainment?

A: — It is almost inevitable that employees, as representatives of their company, will at some stage be offered business entertainment. If, however, employees accept unreasonably frequent or lavish entertainment, it may affect their impartiality in performing their duties, thus damaging the company's interests. A company should therefore issue clear guidelines to all its employees on acceptance and offers of business entertainment and constantly remind them to stick to these rules.

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Q: If government officials solicit advantages from businesspersons, what should the businesspersons do?

A: — In mainland China, Article 387 of the CLPRC stipulates that State bodies, State-owned companies, enterprises, institutions or public organisations which illegally solicit property from another person to help secure benefits may, if the circumstances warrant, be charged with 'unit accepting bribes'. If the above-mentioned units try to solicit advantages from businesspersons, the latter should immediately report the matter to the People's Procuratorates.

— In Hong Kong, it is against the law for government officers to solicit any advantage in return for providing favours in their official duties or to secure personal gains by abuse of their power. In such cases, businesspersons should decline the request and report it to the ICAC.

— In Macao, it is an offence under the anti-bribery law for a government officer to solicit any advantage from stakeholders. Any person agreeing to a government officer's request for an advantage, irrespective of whether the officer is required to act in contravention of his/her official obligations or not, shall commit offence of 'offering an advantage'. Under such circumstance, businesspersons are advised to decline such requests and report the case to the CCAC as soon as possible.

Q: If employees of business partners solicit advantages from businesspersons in the course of business negotiations, what should the businesspersons do?

- A:** — If the advantages solicited are not specified in the contract and no official receipts are issued by the organisation, the request should be turned down and the matter should be reported to the appropriate authority immediately.
- In mainland China, corruption reports can be made to the People's Procuratorates or relevant Public Security Bureau — with respect to the location of the work unit concerned, the location of the crime, or the place of residence of the subject of the crime.
 - In Hong Kong, corruption reports can be made to the ICAC Report Centre or any ICAC Regional Offices.
 - In Macao, the request should be turned down and the matter immediately reported to the CCAC.
 - Whether in mainland China, Hong Kong or Macao, corruption reports can be made by mail, in person or by phone. Anyone making a false accusation will be pursued for legal liability.

Q: Will Hong Kong businesspersons contravene the CLPRC if they offer red packets to State functionaries who are invited to officiate at a ribbon-cutting ceremony, in celebration of the opening of a new company?

- A:** — In mainland China, the discipline inspection authorities stipulate that any red packets or gifts received by a State functionary during official dealings must be submitted to the State. The State functionary concerned would violate the stipulations under Article 394 of the CLPRC if they kept red packets or gifts for personal use. Any Hong Kong businesspersons offering an advantage to State functionaries for securing illegitimate benefits also commits the offence of 'offering a bribe' under Article 389 of the CLPRC even if the advantage is presented as a token of gratitude.

Q: Does it constitute the offence of 'offering a bribe' if Hong Kong businesspersons apply to mainland Chinese or Macao government authorities for approval certificates through intermediaries, such as consultancy firms, that charge a prescribed fee?

A: — In mainland China, businesspersons can apply to government authorities for approval certificates — like those for trademarks or patents — through intermediaries. Paying a fee to these intermediaries for such services does not constitute the offence of 'offering a bribe'.

— In Macao, any person can authorise an intermediary to handle government procedures. If an intermediary asks for favourable treatment through corrupt means to secure endorsements — and such act is with the full knowledge of the client or with the objective exclusion of the client's innocence — the client and intermediary both commit the offence of bribery.

Q: Sometimes private enterprises may need to file urgent applications for approval certificates to the government. An additional fee might be charged by government officials, for instance, as compensation for overtime work. Does it constitute a bribery offence if businesspersons pay for such overtime charges?

A: — In Hong Kong, there are standard procedures for applying for licences or services from the government. All the charges, if any, are made public by the relevant government departments concerned and a receipt will be issued for any payment with no exception for special cases. The fee concerned should be paid at the Treasury or other specified locations such as post offices or via crossed cheque payable to 'The Government of the Hong Kong Special Administrative Region'. A government bill can also be settled by posting a crossed cheque together with the bill to the Treasury. One should never pay cash to a government officer in private without getting a receipt. If someone is asked for an additional charge or for a charge with no receipt, he/she should consider its legitimacy and be mindful of the risk of being deceived or committing the offence of 'offering a bribe'. In case of doubt, enquiries can be made directly to the government department concerned.

- In mainland China, there are also standard procedures for applying to the government for licences or services. If a charge is involved, the department concerned will notify the public of such charge, and issue a receipt upon receiving the fee. There is no exception for special circumstances. Paying a fee according to stipulated regulations does not constitute the offence of 'offering a bribe'.
- In Macao, public officers are prohibited from asking applicants privately for overtime work payment even if such overtime work has actually been carried out. All administrative fees are charged under the Statutory Schedule of Rates, including charges for expediting application processing procedures, and are payable directly to the government. Therefore, the case of public officers asking stakeholders for overtime payment constitutes the offence of 'soliciting advantages' while stakeholders giving overtime payments to public officers constitutes the offence of 'offering a bribe to public officials' regardless of whether the overtime services provided have contravened their obligation as a public officer or not.

Q: During the Spring Festival, if a company holds a spring reception and takes the opportunity to advertise its products during the occasion, is it legal for the senior management to distribute red packets to journalists attending the reception?

- A:** — In the Hong Kong, if a journalist accepts red packets from an event organiser without the approval of his/her employer, he/she will commit the offence of 'accepting a bribe' under the PBO. According to the Code of Ethics stipulated by the Hong Kong Journalists Association, Hong Kong journalists are forbidden from receiving any advantages, including red packets and tips, in the course of reporting news or covering social activities. This is to prevent journalists from misleading the public or disseminating inaccurate information.
- In mainland China, if a journalist accepts red packets or gifts in the course of his/her duties, he/she must hand them back to the State. The journalist will violate the CLPRC if he/she retains it for personal use. Meanwhile, if a businessperson offers money or property to a journalist under the pretext of gratitude but actually for the purpose of securing illegitimate benefits, he/she will commit the offence of 'offering a bribe' under the CLPRC.
 - In Macao, journalists of publicly-funded, wholly-owned or majority-owned media organisations, and journalists of media organisations operating public properties are classed as 'government officers' as defined in the *Penal Code*. It is, therefore, unlawful for them to accept advantages, including red packets, in the course of executing their official duties. In a similar vein, offering red packets to journalists of other media organisations, who are categorised as employees working for an entity in the private sector, as a reward for breaching regulations or professional codes of their respective organisations, shall constitute the offence of 'active bribery in the private sector'.

Q: How are the duties of the ICAC in Hong Kong separate from those of departments specialising in the investigation of commercial crimes?

- A:** — The Operations Department of the ICAC is mainly responsible for investigating alleged offences against:
- the PBO;
 - the *Independent Commission Against Corruption Ordinance*; and
 - the *Elections (Corrupt and Illegal Conduct) Ordinance*.
- ICAC investigators are empowered to investigate and execute arrests in relation to alleged offences against the *Theft Ordinance* and the *Criminal Procedure Ordinance* and offences related to perverting the course of justice, if such crimes are uncovered during their investigations into corruption offences.
- The Hong Kong Police Force and other relevant law enforcement agencies are empowered to handle other non-corruption related commercial crimes.

Q: How are the duties of the mainland Public Security Bureaux separate from those of the People's Procuratorates in the aspect of crime control?

- A:** — According to the *Criminal Procedure Law of the People's Republic of China*, the mainland Public Security Bureaux are responsible for the investigation, detention, execution of arrests and preliminary inquiry in criminal cases. On the other hand, the People's Procuratorates are responsible for procuratorial work, authorising approval of arrests, conducting examination before prosecution, initiating public prosecution in criminal cases, as well as filing 'selected' criminal cases for investigation. Such 'selected' criminal cases are those of embezzlement, bribery, dereliction of duty by State functionaries, and criminal infringement of others' rights.
- General criminal cases, such as commercial bribery cases, are put on file for investigation by the Public Security Bureaux. These include: acceptance of bribes by non-State functionaries under Article 163 and offers of bribes to non-State functionaries under Article 164 of the CLPRC. Cases of a special criminal nature are handled by specific agencies as required by specific legal stipulations.

Q: Does the ICAC in Hong Kong or Macao handle cases of cross-boundary corruption or bribery?

- A:** — If an employee of a local private company commits a corruption or bribery offence outside Hong Kong, and part of the act takes place in Hong Kong — including offering, soliciting or accepting a bribe and agreeing on or processing the illegal deal — then the ICAC is empowered to investigate.
- If Hong Kong's public servants, including government officers and employees of public bodies, are involved in cases of soliciting or accepting a bribe in mainland China, the Hong Kong ICAC can conduct an investigation according to the PBO.
 - Macao has jurisdiction over cases involving criminal acts wholly, or partially, committed in Macao, and also cases involving bribery acts committed outside Macao in which the feisor or victim is a Macao citizen and with the caveat of meeting certain statutory requirements. For individual cases, over which Macao authorities have no jurisdiction as concluded from the CCAC's analysis, the party concerned will be advised to lodge a complaint with the anti-bribery agency where the crime took place.

Q: Are there any referral services for corruption and bribery cases between mainland China, Hong Kong and Macao?

- A:** — Due to disparity in the legal systems and anti-bribery laws among the three locations, referral services are not currently available for corruption and bribery allegations. Advice will, however, be offered to the party concerned to report to the anti-bribery agency where the crime took place.

Q: If an employee of a private enterprise takes advantage of his/her position to embezzle public funds and steals from his/her company, and someone helps conceal the crime, is this considered a commercial crime or a bribery offence? Should this be reported to the anti-corruption and anti-bribery authorities?

- A:** — In Hong Kong, commercial bribery is governed by the PBO. It is a bribery offence for an employee or agent to embezzle company properties by abusing his/her official position or intentionally using false documents to deceive the employer. Any person who accepts a bribe and, in return, helps conceal the above criminal acts for an employee is also liable to be charged with a bribery offence. In such cases, the matter should be reported to the ICAC, which will then carry out an investigation based on the complaint. If a complainant has reasonable suspicion that bribery has occurred, even though he/she cannot provide full evidence, the ICAC will still be able to process the case in accordance with the law. If the crime concerned has no connection with bribery, or no evidence of bribery is found after preliminary investigation, the ICAC will then obtain the consent of the complainant to refer the case to other relevant law enforcement agencies, such as the Hong Kong Police Force, for further investigation.
- In mainland China, employees of private enterprises who misappropriate funds and steal from the enterprise commit the offence of embezzlement through dereliction of duty under Article 271 and misappropriation of a unit's funds under Article 272 of the CLPRC. Reports of these criminal acts can be made to any Public Security Bureaux.
 - In Macao, the CCAC is tasked with investigating corruption and corruption-related deception cases in the private sector. Business operators may report cases of a similar nature to the CCAC for follow-up. If the cases show no sign of corruption, or the cases are found not to be under the CCAC's purview after their investigation and analysis, they will be referred to relevant law enforcement agencies for follow-up in accordance with the law.

Q : Are the offeror and acceptor of a bribe subject to the same legal liability?

- A :** — In Hong Kong, according to the PBO, both the offeror and acceptor of a bribe are subject to the same legal liability and shall be liable to a maximum penalty of a HKD500,000 fine and 7 years' imprisonment upon conviction.
- In mainland China, the legal responsibility for the offence of accepting a bribe is usually heavier than that for offering a bribe. The maximum penalty for accepting a bribe is capital punishment while that for offering a bribe is life imprisonment. Mitigation or exemption of criminal punishment may even be granted to the offeror of bribes if they confess voluntarily before legal proceedings. The party who is solicited for bribes does not accede to the request and does not commit the offence of offering a bribe, but the party who solicited the bribe without obtaining illegitimate gains in the end is still liable to severe penalty according to the law.
- In Macao, an acceptor of bribes is usually subject to heavier penalties than an offeror. For instance, the maximum penalty for a government officer accepting bribes is 8 years' imprisonment, while that for offering bribes is 3 years' imprisonment. In the private sector, the maximum penalty for accepting bribes is 3 years' imprisonment, while that for offering bribes is 2 years' imprisonment. These penalties are subject to lawmakers' consideration that the acceptor of bribes, who is vested with official authority, should perform an obligation — especially a moral one — and therefore be liable to heavier penalty for breach of trust and abuse of power for personal gains.

Q : How will the cases involving a bribe of less than \$5,000 be handled in the three locations?

- A :** — In mainland China, it is stipulated in Article 383(1)(4) of the CLPRC that individuals who have committed corruption with a bribery amount of less than RMB5,000, with the situation being serious, are to be sentenced to less than 2 years of fixed-term imprisonment or criminal detention. If the situation is not serious, they will be dealt with by administrative action to be decided by the unit to which they belong or the higher administrative organ.
- In Hong Kong or Macao, since the law does not stipulate any 'minimum amount' to constitute a bribery offence, the amount of money offered or received as a bribe has no bearing on the outcome of the conviction. Therefore, the case will be handled by the ICAC of Hong Kong and CCAC of Macao regardless of the monetary amount of a bribe.

Appendices



Extracts from the Prevention of Bribery Ordinance

(1) Bribery involving private sector employees

Section 9

- (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,shall be guilty of an offence.
- (3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document-
 - (a) in respect of which the principal is interested; and
 - (b) which contains any statement which is false or erroneous or defective in any material particular; and
 - (c) which to his knowledge is intended to mislead the principal,shall be guilty of an offence.
- (4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).
- (5) For the purposes of subsection (4) permission shall-
 - (a) be given before the advantage is offered, solicited or accepted; or
 - (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

(2) Bribery involving public servants

Section 4(1)

Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

Section 5(1)

Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in-

- (a) the promotion, execution, or procuring of-
 - (i) any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or
 - (ii) any subcontract to perform any work, provide any service, do any thing or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

shall be guilty of an offence.

Section 8

- (1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the government through any department, office or establishment of the government, offers any advantage to any prescribed officer employed in that department, office or establishment of the government, shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

(3) Bribery in relation to tenders and auctions of government departments or public bodies

Section 6

- (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Section 7

- (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

(4) Legal requirements to uphold a high standard of integrity in the civil service

Section 3

Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence.

Notes:

- 1. Prescribed officers include any person holding an office of emolument, whether permanent or temporary, under the Government.*
- 2. The Acceptance of Advantages (Chief Executive's Permission) Notice 2010 was given by the Chief Executive on 9 April 2010 for the purpose of this section.*

Extracts of corruption and bribery offences from the Criminal Law of the People's Republic of China

(1) Embezzlement by State functionaries

Article 382

Any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement.

Any person authorised by State organs, State-owned companies, enterprises, institutions or people's organisations to administer and manage State-owned property who, by taking advantage of his office, appropriates, steals, swindles the said property or by other means illegally take it into his own possession shall be regarded as being guilty of embezzlement.

Whoever conspires with the person mentioned in the preceding two paragraphs to engage in embezzlement shall be regarded as joint offenders in the crime and punished as such.

Article 383

Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:

- (1) An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.
- (2) An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property.
- (3) An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If an individual who embezzles not less than 5,000 yuan and less than 10,000 yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.

- (4) An individual who embezzles less than 5,000 yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.

Whoever repeatedly commits the crime of embezzlement and goes unpunished shall be punished on the basis of the cumulative amount of money he has embezzled.

Article 183 (2)

If an employee of a State-owned insurance company or any person who is assigned by a State-owned insurance company to an insurance company that is not owned by the State to engage in public service commits the act prescribed in the preceding paragraph (i.e. taking advantage of his position, deliberately fabricates the occurrence of an insured accident and falsely settles a fictitious claim, thereby swindling the insured amount of money out of the company and taking it into his own possession), he shall be convicted and punished according to the provisions in Articles 382 and 383 of this law.

Article 271 (2)

If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or if a person who is assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits the act mentioned in the preceding paragraph (i.e. an employee of a company, enterprise or any other unit, by taking advantage of his position, unlawfully takes possession of the money or property of his own unit, if the amount is relatively large), he shall be convicted and punished in accordance with the provisions of Article 382 or 383 of this law.

Article 394

Any State functionary who, in his activities of domestic public service or in his contacts with foreigners, accepts gifts and does not hand them over to the State as is required by State regulations, if the amount involved is relatively large, shall be convicted and punished in accordance with the provisions of Articles 382 and 383 of this law.

(2) Embezzlement through dereliction of duty by employees of enterprises

Article 271 (1)

Any employee of a company, enterprise or any other unit who, taking advantage of his position, unlawfully takes possession of the money or property of his own unit, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property.

(3) Illicit division of State-owned assets, fines and confiscated money or property

Article 396

Where a State organ, State-owned company, enterprise, institution or people's organisation, in violation of State regulations and in the name of the unit, divides up State-owned assets in secret among all the individuals of the unit, if the amount involved is relatively large, the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount involved is huge, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Any judicial organ or administrative law-enforcing organ that, in violation of State regulations and in the name of the organ, divides up in secret the fines or confiscated money or property, which should be turned over to the State, among all the individuals of the organ shall be punished in accordance with the provisions of the preceding paragraph.

(4) Misappropriation of public funds

Article 384

Any State functionary who, by taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds for profit-making activities, or misappropriates a relatively large amount of public funds and fails to return it after the lapse of three months, shall be guilty of misappropriation of public funds and shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years. Whoever misappropriates a huge amount of public funds and fails to return it shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Whoever misappropriates for his own use funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief shall be given a heavier punishment.

Article 185 (2)

If any employee of a State-owned commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or other banking organisation or any person who is assigned by a State-owned commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or other banking organisation to an organisation that is not owned by the State to engage in public service commits the act as mentioned in the preceding paragraph (i.e. taking advantage of his position, misappropriates money belonging to his own institution or any client), he shall be convicted and punished in accordance with the provisions in Article 384 of this law.

Article 272 (2)

If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or any person who is assigned by a State-owned company, enterprise, or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits any act mentioned in the preceding paragraph (i.e. taking advantage of his position, misappropriates the funds of his own unit for personal use or for loaning them to another person), he shall be convicted and punished in accordance with the provisions of Article 384 of this law.

(5) Misappropriation of a unit's funds

Article 272(1)

Any employee of a company, enterprise or any other unit who, taking advantage of his position, misappropriates the funds of his own unit for personal use or for loaning them to another person, if the amount is relatively large and the funds are not repaid at the expiration of three months, or if the funds are repaid before the expiration of three months but the amount involved is relatively large and the funds are used for profit-making activities or for illegal activities, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, or if it is relatively large but is not returned, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 185 (1)

Any employee of a bank or of any other banking institution who, taking advantage of his position, misappropriates money belonging to the bank or any client shall be convicted and punished according to the provisions in Article 272 of this law.

(6) State functionaries accepting bribes

Article 385

Any State functionary who, by taking advantage of his position, extorts money or property from another person, or illegally accepts another person's money or property in return for securing benefits for the person shall be guilty of acceptance of bribes.

Any State functionary who, in economic activities, violates State regulations by accepting rebates or service charges of various descriptions and taking them into his own possession shall be regarded as guilty of acceptance of bribes and punished for it.

Article 386

Whoever has committed the crime of acceptance of bribes shall, on the basis of the amount of money or property accepted and the seriousness of the circumstances, be punished in accordance with the provisions of Article 383 of this law. Whoever extorts bribes from another person shall be given a heavier punishment.

Article 163 (3)

Any employee of a State-owned company or enterprise who, being engaged in public service or who is assigned by a State-owned company or enterprises to engage in public service in a company or enterprise that is not owned by the State, commits any of the acts mentioned in the preceding two paragraphs (i.e. according to Article 163, Where an employee of a company or enterprise who, taking advantage of his position, demands money or property from another person or illegally accepts another person's money or property in return for the benefits he seeks for such person, if the amount involved is relatively large, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; and according to Article 163(2), Any employee of a company or enterprise who, violating State regulations in economic activities, accepts rebates or service charges of various descriptions and takes them into his own possession) shall be convicted and punished according to the provisions in Articles 385 and 386 of this law.

Article 184 (2)

Any employee of a State-owned banking institution or any person assigned by a State-owned banking institution to a banking institution that is not owned by the State to engage in public service who commits the act mentioned in the preceding paragraph (i.e. in financial activities demands money or property from another person or illegally accepts money or property from another person in return for the benefits secured for such person or, in violation of State regulations, accepts rebates or service charges of various descriptions and takes them into his own possession) shall be convicted and punished according to the provisions in Articles 385 and 386 of this law.

Article 388

Any State functionary who, by taking advantage of his own functions and powers or position, secures illegitimate benefits for an entrusting person through another State functionary's performance of his duties and extorts from the entrusting person or accepts the entrusting person's money or property shall be regarded as guilty of acceptance of bribes and punished for it.

Article 388 (1) (1)

Where any close relative of a State functionary or any other person who has a close relationship with the said State functionary seeks any improper benefit for a requester for such a benefit through the official act of the said State functionary or through the official act of any other State functionary by using the advantages generated from the authority or position of the said State functionary, and asks or accepts property from the requester for such a benefit, and the amount is relatively large or there is any other relatively serious circumstance, he shall be sentenced to fixed-term imprisonment not more than three years or criminal detention, and be fined; if the amount is huge or there is any other serious circumstance, shall be sentenced to fixed-term imprisonment not less than three years but not more than seven years, and be fined; or where the amount is extremely huge or there is any other extremely serious circumstance, shall be sentenced to fixed-term imprisonment not less than seven years, and be fined or be sentenced to confiscation of property.

Article 388 (1) (2)

Where any State functionary who has left his position, any close relative of him or any other person who has a close relationship with him commits the act as prescribed in the preceding paragraph by using the advantages generated from the former authority or position of the said State functionary, he shall be convicted and punished pursuant to the preceding paragraph.

(7) Unit accepting bribes

Article 387

Where a State organ, State-owned company, enterprise, institution or people's organisation extorts from another person or illegally accepts another person's money or property in return for securing benefits for the person, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Any of the units mentioned in the preceding paragraph that, in economic activities, secretly accepts off-the-book rebates or service charges of various descriptions shall be regarded as guilty of acceptance of bribes and punished in accordance with the provisions of the preceding paragraph.

(8) Offering bribes to State functionaries

Article 389

Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State functionary shall be guilty of offering bribes.

Whoever, in economic activities, violates State regulations by giving a relatively large amount of money or property to a State functionary or by giving him rebates or service charges of various descriptions shall be regarded as guilty of offering bribes and punished for it.

Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefits shall not be regarded as offering bribes.

Article 390

Whoever commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; whoever offers bribes to secure illegitimate benefits, if the circumstances are serious or if heavy losses are caused to the interests of the State, shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property .

Any briber who, before he is investigated for criminal responsibility, voluntarily confesses his act of offering bribes may be given a mitigated punishment or exempted from punishment.

(9) Offering bribes to a unit

Article 391

Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State-owned company, enterprise, institution or people's organisation or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

(10) Introducing a bribe

Article 392

Whoever introduces a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Any person who introduces a bribe but voluntarily confesses the act before he is investigated for criminal responsibility may be given a mitigated punishment or exempted from punishment.

(11) Unit offering bribes

Article 393

Where a unit offers bribes for the purpose of securing illegitimate benefits or, in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with the provisions of Articles 389 and 390 of this law.

(12) Non-State functionaries accepting bribes

Article 163(1) and (2)

Where any of the employees of any company or enterprise or any other unit exerts any property by taking advantage of his position or accepts any money or property of any other person so as to seek any benefits for such person, and if the amount is considerably large, one shall be sentenced to fixed-term imprisonment of not more than five years or detention. If the amount is huge, one shall be sentenced to fixed-term imprisonment of less than five years, and one's properties may be jointly confiscated.

Where any of the employees of any company or enterprise or any other unit violates the relevant provisions of the State by taking advantage of his position to accept kickbacks or commissions in any disguise and keeps them for oneself, one shall be penalised according to the preceding paragraph.

(13) Offering bribes to non-State functionaries

Article 164

Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company or enterprises or any other unit, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is large, shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years and shall also be fined.

Whoever, for the purpose of seeking for improper commercial benefits, gives money or property to the foreign government functionary or officials of international public organisations shall be punished in accordance with the preceding paragraph.

Where an entity commits the crime as mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the first paragraph in this Article respectively.

Any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

(14) Submission of documents containing false testimony

Article 229 (1) and (2)

If a member of an intermediary organisation, whose duty is to make capital assessment, verification or validation, to do accounting or auditing, or to provide legal service, etc., deliberately provides false testifying papers, if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined.

Any member mentioned in the preceding paragraph who commits the crime prescribed in the preceding paragraph demands money or property from another or illegally accepts money or property from another shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

(15) Holding a huge amount of property with an unidentified source

Article 395 (1)

Any State functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall be recovered.

(16) Concealing savings outside the country

Article 395 (2)

Any State functionary shall, in accordance with State regulations, declare to the State his bank savings outside the territory of China. Whoever has a relatively large amount of such savings and does not declare them to the State shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or the competent authorities at a higher level.

The interpretation by the Standing Committee of the National People's Congress, the Supreme People's Court and the Supreme People's Procuratorate regarding certain issues in the *Criminal Law of the People's Republic of China*

Extracts of 'opinions on issues concerning the application of laws in the handling of criminal cases involving the acceptance of bribes' adopted by the Supreme People's Court and the Supreme People's Procuratorate

English copy is not available.
Please refer to the Chinese version of the Guide.

Reply of the Supreme People's Court on How to Convict People Entrusted to Manage or Operate State Properties of Misappropriating Public Funds

Judicial Interpretation No. 5 [2000]

English copy is not available.
Please refer to the Chinese version of the Guide.

**Interpretation by the Supreme People's Court on
several issues about identifying joint offenders
in cases of embezzlement by State functionaries or
by employees of enterprises through dereliction of duty**

Judicial Interpretation No. 15 [2000]

**English copy is not available.
Please refer to the Chinese version of the Guide.**

**Reply of the Supreme People's Procuratorate on
the application of laws to misappropriation of
public funds for the use of private companies and
private enterprises**

(No. 7 [2000] of the Supreme People's Procuratorate)

**English copy is not available.
Please refer to the Chinese version of the Guide.**

Interpretation by the Standing Committee of the National People's Congress regarding the second paragraph of Article 93 of the *Criminal Law of the People's Republic of China*

(Adopted at the 15th Meeting of the Standing Committee of the Ninth National People's Congress on April 29, 2000)

When the Standing Committee of the National People's Congress discussed whether members of a villagers committee or of other rural organisations at the grassroots level engaging in certain work may be regarded as 'the other persons who perform public service according to law' as provided for in the second paragraph of Article 93 of the Criminal Law, it made the following explanation.

The members of a villagers committee or of other rural organisations at the grassroots level who are engaged in the following administrative work shall be regarded as 'the other persons who perform public service according to law' as provided for in the second paragraph of Article 93 of the Criminal Law:

- (1) administration of funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief;
- (2) administration of funds or materials donated for public welfare;
- (3) management and administration of State-owned land;
- (4) administration of compensation for requisitioned land;
- (5) withholding and tax payment affairs;
- (6) administration of birth control, household register and conscription; and
- (7) assisting the people's governments in such other administrative work.

When the members of a villagers committee or of other rural organisations at the grassroots level perform the public service provided in the preceding paragraph, if they illegally take possession of public property, misappropriate public funds, extort money or property from another person or illegally accept another person's money or property and thus committed a crime, they shall be punished according to the provisions of Articles 382 and 383 on the crime of embezzlement, provisions of Article 384 on the crime of misappropriating public funds, and provisions of Articles 385 and 386 on the crime of accepting bribes in the Criminal Law.

**Interpretation by the Standing Committee of the
National People's Congress regarding the
first paragraph of Article 384 of the
*Criminal Law of the People's Republic of China***

(Adopted at the 27th Meeting of the Standing Committee of
the Ninth National People's Congress on April 28, 2002)

Having discussed the implication of a State functionary who, taking advantage of his position, misappropriates public funds 'for his own use' as prescribed in the first paragraph of Article 384 of the Criminal Law, the Standing Committee of National People's Congress gives the interpretation as follows:

Whoever is found to be in any of the following circumstances shall be deemed to be misappropriating public funds 'for his own use':

- (1) providing public funds to himself, his relatives or friends or to other natural persons for use;
- (2) providing public funds in his own name to other units for use; or
- (3) deciding himself in the name of his unit to provide public funds to other units for use, in order to obtain personal benefits in return.

**Notice of the Supreme People's Court and
the Supreme People's Procuratorate on
issuing the opinions on issues concerning the
application of law in the handling of criminal cases of
commercial briberies**

English copy is not available.
Please refer to the Chinese version of the Guide.

Law of the People's Republic of China Against Unfair Competition

(Adopted at the Third Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by Order No.10 of the President of the People's Republic of China on September 2, 1993)

Chapter I General Provisions

Article 1

This law is formulated with a view to safeguarding the healthy development of socialist market economy, encouraging and protecting fair competition, repressing unfair competition acts, and protecting the lawful rights and interests of business operators and consumers.

Article 2

A business operator shall, in his market transactions, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognised business ethics.

'Unfair competition' mentioned in this law refers to a business operator's acts violating the provisions of this law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order.

'A business operator' mentioned in this law refers to a legal person or any other economic organisation or individual engaged in commodities marketing or profit-making services ('commodities' referred to hereinafter includes such services).

Article 3

People's governments at various levels shall take measures to repress unfair competition acts and create favourable environment and conditions for fair competition.

Administrative departments for industry and commerce of the people's governments at or above the county level shall exercise supervision over and inspection of unfair competition acts; where laws or administrative rules and regulations provide that other departments shall exercise the supervision and inspection, those provisions shall apply.

Article 4

The State shall encourage, support and protect all organisations and individuals in the exercise of social supervision over unfair competition acts.

No State functionary may support or cover up unfair competition acts.

Chapter II Acts of Unfair Competition

Article 5

A business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means:

- (1) counterfeiting a registered trademark of another person;
- (2) using for a commodity without authorisation a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter;
- (3) using without authorisation the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person; or
- (4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.

Article 6

A public utility enterprise or any other business operator occupying monopoly status according to law shall not restrict people to purchasing commodities from the business operators designated by him, thereby precluding other business operators from fair competition.

Article 7

Governments and their subordinate departments shall not abuse administrative powers to restrict people to purchasing commodities from the business operators designated by them and impose limitations on the rightful operation activities of other business operators.

Governments and their subordinate departments shall not abuse administrative powers to restrict commodities originated in other places from entering the local markets or the local commodities from flowing into markets of other places.

Article 8

A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or purchasing commodities. A business operator who offers off-the-book rebate in secret to the other party, a unit or an individual, shall be deemed and punished as offering bribes; and any unit or individual that accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.

A business operator may, in selling or purchasing commodities, expressly allow a discount to the other party and pay a commission to the middleman. The business operator who gives discount to the other party and pays commission to the middleman must truthfully enter them in the account. The business operator who accepts the discount or the commission must also truthfully enter it in the account.

Article 9

A business operator may not, by advertisement or any other means, make false or misleading publicity of their commodities as to their quality, ingredients, functions, usage, producers, duration of validity or origin.

An advertisement agent may not act as agent for, or design, produce or release, a false advertisement while he clearly knows or ought to know its falsehood.

Article 10

A business operator shall not use any of the following means to infringe upon trade secrets:

- (1) obtaining an obligee's trade secrets by stealing, luring, intimidation or any other unfair means;
- (2) disclosing, using or allowing another person to use the trade secrets obtained from the obligee by the means mentioned in the preceding paragraph; or
- (3) in violation of the agreement or against the obligee's demand for keeping trade secrets, disclosing, using or allowing another person to use the trade secrets he possesses.

Obtaining, using or disclosing another's trade secrets by a third party who clearly knows or ought to know that the case falls under the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon trade secrets.

'Trade secrets' mentioned in this Article refers to any technology information or business operation information which is unknown to the public, can bring about economic benefits to the obligee, has practical utility and about which the obligee has adopted secret-keeping measures.

Article 11

A business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs.

Any of the following shall not be deemed as an unfair competition act:

- (1) selling perishables or live commodities;
- (2) disposing of commodities near expiration of their validity duration or those kept too long in stock;
- (3) seasonal sales; or
- (4) selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation.

Article 12

A business operator may not, against the will of purchasers, conduct tie-in sale of commodities or attach any other unreasonable conditions to the sale of their commodities.

Article 13

A business operator shall not engage in any of the following lottery-attached sale activities:

- (1) lottery-attached sale conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize;
- (2) lottery-attached sale employed as a means to sell goods of low quality at a high price; or
- (3) lottery-attached sale in form of lottery-drawing with the highest prize exceeding 5,000 yuan.

Article 14

A business operator shall not fabricate or spread false information to injure his competitors' commercial credit or the reputation of his competitors' commodities.

Article 15

Bidders shall not act in collusion with each other so as to force up or down the bidding prices.

Bidders and tender-invited shall not collude with each other so as to push out their competitors from fair competition.

Chapter III Supervision and Inspection

Article 16

Supervision and inspection departments at or above the county level may carry out supervision over and inspection of unfair competition acts.

Article 17

Supervision and inspection departments shall, in supervising and inspecting unfair competition acts, have the right to exercise the following functions and powers:

- (1) to interrogate the business operators under inspection, interested persons, or witnesses in accordance with the prescribed procedures, and require them to provide testimonial materials or other materials relating to the unfair competition acts;
- (2) to inquire about and duplicate the agreements, account books, invoices, documents, records, business letters and telegrams or other materials relating to the unfair competition acts; and
- (3) to inspect the property involved in the unfair competition acts under Article 5 of this law; and, when necessary, to order the business operators under inspection to explain the source and quantity of the commodities, suspend the sale and await the inspection thereof, and the property involved shall not be transferred, concealed or destroyed.

Article 18

Functionaries of supervision and inspection departments shall, when supervising and inspecting unfair competition acts, produce their inspection certificates.

Article 19

Business operators under inspection, interested persons and witnesses shall truthfully provide relevant materials or particulars when the supervision and inspection departments supervise and inspect unfair competition acts.

Chapter IV Legal Responsibility

Article 20

A business operator who violates the provisions of this law and thus causes damage to the infringed business operators, shall bear the liability of compensation for the damage. If the losses of the infringed business operator are difficult to estimate, the damages shall be the profits derived from the infringement by the infringer during the period of infringement. And the infringer shall also bear the reasonable expense paid by the infringed business operator for investigating the infringer's unfair competition acts violating his lawful rights and interests.

A business operator whose lawful rights and interests are infringed upon by unfair competition acts may bring a suit in a people's court.

Article 21

A business operator who counterfeits another's registered trademark, uses without authorisation the name of another enterprise or person, forges or counterfeits authentication marks, famous-and-excellent- product marks or other product quality marks, forges origin of the products or makes false and misleading indications regarding the product quality shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Law of the People's Republic of China on Product Quality.

In case a business operator uses for a commodity without authorisation the name, package or decoration of a famous commodity or the name, package or decoration similar to that of a famous commodity and thereby confuses the commodity with another's famous commodity and leads the purchasers to mistake the former for the latter, the supervision and inspection department shall order the business operator to stop the illegal act and confiscate the illegal earnings and may, in light of the circumstances, impose a fine of not less than one time but not more than three times the illegal earnings; if the circumstances are serious, his business licence may be revoked; and if the commodities sold are fake and inferior, and the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 22

A business operator, who resorts to bribery by offering money or goods or by any other means in selling or purchasing commodities and if the case constitutes a crime, shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances and confiscate the illegal earnings, if any.

Article 23

In case a public utility enterprise or any other business operator occupying monopoly status according to law restricts people to purchasing commodities from a designated business operator in order to push out other business operators from fair competition, the supervision and inspection departments at the provincial level or of cities divided into districts shall order the ceasing of the illegal acts and may impose a fine of not less than 50,000 yuan but not more than 200,000 yuan in light of the circumstances. If such designated business operator takes advantage of his monopoly status to sell goods of low quality at high prices or indiscriminately collects fees, the inspection and supervision department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 24

In case a business operator makes false and misleading publicity of his commodities by advertisement or any other means, the supervision and inspection department shall order the said business operator to stop his illegal acts and eliminate the bad effects, and may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

In case an advertisement agent acts as agent for, or designs, produces or releases, a false advertisement though the agent clearly knows or ought to know the falsehood, the supervision and inspection department shall order the ceasing of the illegal acts, confiscate the illegal earnings, and impose a fine according to law.

Article 25

In case a business operator violates the provisions of Article 10 of this law and infringes upon trade secrets, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

Article 26

In case a business operator engages in lottery-attached sale in violation of the provisions of Article 13 of this law, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10,000 yuan but not more than 100,000 yuan in light of the circumstances.

Article 27

Where bidders act in collusion with each other to force up or down the bidding price, or a bidder colludes with a tender-inviter for the purpose of pushing out their competitors, the successful bid shall be invalid, and the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

Article 28

In case a business operator acts in violation of the order of stopping the sale or forbidding the transfer, concealment or destruction of the property involved in the unfair competition acts, the supervision and inspection department may impose a fine of not less than one time but not more than three times the price of the property sold, transferred, concealed or destroyed.

Article 29

In case a party is not satisfied with the punishment decision made by the supervision and inspection department, it may apply for reconsideration to the competent department at the next higher level within 15 days from receipt of the decision; and if the party is still not satisfied with the reconsideration decision, it may bring a suit in a people's court within 15 days from receipt of the decision; and the party may also directly file a suit in a people's court.

Article 30

Where a government or its subordinate departments, in violation of the provisions of Article 7 of this law, restrict people to purchasing commodities from a designated business operator or impose limits on other business operator's rightful operation activities or the normal circulation of commodities between different areas, the supervision and inspection department at higher levels shall order them to make corrections; and if the circumstances are serious, the persons held directly responsible shall be given administrative sanctions by the relevant department at the same or higher levels; if the designated business operator takes advantage of his status to sell goods of low quality at high prices or indiscriminately collects fees, the supervision and inspection department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 31

Where a State functionary engaged in supervision over and inspection of unfair competition acts abuses his power or neglects his duty, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, he shall be given an administrative sanction.

Article 32

Where a State functionary engaged in supervision over and inspection of unfair competition acts practices favouritism or irregularities and intentionally harbours a business operator whom he clearly knows to be guilty of a crime by violating the provisions of this law and attempts to shield him from prosecution, he shall be investigated for criminal responsibility according to law.

Chapter V Supplementary Provisions

Article 33

This law shall go into effect as of December 1, 1993.

Extracts from the Penal Code of Macao

Article 196 (Definitions)

For the purposes of this Code, the following terms shall be defined as follows:

- a) Significant value: an amount which exceeds MOP30,000 as at the time of the commission of the offence;
- b) Considerably significant value: an amount which exceeds MOP150,000 as at the time of the commission of the offence;
- c) Minor value: an amount which does not exceed MOP500 as at the time of the commission of the offence;
- d) Breaking: the breaching, fracturing or destroying, in whole or in part, of any devices installed inside or outside a premise, designed to block or prevent entry to that premise or any enclosure attached to it;
- e) Scaling: the entering of a premise or an enclosure belonging to the premise via an usually unintended access, in particular, the rooftop, rooftop entrance, terraces or balconies, windows, walls, basement openings or any devices designed to block or prevent any entry or access to the premise;
- f) False keys:
 - (1) Imitated, counterfeited or altered keys;
 - (2) Genuine keys, obtained by accident or deceitful means, by any person who is not liable to the authorised user of such keys; and
 - (3) Lock-picks or any tools which are used to open locks or other security devices;
- g) Border mark: Any constructions, vegetations, ditches or any build-ups, barriers or other markings erected to mark the territory of lands, as approved by the Court or with the agreement of the person who has the proper authorisation for the execution of such agreement.

Article 199 (Abuse of trust)

- 1. Whosoever unlawfully appropriates any chattel entrusted to him/her by means other than transfer of ownership, shall be liable to imprisonment of not more than three years or a fine.

2. The attempt shall be punishable.
3. The offence may only be prosecuted upon request.
4. If the chattel referred to in Paragraph 1 of this Article is:
 - a) Of significant value: the offender shall be liable to imprisonment of not more than five years or a fine of up to 600 days;
 - b) Of considerably significant value: the offender shall be liable to imprisonment from one to eight years.
5. If the offender had been entrusted with the care of the chattel by a provision of law, due to his/her trade, employment or profession, or acting in the capacity of a guardian, curator or judicial custodian, the penalty shall be imprisonment from one to eight years.

Article 211 (Fraud)

1. Whosoever, with the intent of obtaining for himself/herself or a third person an unlawful material, by causing or maintaining deceit or an error about facts cunningly created by himself, and in this way induces another person into performing acts which damage his/her own property or someone else's, shall be liable to imprisonment not exceeding three years or a fine.
2. The attempt shall be punishable.
3. If the property damage arising from the fraud is of significant value, the offender shall be liable to imprisonment not exceeding five years or a fine of up to 600 days.
4. The penalty shall be imprisonment from two to ten years if:
 - a) The property damage is of considerably significant value;
 - b) The offender earns his living through fraudulent acts; or
 - c) The person who suffered the loss is left in economic distress.

Article 217

(Embezzlement)

1. Whosoever having been accorded by statute, by commission of a public authority or legal transaction, the power to dispose of assets of another or to make binding agreements for another, or having been entrusted the duty to safeguard the property interests of another, intentionally abuses his/her power or seriously violates his/her duties and thereby causes damage to the person, whose property interests he/she was responsible for, shall be liable to imprisonment not exceeding three years or a fine.
2. The attempt shall be punishable.

Article 243

(Definitions)

For the purposes of this Code, the following terms shall be defined as follows:

- a) Document:
 - (1) A statement embodied in writing or in the form of a recording in disks, recorded tapes or any other technical media, which is intelligible to the generality of persons or to a certain group of persons, of which the issuer is identifiable, and which is appropriate to be used to prove a legally relevant fact, whether the statement is intended for this purpose at the time of issuance, or thereafter; and
 - (2) A mark, which is made or given by an object or left onto an object, with the purpose of proving a legally relevant fact and which enables the generality of persons or a certain group of persons to recognise its purpose and the proof arising thereof.
- b) Technical record: a record of a numerical value, weight, measure, or status or the course of an event registered by a technical device that operates wholly or partly by automatic means, which enables the generality of persons or a certain group of persons to recognise its results and has the purpose of proving a legally relevant fact, whether it is intended for this purpose at the time of recording, or thereafter;
- c) Identification document: a resident identity card or other official document that serve to certify one's identity, passport or other travel documents and relevant visas, any documents required to enter or stay in Macao or documents certifying the right of abode or any document, with effects conferred upon by the law, certifying the state or professional status of an individual, or certain rights or benefits derived from it, particularly with regard to subsistence, abode, migration, assistance, health, ways to earn a living and improvement of life standards, etc;
- d) Currency: banknotes and coins which are of legal tender in Macao or abroad.

Article 244

(Forgery of a document)

1. Whosoever, with the intent to cause damage or loss to another person or to the Special Administrative Region of Macao, or to obtain an unlawful benefit for himself/herself or for another, commits the following acts shall be liable to imprisonment not exceeding three years or a fine;
 - a) produce a counterfeit document, falsify or alter a document or abuse the signature of another person to produce a counterfeit document;
 - b) falsely enter a legally relevant fact into a document; or
 - c) use a document referred to in the preceding two Subparagraphs, produced, falsified or changed by another person.
2. The attempt shall be punishable.

Article 245

(Forgery of a document of special value)

If the facts described in Paragraph 1 of the preceding Article refer to an authentic document or any document with an equivalent legal effect, an identification document, a document for identification of registered chattel, a sealed will, a postal money order, a money order, a cheque or any other negotiable instrument, or any debt securities which are not covered in Subparagraph a) of Paragraph 1 of Article 257, the offender shall be liable to imprisonment from one to five years.

Article 246

(Forgery by a public servant)

1. If the facts referred to in Paragraph 1 of Article 244 and in the preceding Article are committed by a public servant while in the performance of his/her duties, the offender shall be liable to imprisonment from one to five years.
2. A public servant who, while in the performance of his/her duties, commits any of the following acts, with the intent to cause damage or loss to another person or to the Special Administrative Region of Macao, or to obtain an unlawful benefit for himself/herself or for another, shall be liable to imprisonment from one to five years:
 - a) fail to enter into a document to which the law confers full faith and credit, a fact that the same document is intended to certify or provide proof of; or
 - b) insert an act or a document into an official correspondence registry, an official record or an official book, without following legal formalities.

Article 247

(Forgery of a technical record)

1. Whosoever, with the intent to cause damage or loss to another person or to the Special Administrative Region of Macao, or to obtain an unlawful benefit for himself/herself or for another, commits any of the following acts, shall be liable to imprisonment not exceeding three years or a fine:
 - a) produce a counterfeit technical record;
 - b) falsify or alter a technical record;
 - c) enter falsely a legally relevant fact into a technical record; or
 - d) use a technical record referred to be any of the preceding Subparagraphs, which was produced, falsified or altered by another person.
2. The act of disrupting a technical or automatic device in order to influence the result of the record is deemed to be forgery of a technical record.
3. The attempt shall be punishable.
4. Paragraph 1 of the preceding Article shall apply mutatis mutandis.

Article 248

(Damage to or suppression of a document or technical record)

1. Whosoever, with the intent to cause damage or loss to another person or to the Special Administrative Region of Macao, or to obtain an unlawful benefit for himself/herself or for another, destroys, damages, renders unusable, causes to disappear, conceals, suppresses or retains a document or a technical record that he/she is not entitled or solely entitled to dispose of, or that by law he/she may be requested to deliver or to produce to another person, shall be liable to imprisonment not exceeding three years or a fine.
2. The attempt shall be punishable.
3. Paragraph 1 of Article 246 shall apply mutatis mutandis.
4. If the victim is a private person, the offence may only be prosecuted upon request.

Article 249

(Forgery of certification)

1. The doctor, dentist, nurse, midwife, leader or employee of a laboratory or of a research institution at the service of medical purposes, or a coroner, who is aware that it is not true to the fact, issues an attestation or certification related to the physical condition or health condition either of body or mind, to the birth or death of an individual, intended to provide proof before a public authority, to damage the interests of another person, or to obtain an unlawful benefit for himself/herself or for another, shall be liable to imprisonment not exceeding two years or a fine up to 240 days.
2. A veterinarian who, under the conditions and for the purposes described in the preceding Paragraph, issues a certification in relation to an animal, shall be liable to the same penalty.
3. Whosoever claims to have a capacity or a power referred to in the preceding two Paragraphs, issues such an attestation or certificate, shall be liable to the same penalty.

Article 250

(Use of a false certification)

Whosoever, uses a false attestation or certification, with the purpose to deceive the public authority, to damage the interests of another person, or to obtain an unlawful benefit for himself/herself or for another, shall be liable to imprisonment not exceeding one year or a fine up to 120 days.

Article 336

(Concept of public servant)

1. For the purpose of the Penal Code, public servant means:
 - a) a worker for the public administration or for other public legal persons;
 - b) a worker for other public powers;
 - c) whosoever, even if provisionally or temporarily, whether paid or unpaid, voluntary or out of obligation, has been called to perform, to participate or to collaborate in an activity encompassed by public administrative or jurisdictional functions.

2. The concept of public servant is deemed to include:
 - a) the Chief Executive and the Secretaries, the Deputies to the Legislative Assembly, the members of the Executive Council, judges and public prosecutors, the Commissioner against Corruption and the officials of the municipal organs;
 - b) the directors on behalf of the Special Administrative Region of Macao and delegates in representation of the government;
 - c) the members of management bodies, supervision bodies or bodies of other nature and the employees of public corporations, corporations with public capital or with a majority of public share in their capital, as well as of franchisees of public services or utilities or of companies holding an exclusive entitlement for their scope of activity.

Article 337

(Passive corruption to perform illicit acts)

1. A public servant who, directly or through an intermediary, with his/her consent or ratification, solicits or accepts, for himself/herself or for another, an undue advantage or a promise of such an advantage, pecuniary or non-pecuniary, to act or refrain from acting in breach of his/her official duties, shall be liable to imprisonment from 1 to 8 years.
2. If the act is not performed, the offender shall be liable to imprisonment not exceeding three years or a fine.
3. No punishment shall be inflicted if the offender, before the performance of the act, voluntarily rejects the offer or promise he/she has accepted, or returns the advantage, or, in case of fungible goods, its value.

Article 338

(Passive corruption to perform licit acts)

1. A public servant who, directly or through an intermediary, with his/her consent or ratification, solicits or accepts, for himself/herself or for another, an undue advantage or a promise of such an advantage, pecuniary or non-pecuniary, to act or refrain from acting not in breach of his/her official duties, shall be liable to imprisonment not exceeding two years or a fine of up to 240 days.
2. Paragraph 3 of the preceding Article shall apply *mutatis mutandis*.

Article 339

(Active corruption)

1. Whosoever, directly or through an intermediary, with his/her consent or ratification, gives or promises an undue advantage, pecuniary or non-pecuniary, to a public servant or to a third party with the public servant's knowledge, with the purpose stated in article 337, shall be liable to imprisonment not exceeding three years or a fine.
2. If the purpose is as stated in the preceding article, the offender shall be liable to imprisonment not exceeding six months or a fine of up to 60 days.
3. Subparagraph b) of Article 328 shall apply *mutatis mutandis*.

Article 340

(Embezzlement)

1. A public servant who, for his/her benefit or the benefit of another person, unlawfully appropriates money or any chattel, either public or private entrusted to him/her or in his/her possession or to which he/she has access by virtue of his/her position, shall be liable to imprisonment from one to eight years, unless the offence is subject to a more severe penalty under other provisions.
2. If the item of value or object referred to in the preceding Paragraph is of a minor value, the offender shall be liable to imprisonment not exceeding three years or a fine.
3. If the public servant loans, pledges or encumbers the item of value or object referred to in Paragraph 1 by any means, shall be liable to imprisonment not exceeding three years or a fine, unless the offence is subject to a more severe penalty under other provisions.

Article 342

(Unlawful economic advantage)

1. A public servant who, with the intent of obtaining for himself/herself or a third person an unlawful economic advantage in a legal act in which he/she participates by virtue of his/her position, damages the property interests for which in whole or in part, he/she has the duty to administer, monitor, safeguard or effect, shall be liable to imprisonment not exceeding five years.

2. A public servant who, by any means receives a property advantage for himself/herself or for another person in a civil legal act regarding interests that the public servant was, at the time of the act and by virtue of his/her position, under the duty to dispose, administer or monitor, even if no damage was caused to these interests, shall be liable to imprisonment not exceeding six months or a fine up to 60 days.
3. The penalty of the preceding Paragraph shall apply to the public servant who, by any means receives a property advantage for himself/herself or for another person, arising from any collection, liquidation or payment he/she is, by virtue of his/her position under the duty of ordering or performing himself/herself, even if no damage is caused to the Public Treasury or to the interests entrusted to him/her.

Article 347 **(Abuse of power)**

A public servant who, in cases other than those referred to in the preceding Articles , abuses the powers or violates the duties inherent to his/her functions, with the intent of obtaining for himself/herself or a third person an unlawful benefit or to cause damage to another person, shall be liable to imprisonment not exceeding three years or a fine, unless the offence is subject to a more severe penalty under other provisions.

Prevention and Suppression of Bribery in the Private Sector

The Legislative Assembly decrees, pursuant to subparagraph 1) of Article 71 of the Basic Law of the Macao Special Administrative Region, that the following shall be enforced as law:

CHAPTER I General provisions

Article 1

Object

This law establishes the classification of bribery offences in the private sector, the regime of prevention and the allocation of powers in this scope to the Commission Against Corruption.

Article 2

Definitions

For the purposes of this law,

1. 'Unfair competition' means any act of competition that objectively reveals itself to be in breach of the norms and honest usage of economic activity.
2. 'Functional duties' means the duties to be complied with when carrying out a certain activity as stipulated by law or legal acts between the parties concerned.

CHAPTER II Penal provisions

Article 3

Passive bribery in the private sector

1. Any person who, performing his/her professional duties, including the personnel of management or administration of any entity in the private sector, even such entities are irregularly established, solicits or accepts, personally or through an intermediary with his/her consent or ratification, an undue pecuniary or non-pecuniary advantage, or the promise of such advantage, for himself/herself or a third party, as a reward for acting or refraining from acting, in violation of his/her functional duties, shall be liable to imprisonment for a maximum term of 1 year or a fine.
2. If the act or omission mentioned in the preceding paragraph induces any unfair competition, the actor shall be liable to imprisonment for a maximum term of 2 years or a fine.
3. If the act or omission mentioned in paragraph 1 is adequate to cause damage to the health or safety of third parties, the actor shall be liable to imprisonment for a maximum term of 3 years or a fine.

4. No punishment shall be inflicted if the actor, before the act is performed, voluntarily rejects the offer or the promise he/she has accepted, or returns the advantage, or, in case of fungible goods, its value.

Article 4

Active bribery in the private sector

1. Any person who, personally or through an intermediary with his/her consent or ratification, gives or promises to give the person mentioned in the preceding article, or a third party with the knowledge of that person, an undue pecuniary or non-pecuniary advantage, for the purpose indicated in paragraph 1 of the preceding article, shall be liable to imprisonment for a maximum term of 6 months or a fine.
2. If the conduct mentioned in the preceding paragraph induces any unfair competition, the actor shall be liable to imprisonment for a maximum term of 1 year or a fine.
3. If the conduct mentioned in paragraph 1 is adequate to cause damage to the health or safety of third parties, the actor shall be liable to imprisonment for a maximum term of 2 years or a fine.

Article 5

Complaint

1. In the cases prescribed by paragraph 1 of Article 3 and paragraph 1 of Article 4, penal procedures shall only be instituted when there is a complaint.
2. In the cases prescribed by paragraph 2 of Article 3 and paragraph 2 of Article 4, penal procedures shall only be instituted when there is a complaint; however, if the case involves acquisition of assets and services with funding coming totally or partly from public money, penal procedures shall be instituted even without a complaint.
3. Not exercising the right of complaint or withdrawing from a complaint against the actor referred to in paragraph 1 of Article 3 or paragraph 1 of Article 4 will also benefit the corresponding actors of active and passive bribery.
4. The preceding paragraph shall apply correspondingly to the cases mentioned in paragraph 2 of Article 3 and paragraph 2 of Article 4, in which penal procedures shall only be instituted when there is a complaint.

Article 6

Special mitigation and remission of punishment

For the crimes prescribed by this law, punishment shall be specially reduced or waived if the actor assists in the collection of evidence crucial to the identification or arrest of other actors or, in some way makes a decisive contribution to the discovery of the truth.

CHAPTER III

Final provisions

Article 7

Scope of activity of the Commission Against Corruption

1. The Commission Against Corruption aims, within its scope of activity, at carrying out investigation and inquiry with regard to acts of corruption in the private sector, in accordance with penal procedure legislation and without prejudice to the powers vested by law in other bodies.
2. Subparagraph 1) of paragraph 1 of Article 3 of Law no. 10/2000 also applies to the prevention of bribery in the private sector, and, for this purpose, the Commission Against Corruption shall particularly promote:
 - 1) the formulation of standards and procedures aiming to ensure the integrity of relevant private entities, including the codes of conduct;
 - 2) transparency among private entities.
3. Law no. 10/2000 shall apply, with necessary adaptations, to the acts and measures carried out by the Commission Against Corruption within its scope of activity referred in the preceding paragraphs.

Article 8

Subsidiary Law

Provisions under the Penal Code shall subsidiarily apply to the offences prescribed by this law.

Article 9

Entry into force

This law shall enter into force on 1 March 2010.

Approved on 4 August 2009.

The President of the Legislative Assembly, **Susana Chou**.

Signed on 7 August 2009.

To be published.

The Chief Executive, **Ho Hau Wah**.

Integrity management health checklist

SMEs should conduct regular checks on their 'health conditions' in order to facilitate their business and move ahead in the right direction. This checklist below aims to identify corruption and bribery loopholes in a company. If the majority of your answers are 'No', it is time to strengthen corruption prevention measures in your company. Please refer to Chapter 8 for more information.

Purchasing		
	Yes	No
1. Have we issued any written procurement guidelines and clearly explained them to staff members?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are staff members required to declare conflict of interest in order to minimise the occurrence of corruption?	<input type="checkbox"/>	<input type="checkbox"/>
3. Have we compiled a list of suitable suppliers to ensure that only reliable suppliers are used and to minimise the overhead costs and time required for sourcing suppliers?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are there adequate security measures to prevent the loss of quotations submitted or early disclosure of quotation information?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have we clearly laid down the financial limits and purchase authority for direct purchases?	<input type="checkbox"/>	<input type="checkbox"/>
6. Are the goods delivered being inspected and checked against the purchase orders and the delivery invoices before acknowledging receipts?	<input type="checkbox"/>	<input type="checkbox"/>
7. Are invoices being checked against the purchase orders before processing the actual payment according to the established accounting procedures?	<input type="checkbox"/>	<input type="checkbox"/>

Sales and marketing		
	Yes	No
8. Do we have a list of discounts granted to clients and have we made it known to both the staff and the clients?	<input type="checkbox"/>	<input type="checkbox"/>
9. Do we have any stated guidelines for handling sales deposits, reservation of goods, sales cancellation and deposit refund?	<input type="checkbox"/>	<input type="checkbox"/>
10. Have we segregated major functions such as customer sales, cash collection, cash refund or stock return? Could we trace from existing records the person responsible for every transaction?	<input type="checkbox"/>	<input type="checkbox"/>
11. Do we check the sales memo against the till roll record and the daily sales report at the end of the day? Have we also ensured that the daily sales reports and other related documents are dispatched to the accounts department promptly?	<input type="checkbox"/>	<input type="checkbox"/>
12. Do we carefully check on the sales income and then promptly bank in cash and cheques received?	<input type="checkbox"/>	<input type="checkbox"/>
13. Are there any staff members (such as those in the accounts department) who are not working at the stores checking the daily sales report and updating the accounting database regularly?	<input type="checkbox"/>	<input type="checkbox"/>
14. Do we conduct any checks on the sequential order of the sales documents as well as checking on them against the daily sales reports?	<input type="checkbox"/>	<input type="checkbox"/>
15. Are sales documents (including special items like deposit forfeiture and cash refund) well filed for record and review?	<input type="checkbox"/>	<input type="checkbox"/>
16. Do we record and verify the profits directly deposited into the company bank account?	<input type="checkbox"/>	<input type="checkbox"/>
Inventory and stock control		
	Yes	No
17. Are we keeping accurate and up-to-date records of stock, including information about the quantity of goods sold and purchased, the date and quantity of every receipt/issue of goods, the expiry of validity date and the location where the items are stored?	<input type="checkbox"/>	<input type="checkbox"/>
18. Do we promptly enter each store transaction in the database in order to facilitate audit checks in the future?	<input type="checkbox"/>	<input type="checkbox"/>
19. Do supervisors verify the accuracy of stock records from time to time?	<input type="checkbox"/>	<input type="checkbox"/>
20. Have we segregated the key duties of ordering of goods, receipt of goods and store keeping?	<input type="checkbox"/>	<input type="checkbox"/>
21. Do we have well defined procedures for the disposal of stock items and mechanism to verify if the disposal is authorised?	<input type="checkbox"/>	<input type="checkbox"/>

Finance and accounting		
	Yes	No
22. Have we drawn up comprehensive guidelines on the payment procedures and payment methods under different circumstances (including provisions for non-routine payments such as advance payments and deposits)?	<input type="checkbox"/>	<input type="checkbox"/>
23. Have we established any mechanism to keep all invoices and payment records in an orderly way?	<input type="checkbox"/>	<input type="checkbox"/>
24. Are autopay authorisations verified and approved by the designated staff member before referring to banks?	<input type="checkbox"/>	<input type="checkbox"/>
25. Have we maintained an autopay list detailing the payees' particulars and the goods/services they provided?	<input type="checkbox"/>	<input type="checkbox"/>
26. Are company blank cheque books and petty cash safely stored?	<input type="checkbox"/>	<input type="checkbox"/>
27. Have we any stated guidelines on the use and replenishment of petty cash, as well as on conducting regular checks on its amount?	<input type="checkbox"/>	<input type="checkbox"/>
28. Is each payment claim supported by copies of purchase requisition authorisation, suppliers' invoices and delivery notes showing details of the goods/services provided?	<input type="checkbox"/>	<input type="checkbox"/>
Personnel and administration		
	Yes	No
29. Have we drawn up a code of conduct (with guidelines on conflict of interest and rules on acceptance of advantages) for staff members, so that they understand the standards of behaviour the company expects from them?	<input type="checkbox"/>	<input type="checkbox"/>
30. Do we have clear procedures on staff recruitment and staff promotion?	<input type="checkbox"/>	<input type="checkbox"/>
31. Have we established a performance appraisal system for the staff?	<input type="checkbox"/>	<input type="checkbox"/>
32. Do we have any system to monitor staff attendance and overtime work in order to prevent them from fabricating attendance records or over-claiming overtime?	<input type="checkbox"/>	<input type="checkbox"/>
33. Do we have a fair and transparent system to allocate shift duties on a rotational basis and to record the swapping of duties among staff?	<input type="checkbox"/>	<input type="checkbox"/>
34. Do we verify that the wages paid correspond to the actual number of workers and the working hours?	<input type="checkbox"/>	<input type="checkbox"/>
35. Are there any channels for staff to air their opinions, dissatisfactions or grievances?	<input type="checkbox"/>	<input type="checkbox"/>

Extracts from the Law of the People's Republic of China on Foreign-Capital Enterprises

Article 6

The application to establish an enterprise with foreign capital shall be submitted for examination and approval to the department under the State Council which is in charge of foreign economic relations and trade, or to an institution authorised by the State Council. The authorities in charge of examination and approval shall, within 90 days from the date they receives such application, decide whether or not to grant approval.

Article 7

When the application for the establishment of an enterprise with foreign capital is approved, the foreign investor shall, within 30 days from the date of receiving the certificate of approval, apply to the administrative department for industry and commerce for registration in order to obtain a business licence. The date of issue of the business licence of foreign-capital enterprise shall be the date of its establishment.

Article 9

An enterprise with foreign capital shall make investments in China within the period approved by the authorities in charge of examination and approval. If it fails to do so, the administrative departments for industry and commerce shall have the power to cancel its business licence.

The administrative department for industry and commerce shall inspect and supervise the investment situation of an enterprise with foreign capital.

Article 10

In the event of separation, merger or other major change, an enterprise with foreign capital shall report the matter to and seek approval from the authorities in charge of examination and approval, and register the change with the administrative department for industry and commerce.

Article 17

Enterprises with foreign capital shall pay taxes in accordance with relevant State regulations for tax payment, and may enjoy preferential treatment for reduction of or exemption from taxes.

An enterprise with foreign capital that reinvests its profits in China after paying the income tax may, in accordance with relevant State regulations, apply for refund of a part of the income tax already paid on the reinvested amount.

Article 20

With respect to the period of operation of an enterprise with foreign capital, the foreign investor shall report to and secure approval from the authorities in charge of examination and approval. For an extension of the period of operation, an application shall be submitted to the said authorities 180 days before the expiration of the period. The authorities in charge of examination and approval shall, within 30 days from the date of receiving such application, decide whether or not to grant the extension.

Extracts from the Rules for the Implementation of the Law of the People's Republic of China on Foreign-Capital Enterprises

English copy is not available.
Please refer to the Chinese version of the Guide.

Extracts from the Foreign Trade Law of the People's Republic of China

Article 11

The State may put the import and export of certain goods under the control of State-operated trading. Such goods shall only be imported and exported by the authorised enterprises, except the import and export of certain quantities of the goods under State-operated trading which the State permits to be operated by unauthorised enterprises.

The catalogues of the goods under the control of State-operated trading and the authorised enterprises shall be determined, adjusted and published by the department for foreign trade under the State Council in conjunction with the relevant department under the State Council.

Where, in violation of the provisions in the first paragraph of this Article, the goods under State-operated trading are imported or exported without authorisation, the Customs shall not grant to them clearance.

Article 34

In foreign trade activities, none of the following acts may be committed:

- (1) forging or falsifying marks of origin of imported or exported goods; forging, falsifying or dealing in origin certificates of imported or exported goods, import or export licenses, certificates of import or export quotas, or any other import or export certificates;
- (2) obtaining export tax refund by fraudulent means;
- (3) smuggling;
- (4) evading certification, inspection or quarantine which is required by laws and administrative regulations; or
- (5) other acts in violation of the provisions of laws and administrative regulations.

Article 60

The department for foreign trade under the State Council or the relevant department under the State Council may impose a fine of not more than RMB 50,000 yuan on enterprise that, in violation of the provisions in Article 11 of this law and without authorisation, imports or exports the goods subject to control of State-operated trading, and if the circumstances are serious, it may, within three years from the date the administrative penalty decision takes effect, refuse to accept the application submitted by the offender for engaging in the business of import and export of the goods subject to control of State-operated trading, or may withdraw the authorisation granted to the offender for the import and export of other goods subject to control of State-operated trading.

Article 61

Any dealer who imports or exports the goods the import and export of which are prohibited or, without authorisation, imports or exports the goods import and export of which are restricted shall be dealt with and penalised by the Customs in accordance with the provisions of relevant laws and administrative regulations; if its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

Any dealer who imports or exports the technologies the import and export of which are prohibited or, without authorisation, imports or exports the technologies the import and export of which are restricted shall be dealt with and penalised in accordance with the provisions of relevant laws and regulations. Where there are no provisions in laws or administrative regulations to go by, the department for foreign trade under the State Council shall order it to rectify, confiscate its unlawful gains and, in addition, impose a fine of not less than the amount of the unlawful gains but not more than five times that amount. If there are no unlawful gains or such gains are less than 10,000 yuan, a fine of not more than 10,000 yuan but not more than 50,000 yuan shall be imposed. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

Within three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding two paragraphs, the department for foreign trade under the State Council or the relevant department under the State Council may refuse to accept the application submitted by the offender for import or export quotas or license, or prohibit the offender from engaging in the import or export of relevant goods and technologies for a period of not less than one year but not more than three years.

Article 62

Any dealer that engages in the international trade in services subject to prohibition or, without authorisation, engages in the international trade in services subject to restriction shall be penalised in accordance with the provisions of relevant laws and administrative regulations. Where there are no provisions in laws or administrative regulations to go by, the department for foreign trade under the State Council shall order it to rectify, confiscate its unlawful gains and, in addition, impose a fine of not less than the amount of the unlawful gains but not more than five times that amount. If there are no unlawful gains or such gains are less than 10,000 yuan, a fine of not less than 10,000 yuan but not more than 50,000 yuan shall be imposed. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

The department for foreign trade under the State Council may prohibit the offender from engaging in the relevant international trade in services for a period of not less than one year but not more than three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding paragraph.

Article 63

Any dealer that violates the provisions in Article 34 of this law shall be penalised in accordance with the provisions of relevant laws and administrative regulations. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

The department for foreign trade under the State Council may prohibit the offender from engaging in the relevant foreign trade activities for a period of not less than one year but not more than three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding paragraph.

Extracts from the Provisions on Guiding Foreign Investment Direction

(Promulgated by Decree No.346 of the State Council of the People's Republic of China on February 11, 2002)

Article 2

These Provisions are applicable to the projects involving the making of investment to establish Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures, or wholly foreign-owned enterprises (hereinafter referred to as foreign invested enterprises) within the territory of our country, as well as to other forms of projects with foreign investment (hereinafter referred to as foreign invested projects).

Article 4

Foreign invested projects shall be classified into four categories: projects to be encouraged, permitted, restricted or prohibited.

Foreign invested projects to be encouraged, restricted or prohibited are listed in the Catalogue for the Guidance of Industries for Foreign Investment. Those other than foreign invested projects to be encouraged, restricted or prohibited shall be foreign invested projects to be permitted, which are not listed in the Catalogue for the Guidance of Industries for Foreign Investment.

Article 5

Foreign invested projects under one of the following circumstances shall be listed as encouraged ones:

- (1) projects applying new agricultural technology, for comprehensive agricultural development, and for development of energy, communications or industry of key raw materials;
- (2) projects employing new high technology and advanced practical technology which can improve performance of products, increase tech-economic efficiency of enterprises, or manufacture new equipment or new materials while the domestic productivity is deficient;
- (3) projects that can meet the demands of market, raise the grade of products, open up new markets or increase the competitive strength of products in international market;
- (4) projects adopting new technology or equipment that can conserve energy and raw materials, utilise resources and renewable resources in a comprehensive way or prevent environmental pollution;

- (5) projects that can make full use of the superiority in human and natural resources in the mid-west regions and that are in conformity with the industrial policies of the State; or
- (6) other circumstances provided for in laws and administrative regulations.

Article 6

Foreign invested projects under one of the following circumstances shall be listed as restricted ones:

- (1) projects with backward technology;
- (2) projects without any benefit to the conservation of resources and the improvement of eco-environment;
- (3) projects involving the exploration and exploitation of any special mineral resource the exploitation of which shall, as provided for by the State, be carried out in a protective way;
- (4) projects involving the industry that is being opened up by the State step by step; or
- (5) other circumstances provided for in laws and administrative regulations.

Article 7

Foreign invested projects under any of the following circumstances shall be listed as prohibited ones:

- (1) projects endangering State security or damaging social and public interests;
- (2) projects causing pollution or damage to environment, jeopardising natural resources or impairing health of human body;
- (3) projects unfavorable to the protection and development of land resources as a result of occupation of large amount of arable lands;
- (4) projects endangering the safety of military installation or the work efficacy thereof;
- (5) projects involving the making of products by utilising the unique craftsmanship or technology of our country; or
- (6) other circumstances provided for in laws and administrative regulations.

Article 8

The Catalogue for the Guidance of Industries for Foreign Investment may provide for that a foreign invested project can be carried out 'only in the form of equity joint venture or contractual joint venture', 'with the Chinese party holding the majority of shares', or 'with the Chinese party holding the relative majority of shares'.

'Only in the form of equity joint venture or contractual joint venture' means that a project can only be operated in the form of Chinese-foreign equity joint venture or Chinese-foreign contractual joint venture; 'with the Chinese party holding the majority of shares' means that the proportion of investment made by Chinese investors into a foreign invested project shall be fifty-one per cent or more; 'with the Chinese party holding the relative majority of shares' means that the proportion of investment made by Chinese investors into a foreign invested project shall be more than the proportion of investment made by any one foreign investor.

Article 9

In addition to the preferential treatment as provided for in relevant laws or administrative regulations, foreign invested projects to be encouraged engaging in construction and operation of energy, communications or urban infrastructural facilities (coal, petroleum, natural gas, electric power, railways, highways, ports, airports, urban roads, disposition of polluted water or rubbish, etc.) which need a large amount of investment but have a long payoff period may, upon approval, have their scope of business relating thereto expanded.

Article 10

Foreign invested projects classified as permitted ones shall, if all of the products are exported directly, be regarded as encouraged ones; foreign invested projects classified as prohibited ones may, if their export sales of products account for not less than 70 per cent of the total sales of products, be regarded as permitted ones upon the approval by the people's governments of provinces, autonomous regions, municipalities directly under the Central Government or cities separately listed on the State plan or by the competent departments of the State Council.

Article 11

Restrictions may be appropriately eased to the foreign invested projects classified as permitted or prohibited ones that can really make full use of the superiority in the mid-west regions, and those listed into the Catalogue of Advantaged Industries for Foreign Investment in Mid-west China may enjoy the preferential policies for foreign invested projects to be encouraged.

Article 12

In the light of the division of existing approval authority, foreign invested projects shall, on the basis of their nature, be subject to examination and approval of, as well as submission for the record to, development planning departments and economic and trade departments respectively; contracts and articles of association of foreign invested enterprises shall be subject to examination and approval of, as well as submission for the record to, foreign trade and economic cooperation departments. Among restricted foreign invested projects, if the foreign investment is less than the limit thereon, such projects shall be subject to examination and approval of the corresponding competent departments of the people's governments of provinces, autonomous regions, municipalities directly under the Central Government or

cities separately listed on the State plan, and meanwhile shall be submitted for the record to the competent departments at the higher level and the competent departments for the same industry; the authority of examination and approval of such projects shall not be delegated to lower levels. Foreign invested projects in the field of trade in services which are to be opened up gradually shall be subject to examination and approval as provided for by the State.

For foreign invested projects involving quotas or licences, applications shall first be made to foreign trade and economic cooperation departments for quotas or licences.

If laws or administrative regulations provide otherwise on the procedures and measures for examination and approval of foreign invested projects, those Provisions shall apply.

Article 13

With regard to foreign invested projects that are examined and approved in violation of these Provisions, the examination and approval authorities at the higher level shall cancel such projects within 30 working days from the date of receipt of the documents of the projects submitted for the record. Their contracts and articles of association shall be invalid. The enterprise registration authorities shall not register these projects, and the Customs shall not handle import or export formalities for such projects.

Article 14

Where an applicant for a foreign invested project has the project approved by fraud or other illegal means, he shall, in light of the seriousness of circumstances, be investigated for legal liability according to law. The examination and approval authorities shall cancel the approval granted to the project, and the relevant competent authorities shall deal with the case according to law.

Article 15

Any staff of the examination and approval authorities abusing their power or neglecting their duties shall be investigated for criminal liability pursuant to the provisions of the criminal law on the crime of abuse of power or the crime of neglect of duty, or shall be given administrative sanctions of recording grave demerit or even heavier if the circumstances are not serious enough for criminal punishment.

Article 16

Investment projects carried out by overseas Chinese or by investors from the Hong Kong Special Administrative Region, Macao Special Administrative Region, or Taiwan region shall be *mutatis mutandis* governed by these Provisions.

Notes on investment procedures in Hong Kong

Company incorporation procedures

Company and business registration *

- One director / shareholder (no restriction on the nationality or place of residence of the director / shareholder)
- Minimum amount of nominal / paid-up capital: no restriction
- Time required for registration: 1 working day for electronic submission (www.eregistry.gov.hk) and 4 working days for paper submission

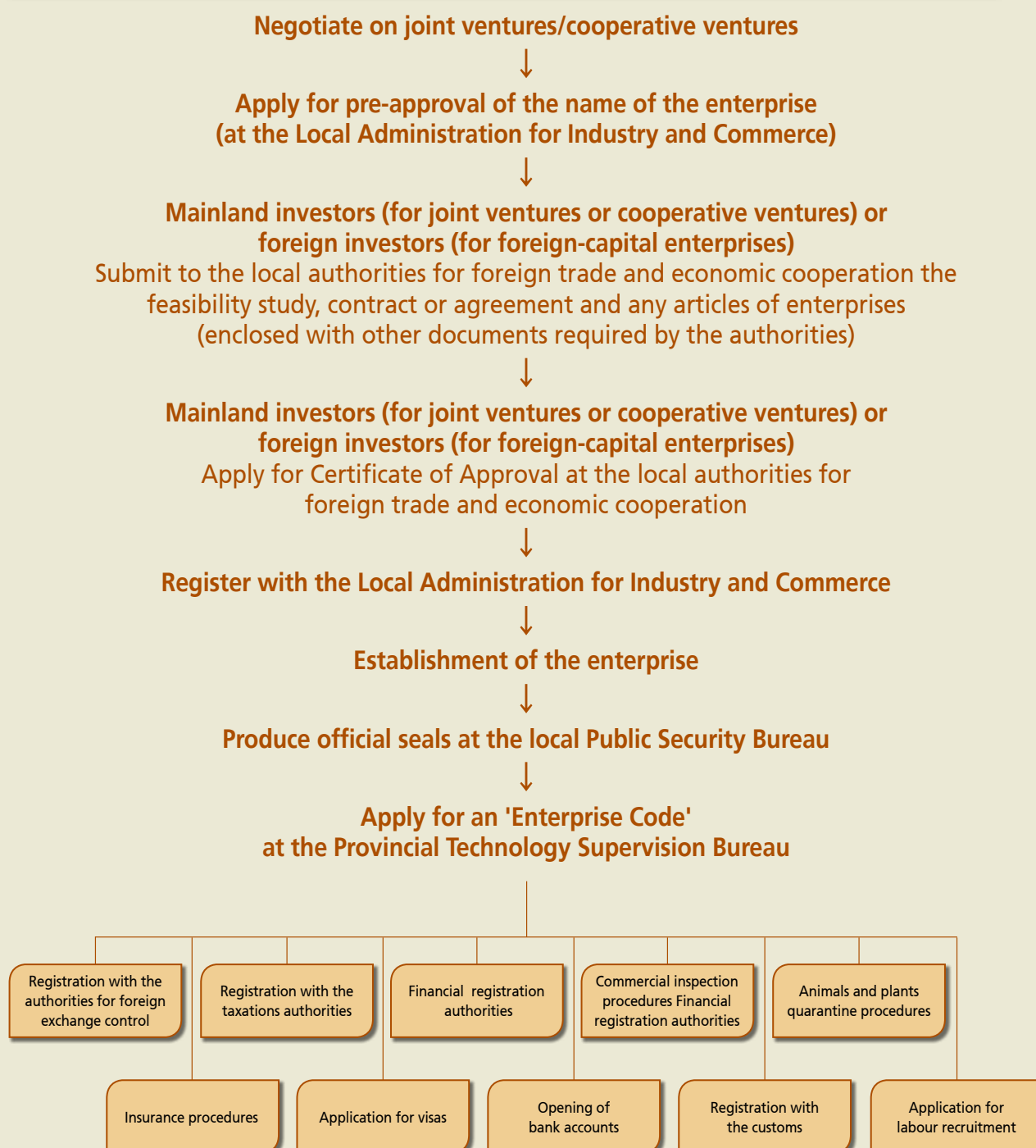
Licences / Legal documents

- Licence / permit applications or trademark registrations specific to various industries are required. For further details, investors may refer to the online Business Licence Information Service of the Support and Consultation Centre for SMEs of the Trade and Industry Department (www.success.tid.gov.hk/tid/eng/blics/index.jsp).
- For requirements stipulated by various departments, such as the Fire Services Department, the Labour Department and the Electrical and Mechanical Services Department, please visit the websites of the respective departments or the website index of the government and related organisations (www.gov.hk/en/about/govdirectory/govwebsite/alphabetical.htm).

* The One-stop Company and Business Registration Service has been jointly implemented by the Companies Registry and the Inland Revenue Department since 21 February 2011. Upon approval of an application for company incorporation, the Registrar of Companies will issue the Certificate of Incorporation/Registration and the Business Registration Certificate in one go.

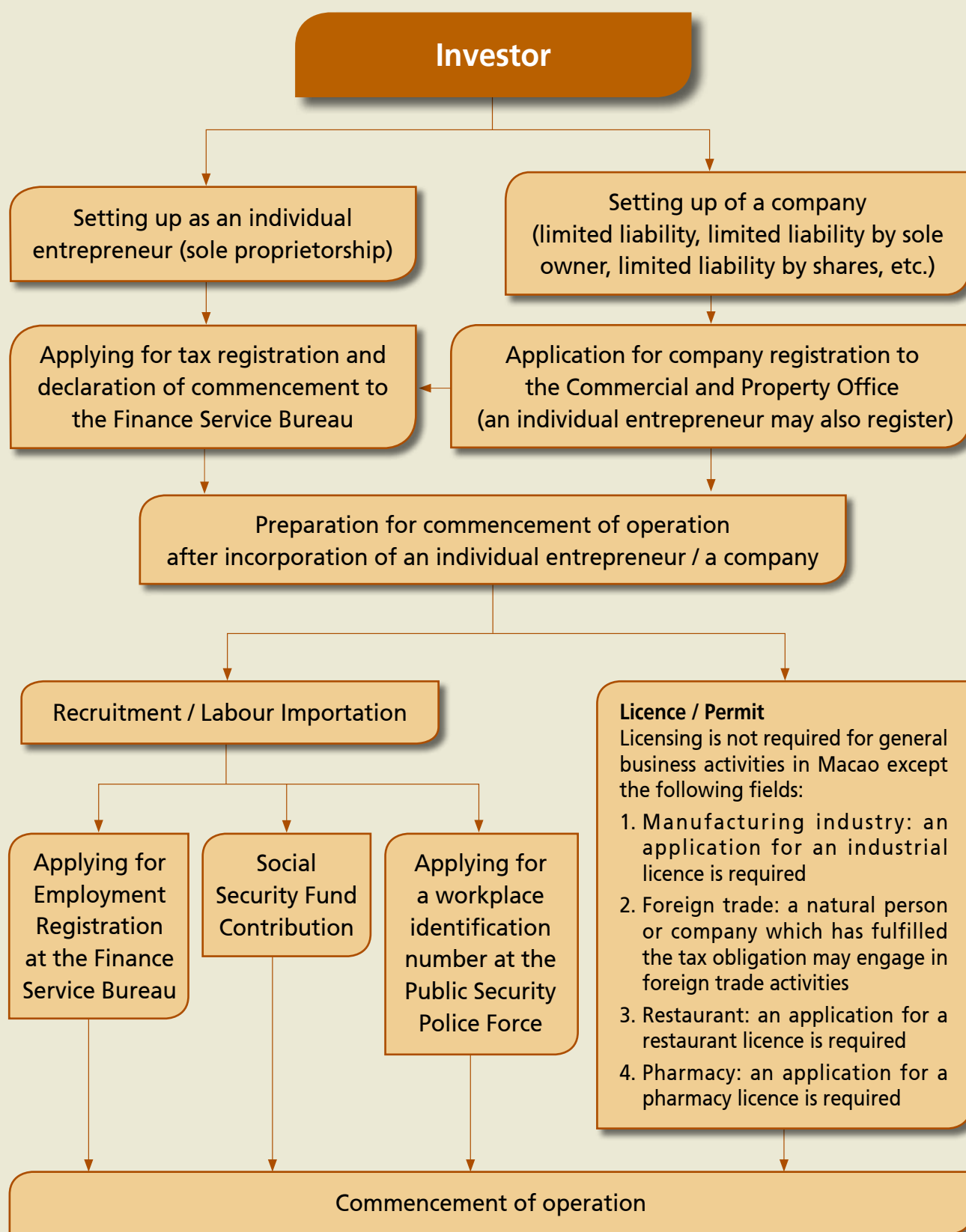
Notes on investment procedures in Guangdong

Procedures to apply for examination and approval for sino-foreign joint ventures, cooperative enterprises and foreign-capital enterprises



Note: The above flowchart shows the general procedures for setting up a foreign investment enterprise. For specific details, please contact the relevant departments.

Notes on investment procedures in Macao



Note: The above flowchart shows the general procedures for setting up a business. For specific details, please contact the relevant departments or visit the website of the Macao Trade and Investment Promotion Institute : www.imip.gov.mo

Code of conduct — sample

Ethical commitment

1. The *(name of company)* (hereafter referred to as the Company) regards honesty, integrity and fair play as our core values that must be upheld by all directors and staff¹ of the Company at all times. This Code sets out the basic standard of conduct expected of all directors and staff, and the Company's policy on acceptance of advantage and handling of conflict of interest when dealing with the Company's business.

Prevention of bribery

2. The Company prohibits all forms of bribery and corruption. All directors and staff are prohibited from soliciting, accepting or offering any bribe in conducting the Company's business or affairs, whether in Hong Kong or elsewhere. In conducting all business or affairs of the Company, they must comply with the Prevention of Bribery Ordinance (PBO) of Hong Kong and must not:

- (a) solicit or accept any advantage from others as a reward for or inducement to doing any act or showing favour in relation to the Company's business or affairs, or offer any advantage to an agent of another as a reward for or inducement to doing any act or showing favour in relation to his/her principal's business or affairs;
- (b) offer any advantage to any public servant (incl. government/public body employee) as a reward for or inducement to his/her performing any act in his/her official capacity or his/her showing any favour or providing any assistance in business dealing with the Government/a public body; or
- (c) offer any advantage to any staff of a government department or public body while they are having business dealing with the latter.

(The relevant provisions of the PBO are at **Annex 1**.)

Acceptance of advantage

3. It is the Company's policy that directors and staff should not solicit or accept any advantage for themselves or others, from any person, company or organisation having business dealings with the Company or any subordinate, except that they may accept (but not solicit) the following when offered on a voluntary basis:

- (a) advertising or promotional gifts or souvenirs of a nominal value; or
- (b) gifts given on festive or special occasions, subject to a maximum limit of \$ _____ in value; or
- (c) discounts or other special offers given by any person or company to them as customers, on terms and conditions equally applicable to other customers in general.

¹ 'Staff' cover full-time, part-time and temporary staff, except where specified.

4. Gifts or souvenirs described in paragraph 3(a) that are presented to directors and staff in official functions are deemed as offers to the Company. The directors and staff concerned should report the acceptance to the Company and seek direction as to how to handle the gifts or souvenirs from *the approving authority*² using Form A (**Annex 2**). If a director or staff member wishes to accept any advantage not covered in paragraph 3, he/she should also seek permission from the *approving authority* using Form A.

5. However, a director or staff member should decline an offer of advantage if acceptance could affect his/her objectivity in conducting the Company's business or induce him/her to act against the interest of the Company, or acceptance will likely lead to perception or allegation of impropriety.

6. If a director or staff member has to act on behalf of a client in the course of carrying out the Company's business, he/she should also comply with any additional restrictions on acceptance of advantage that may be set by the client (e.g. directors and staff members performing any duties under a government or public body contract will normally be prohibited from accepting advantages in relation to that contract).

Offer of advantage

7. Directors and staff are prohibited from offering advantages to any director, staff member or agent of another company or organisation, for the purpose of influencing such person in any dealing, or any public official, whether directly or indirectly through a third party, when conducting the Company's business. Even when an offer of advantage carries no intention of improper influence, it should be ascertained that the intended recipient is permitted by his/her employer/principal to accept it under the relevant circumstance before the advantage is offered.

Entertainment

8. Although entertainment³ is an acceptable form of business and social behaviour, a director or staff member should avoid accepting lavish or frequent entertainment from persons with whom the Company has business dealing (e.g. suppliers or contractors) or from his/her subordinates to avoid placing himself/herself in a position of obligation.

² Specify the post of the approving authority in the Code and the Form.

³ Entertainment refers to 'entertainment' as defined in the PBO, i.e. food or drink provided for immediate consumption on the occasion, and any other entertainment provided at the same time.

Records, accounts and other documents

9. Directors and staff should ensure that all records, receipts, accounts or other documents they submit to the Company give a true representation of the facts, events or business transactions as shown in the documents. Intentional use of documents containing false information to deceive or mislead the Company, regardless of whether there is any gain or advantage involved, may constitute an offence under the PBO.

Compliance with laws of Hong Kong and in other jurisdictions

10. Directors or staff must comply with all local laws and regulations when conducting the Company's business, and also those in other jurisdictions when conducting business there⁴ or where applicable⁵.

Conflict of interest

11. Directors and staff should avoid any conflict of interest situation (i.e. situation where their private interest conflicts with the interest of the Company) or the perception of such conflicts. When actual or potential conflict of interest arises, the director or staff member should make a declaration to the *approving authority* through the reporting channel using Form B (**Annex 3**).

12. Some common examples of conflict of interest are described below but they are by no means exhaustive:

- (a) A staff member involved in a procurement exercise is closely related to or has financial interest in the business of a supplier who is being considered for selection by the Company.
- (b) One of the candidates under consideration in a recruitment or promotion exercise is a family member, a relative or a close personal friend of the staff member involved in the process.
- (c) A director of the Company has financial interest in a company whose quotation or tender is under consideration by the Board.
- (d) A staff member (full-time or part-time) undertaking part-time work with a contractor whom he is responsible for monitoring.

⁴ The 'Business Success: Integrity & Legal Compliance' Corruption Prevention Guide for SMEs in Guangdong, Hong Kong and Macao jointly published by the ICAC, the Guangdong Provincial People's Procuratorate and Commission Against Corruption of Macao provides guidance on the anti-bribery laws in mainland China, Hong Kong and Macao. Directors and staff conducting the Company's business there may find it helpful.

⁵ Some other countries' anti-bribery laws have provisions with extra-territorial effect, e.g. the UK's Bribery Act 2010, the USA's Foreign Corrupt Practices Act.

Misuse of official position, company assets and information

13. Directors and staff must not misuse their official position in the Company to pursue their own private interests, which include both financial and personal interests and those of their family members, relatives or close personal friends.

14. Directors and staff in charge of or having access to any Company assets, including funds, property, information, and intellectual property, should use them solely for the purpose of conducting the Company's business. Unauthorised use, such as misuse for personal interest, is strictly prohibited.

15. Directors and staff should not disclose any classified information of the Company without authorisation or misuse any Company information (e.g. unauthorised sale of the information). Those who have access to or are in control of such information, including information in the Company's computer system, should protect the information from unauthorised disclosure or misuse. Special care should also be taken in the use of any personal data, including directors', staff's and customers' personal data, to ensure compliance with Hong Kong's Personal Data (Privacy) Ordinance.

Outside employment

16. If a staff member wishes to take up employment outside the Company, he must seek the prior written approval of *the approving authority*. *The approving authority* should consider whether the outside employment would give rise to a conflict of interest with the staff member's duties in the Company or the interest of the Company.

Relationship with suppliers, contractors and customers

Gambling

17. Directors and staff are advised not to engage in frequent gambling activities (e.g. mahjong) with persons having business dealings with the Company.

Loans

18. Directors and staff should not accept any loan from, or through the assistance of, any individual or organisation having business dealings with the Company. There is however no restriction on borrowing from licensed banks or financial institutions.

[The Company may wish to include other guidelines on the conduct required of directors and staff in their dealings with suppliers, contractors, customers, and other business partners as appropriate to specific trades.]

Compliance with the Code

19. It is the responsibility of every director and staff member of the Company to understand and comply with this Code, whether performing his duties of the Company in or outside Hong Kong. Managers and supervisors should also ensure that the staff under their supervision understand well and comply with this Code.

20. Any director or staff member in breach of this Code will be subject to disciplinary action, including termination of appointment. Any enquiries about this Code or reports of possible breaches of this Code should be made to *post of a designated senior staff member*. In cases of suspected corruption or other criminal offences, a report should be made to the appropriate authority.

(Name of Company)

Date :

Extracts of the Prevention of Bribery Ordinance (Cap. 201)

Section 9

- (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,shall be guilty of an offence.
- (2) Any person, who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's –
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,shall be guilty of an offence.
- (3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document –
 - (a) in respect of which the principal is interested; and
 - (b) which contains any statement which is false or erroneous or defective in any material particular; and
 - (c) which to his knowledge is intended to mislead the principal,shall be guilty of an offence.
- (4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).

- (5) For the purposes of subsection (4) permission shall –
- (a) be given before the advantage is offered, solicited or accepted; or
 - (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 4

- (1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-
- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
 - (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
 - (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,
- shall be guilty of an offence.
- (3) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

Section 8

- (1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the government through any department, office or establishment of the government, offers any advantage to any prescribed officer employed in that department, office or establishment of the government, shall be guilty of an offence.
- (2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Section 2

'Advantage' means :

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), particulars of which are included in an election return in accordance with that Ordinance.

'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.

Section 19

In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

(Company name)
Report on gifts/advantages received

Part A – To be completed by receiving staff

To : **(Approving authority)**

Description of offeror:

Name & title: _____

Company: _____

Relationship (business / personal): _____

Occasion on which the gift/advantage was / is to be received : _____

Description & (assessed) value of the gift/advantage: _____

Suggested method of disposal:

Remark

() Retain by the receiving staff _____

() Retain for display / as a souvenir in the office _____

() Share among the office _____

() Reserve as lucky draw prize at staff function _____

() Donate to a charitable organisation _____

() Return to offeror _____

() Others (please specify): _____

(Date)

(Name of receiving staff)
(Title / department)

Part B – To be completed by approving authority

To : **(Name of receiving staff)**

The recommended method of disposal is **approved / not approved*. **The gift/advantage concerned should be disposed of by way of :* _____

(Date)

(Name of approving authority)
(Title / department)

** Delete as appropriate*

(Company name)
Declaration of conflict of interest

Part A – Declaration *(To be completed by declaring staff)*

To : **(Approving authority)** via **(supervisor of the declaring staff)**

I would like to report the following actual/potential* conflict of interest situation arising during the discharge of my official duties:-

Persons/companies with whom/which I have official dealings
My relationship with the persons/companies (e.g. relative)
Relationship of the persons/companies with our Company (e.g. supplier)
Brief description of my duties which involved the persons/companies (e.g. handling of tender exercise)

(Date)

(Name of declaring staff)
(Title / department)

Part B – Acknowledgement *(To be completed by approving authority)*

To : **(Declaring staff)** via **(supervisor of the declaring staff)**

Acknowledgement of declaration

The information contained in your declaration form of ____ (Date) ____ is noted. It has been decided that:-

- ☐ You should refrain from performing or getting involved in performing the work, as described in Part A, which may give rise to a conflict.
- ☐ You may continue to handle the work as described in Part A, provided that there is no change in the information declared above, and you must uphold the Company's interest without being influenced by your private interest.
- ☐ Others (please specify) : _____

(Date)

(Name of approving authority)
(Title / department)

* Delete as appropriate

Declaration of company code of conduct — sample

(Name of company) believes that honesty, integrity and fair play are important assets, and that they are crucial to the long-term development and success of the Company.

It is therefore the responsibility of all staff members to observe the laws and regulations of the jurisdiction where they are located, and to maintain a high standard of business/professional ethics when conducting business.

It is the policy of the Company to prohibit staff members from soliciting or accepting any illegal advantage from clients or suppliers. Staff should also avoid situations where their personal interests may be in conflict with their official duties. If such a conflict arises, a declaration must be made to the Company. It is also the policy of the Company to prohibit malpractice, such as misappropriation of Company property, misuse of confidential information, falsification of accounts and documents, and so on.

Any staff member breaching the Company's code of conduct will be subject to disciplinary action. Where any staff member is suspected of having committed corruption, deception or other criminal offences, the Company will report them to the anti-corruption agency/law enforcement authority of the jurisdiction where the offence took place.

For enquiries, please contact (name of Ethics Compliance Officer).

Conflict of interest clauses/acceptance of advantages/employment contracts/appointment letters – sample clauses

The following clauses could be inserted into the employment contracts / appointment letters:

1. Other than the salary, rewards and benefits specified in this agreement, you must seek permission from the Company for the acceptance of any form of reward and advantage in connection with your work.
2. At any time during this agreement, you must inform the Company if you or your immediate family has any financial interest in any business with which the Company has business dealings or which competes with the Company.
3. Unless prior permission is given by the Company, you or your immediate family must not accept any personal loan from the Company's suppliers, clients or business associates. The same applies to accepting guarantee for loans and special commercial discounts. Normal borrowings from banks or other licensed financial institution are, however, not restricted.
4. You must obtain prior permission from the Company for taking up any outside work.
5. You should report to the management promptly should you find any suspected illegal behaviour in the company or any breaches of the Company's requirements. In case of suspected corruption or other criminal offences, a report will be made to the ICAC or the appropriate authorities.

Letter to suppliers and companies having business dealings — sample

(Company Name)

We believe in honesty and fair play and consider that gifts in business are unnecessary and might even jeopardize a cordial and mutually beneficial business relationship. We, therefore, do not permit our staff to ask for any advantage, including gifts, money or rebate, in business dealings. We have enforced a strict Code of Conduct with provisions on solicitation and acceptance of advantages and that breaches would result in disciplinary action. We may also consider reporting the matter to the ICAC. We therefore seek your co-operation not to offer any advantage to our staff in business dealings.

For your information, a copy of our Code of Conduct is enclosed.

Checklist of core competencies for assessing staff performance

Organisational or job knowledge; professional knowledge and expertise

- Possess and apply the knowledge required to achieve organisational goals

Relationship with business associates and clients

- Adopt a client-focused approach and establish an interpersonal network to gain the and support of clients and contractors

Analytical and decision making skills*

- Know the information and external factors affecting the organisation for analysis and decision making

Planning and resource management*

- Plan and monitor work progress so as to deploy resources effectively; improve work efficiency by adopting new ideas and implementing new practices

Leadership*

- Build up good working relationships with staff, set up departmental goals and nurture a sense of belonging among staff

Staff management*

- Set up clear work targets and standards for staff compliance and provide adequate training to develop their potential

Communication skills

- Possess good spoken and written skills
- Maintain sound rapport with people

Initiative

- Ready to take up responsibilities
- Uphold high ethical standards, and devote oneself to one's organisation under all circumstances
- Brace oneself for challenges/pressures and turn risks into opportunities

Communication skills

- Strive for excellence through lifelong learning

**Applicable to persons at management level only*

Appendix 16

Ethics aptitude test

This test comprises a total of 20 scenarios. Please tick the appropriate box to indicate if you agree or disagree on how the scenario is handled.

Scenario	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1. It is already very late when Peter leaves home for work. Noting the long queue at the bus stop, he knows he will probably be late for work as he has to wait for at least several buses. Therefore, when he spots a familiar neighbour at the front of the queue, he greets him and jumps the queue immediately, having no regard for the feelings of other people in the queue. As a result, he manages to get to work on time.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. When Susan pays her mobile telephone bill at a telecommunications company, a staff member there mistakenly thinks she is eligible for the privileged plan, so he charges her 50% of the monthly fee. After having second thoughts, Susan tells the staff member that she should be paying the full charges.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. Michael's son has joined a model-making competition organised by his primary school. Participants are allowed to complete the models at home. In order to help his son win the competition, Michael, who is adept in model making, finishes the model for his son.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
4.	Having heavy gambling debts, Jenny's brother borrows money from his family pretending that he needs cash flow for his business and asks Jenny to keep this secret. Jenny loathes seeing the relationship between her brother and other family members worsening, so she agrees to withhold the truth for him.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5.	Mary has dinner with her friends at a seafood restaurant. When settling the bill, one of her friends notices that the amount is 20% less than expected as several dishes have not been charged for. Mary tells the captain about it and pays the original price.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6.	Stephen often finds his colleagues, whether intentionally or otherwise, bringing home the company's stationery for personal use. Though his colleagues do not take it seriously, it is in fact a breach of the company's regulations, and Stephen decides to report it to his supervisor.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7.	Fred is a transportation worker. This morning when he moves the furniture for a customer, he carelessly leaves a scratch on a valuable rosewood coffee table. Pretending nothing has happened, Fred does not tell the customer about it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8.	Your sister's daughter will soon start her primary education. Since your mother is living in a district with many well-known schools, your sister uses your parents' address to apply for the desired school for her daughter.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
9.	During a crucial football match, Raymond suddenly loses his footing and falls within the other team's penalty area. The referee judges that he is tripped by a player of the other team and awards a penalty. Raymond realises that they are into extra time and that his team may advance to the next stage if only they can get one more chance with the penalty. He therefore does not tell the referee that the other team has not infringed the regulation.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10.	Uncle Wing is the caretaker of a building and one of his tasks is to take charge of the property of the incorporated owners. The chairman of the incorporated owners often takes for his own consumption the spare electric light bulbs to be used for the lift lobby. He even asks Uncle Wing not to put it on record. Uncle Wing turns down his request.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
11.	While surfing the internet, Norman gets linked to a website offering free downloads of pop songs. He later learns that it is an illegitimate website, but he continues to use its services as he only downloads a few songs every month and will delete them after listening to them.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
12.	Angel accidentally comes to learn that her colleague has been 'moonlighting' after office hours. As it has nothing to do with her and the colleague has been nice to her, she decides to say nothing about it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
13.	Alfred is the personnel manager of a company which is conducting a recruitment exercise. In a family gathering, he learns that his nephew has applied for one of the posts. In a chat, he tells his nephew about the company's selection criteria. While other candidates may not get hold of such information, Alfred does not consider it to be a disclosure of examination questions and he is only too happy to do his nephew a favour.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
14.	Nancy suffers from a hand injury when playing tennis with a friend. In order to get extra sick leave, she exaggerates her injury and is eventually granted one week's paid sick leave.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
15.	As a car salesman, Wilson finds that his major source of income comes from commission. Two new car models have been put on sale recently and one of them is a sports car which offers a higher rate of commission. In order to earn more commission, Wilson recommends the sports car to a customer who has just obtained his driving licence and cannot handle the sports car.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
16.	Ken is a night-shift taxi driver. Recently he has become acquainted with a customer who needs to travel a long way to get home after working late at night. On one occasion when Ken drives the frequent customer home, the latter asks for a 20% discount on the taxi fare. He further asks for the receipt with the original taxi fare printed on it so that he can claim a travelling allowance from his company. In return, he promises to hire Ken for future late night trips, but Ken turns down his request.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
17.	To celebrate a friend's birthday, Jane and her friends form a pool of money to buy a present for the friend. Jane is responsible for buying the present. The gift shop where Jane buys the present will give out a vacuum cup as a gift for every purchase of \$500 to mark its anniversary. As the vacuum cup is not of much value, she just keeps the cup for herself without telling her friends about it.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
18.	A competing company has agreed to pay Eddy a high salary on condition that he has to bring the competitor's newly developed production technique to the new company. Eddy accepts the offer immediately because he knows the new technique well, though he is not working as a researcher in the production unit. Besides, his current employment contract does not contain any regulations governing his conduct after he leaves the company.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Scenario		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
19.	When Danny queues up at a bank's teller machine late one night, the man in front of him forgets to take the money from the machine. Since it is only a few hundred dollars and the man has already gone, Danny decides not to run to tell him, nor does he take the money away.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
20.	Charlene works with the loans department of a bank. One of her close friends applies for a loan from the bank to pay for a surgical operation. Nearing the completion of the loan processing formalities, Charlene discovers that the submitted documents are incomplete and one verifying document is missing. However, based on their friendship, Charlene approves the loan without hesitation and asks her friend to submit the required document immediately afterwards.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Calculation of scores

Scenario	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1	1	2	3	4	5
2	5	4	3	2	1
3	1	2	3	4	5
4	1	2	3	4	5
5	5	4	3	2	1
6	5	4	3	2	1
7	1	2	3	4	5
8	1	2	3	4	5
9	1	2	3	4	5
10	5	4	3	2	1
11	1	2	3	4	5
12	1	2	3	4	5
13	1	2	3	4	5
14	1	2	3	4	5
15	1	2	3	4	5
16	5	4	3	2	1
17	1	2	3	4	5
18	1	2	3	4	5
19	1	2	3	4	5
20	1	2	3	4	5

Analysis*

81 - 100 points

You are an upright and honest person who will not give up your principles for petty advantages, nor will you drift with the tide. You can still uphold your principles even when faced with temptation. You deserve your employer's trust.

61 – 80 points

You are a prudent person who will not casually commit any breaches just for immediate benefits. However, you may sometimes turn a blind eye to irregularities, showing that you cannot always stick to your principles or follow regulations. If only you can be more cautious when making ethical judgments, you will be looked upon as an employee worthy of trust.

41 – 60 points

You are a person of loose principles who can never make up your mind when encountering ethical dilemmas. Being indecisive and too concerned about the perception of other people, sometimes you can only perceive the immediate consequences but fail to make a proper judgment from different and long-term perspectives. Even with good intentions, you may end up with bad results. You need to learn how to make objective judgment calls and adhere to correct principles.

20 – 40 points

You are a person who covets small gains and is willing to do anything to obtain advantages. As a result, the negative impact of your acts on your company, friends and family are often neglected. You have to re-adjust your values and uphold fairness and honesty in order to gain the trust of your superiors and colleagues.

* The ethics aptitude test is for general reference only. Please consult professionals if more in-depth analysis is required.

Best practice modules published by the Corruption Prevention Department of the ICAC

The Corruption Prevention Department of the ICAC of Hong Kong has developed best practice modules (BPMs) tailored for private sector companies and public bodies on how to plug corruption loopholes in various functional areas. The BPMs cover the following areas and can be used by persons in charge of these organisations to review whether there are adequate controls in place.

1.	Corruption prevention guide for tertiary education institutions — Administration of donations — Technology transfer and commercialisation — Procurement — Administration of outside practice — Financial reporting
2.	Governance and internal control of estate agencies
3.	Governance of National Sports Associations
4.	Hotel management
5.	Chain stores and supermarkets – control of sales of high-demand goods
6.	Internal control in social enterprises
7.	Corruption prevention guide for testing and certification industry
8.	Management of obstetric services – A corruption prevention guide for private hospitals
9.	Strengthening integrity and accountability – Administration of government funds
10.	Strengthening integrity and accountability – Grantee's guidebook
11.	Management of work consultancies
12.	Procurement
13.	Construction quality control testing
14.	Travel agent operation
15.	Management of catering operations
16.	Management of supermarket operations
17.	Good governance and internal control – A corruption prevention guide for listed companies
18.	Verification of insurance claims
19.	'Governance and internal control' – A best practice checklist (for use by Small and Medium Enterprises)
20.	Management of charities and fund-raising activities
21.	Good governance and internal control in public organisations
22.	Staff administration
23.	Stores management
24.	Governance and internal control in schools
25.	Letting and administration of works contracts
26.	Governance and internal control in non-governmental organisations
27.	Contracting out cleaning and security contracts
28.	Management of donations for naming rights

Interested parties can check out the latest list of BPMs or download their full versions from the ICAC website (www.icac.org.hk).

Contact information of organisations providing services to business operators in Hong Kong

(I) Service organisations

1. Relevant government departments

Name of Organisation	Address	Telephone	Fax	Email	Website
Companies Registry	14/F, High Block, Queensway Government Offices, 66 Queensway, Hong Kong	(852) 2234 9933	(852) 2596 0585	crenq@cr.gov.hk	www.cr.gov.hk
Inland Revenue Department	Business Registration Office: 4/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong	(852) 2594 3149 (852) 2594 3146	(852) 2824 1482	taxbro@ird.gov.hk	www.ird.gov.hk
Hong Kong Customs and Excise Department	222 Java Road, North Point, Hong Kong	(852) 2815 7711	(852) 2542 3334	customsenquiry@customs.gov.hk	www.customs.gov.hk
Hong Kong Fire Services Department	Licensing and Certification Command: 5/F, South Wing, Fire Services Headquarters Building, 1 Hong Chong Road, Tsim Sha Tsui East, Kowloon.	(852) 2733 7619	(852) 2367 3631	hkfsdenq@hkfsd.gov.hk	www.hkfsd.gov.hk
Environmental Protection Department	33/F-34/F, 40/F & 45/F-48/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong	(852) 2838 3111	(852) 2838 2155	enquiry@epd.gov.hk	www.epd.gov.hk
Food and Environmental Hygiene Department	44/F Queensway Government Offices, 66 Queensway, Hong Kong	(852) 2868 0000	(852) 2869 0169	enquiries@fehd.gov.hk	www.fehd.gov.hk
Intellectual Property Department	24/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong	(852) 2961 6901	(852) 2838 6315 (852) 2838 6082 (852) 2574 4345	enquiry@ipd.gov.hk	www.ipd.gov.hk
Labour Department	16/F, Harbour Building, 38 Pier Road, Central, Hong Kong	(852) 2717 1771	(852) 2544 3271	enquiry@labour.gov.hk	www.labour.gov.hk
Trade and Industry Department	Trade and Industry Department Tower, 700 Nathan Road, Mongkok, Kowloon	(852) 2392 2922 (852) 2398 5133	(852) 2787 7422	enquiry@tid.gov.hk	www.tid.gov.hk
Transportation Department	3/F, United Centre, 95 Queensway, Hong Kong	(852) 2804 2600	(852) 2804 2652	tidenq@td.gov.hk	www.td.gov.hk
InvestHK	25/F, Fairmont House, 8 Cotton Tree Drive, Central, Hong Kong	(852) 3107 1000	(852) 3107 9007	enq@investhk.gov.hk	www.investhk.gov.hk
Support and Consultation Centre for SMEs, Trade and Industry Department	M/F, Trade and Industry Department Tower, 700 Nathan Road, Mongkok, Kowloon, Hong Kong	(852) 2398 5133	(852) 2737 2377	success@tid.gov.hk	www.success.tid.gov.hk

2. Public organisations

Name of Organisation	Address	Telephone	Fax	Email	Website
Securities and Futures Commission	35/F, Cheung Kong Center 2 Queen's Road Central, Hong Kong	(852) 2840 9222	(852) 2521 7836	enquiry@sfc.hk	www.sfc.hk
Hong Kong Trade Development Council	38/F, Office Tower, Convention Plaza, 1 Harbour Road, Wan Chai, Hong Kong	(852) 1830 668	(852) 2824 0249	hktcd@hktcd.org	www.hktcd.com
Hong Kong Productivity Council	HKPC Building, 78 Tat Chee Avenue, Kowloon	(852) 2788 5678	(852) 2788 5900	hkpcenq@hkpc.org	www.hkpc.org
Hong Kong Science and Technology Parks Corporation	8/F Bio-Informatics Centre, Hong Kong Science Park, No.2 Science Park West Ave, Sha Tin, New Territories	(852) 2629 1818	(852) 2629 1833	enquiry.marketing@hkstp.org	www.hkstp.org
Hong Kong Export Credit Insurance Corporation	2/F, Tower 1, South Seas Centre, 75 Mody Road, Tsim Sha Tsui East, Kowloon	(852) 2732 9988	(852) 2722 6277	info@hkeic.com	www.hkeic.com

(II) Professional service organisations

1. Chambers of commerce providing support for business organisations

Name of Organisation	Address	Telephone	Fax	Email	Website
Federation of Hong Kong Industries	31/F, Billion Plaza, 8 Cheung Yue Street, Cheung Sha Wan, Kowloon	(852) 2732 3188	(852) 2721 3494	fhki@fhki.org.hk	www.industryhk.org
The American Chamber of Commerce	Room 1904, Bank of America Tower, 12 Harcourt Road, Admiralty, Hong Kong	(852) 2530 6900	(852) 2810 1289	amcham@amcham.org.hk	www.amcham.org.hk
The Chinese General Chamber of Commerce	4/F, 24-25 Connaught Road Central, Hong Kong	(852) 2525 6385	(852) 2845 2610	cgcc@cgcc.org.hk	www.cgcc.org.hk
The Chinese Manufacturers' Association of Hong Kong	CMA Building, 64-66 Connaught Road Central, Hong Kong	(852) 2545 6166	(852) 2541 4541	info@cma.org.hk	www.cma.org.hk
The Hong Kong Chinese Enterprises Association	Room 2104-6, Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong	(852) 2827 2831	(852) 2827 2606	info@hkcea.com	www.hkcea.com
The Hong Kong General Chamber of Commerce	22/F, United Centre, 95 Queensway, Hong Kong	(852) 2529 9229	(852) 2527 9843	chamber@chamber.org.hk	www.chamber.org.hk

2. Major chambers of commerce for SMEs and cross-boundary business in Hong Kong

Name of Organisation	Address	Telephone	Fax	Email	Website
The Hong Kong General Chamber of Small and Medium Business	Flat D, 11/F, Kaiser Estate Phase 1, 41 Man Yue Street, Hung Hom, Kowloon	(852) 2325 9189	(852) 2329 3749	secretariat@hkgcsmb.org.hk	www.hkgcsmb.org.hk
Hong Kong-Mainland Joint Business Liaison Committee	(Secretariat) Federation of Hong Kong Industries	(852) 2117 1221	—	fhki@fhki.org.hk	www.hkchinabiz.org.hk
Hong Kong Chamber of Commerce in China	Room 916, Block 1, Guanghua Chang'an Building, 7 Jianguomen Neidajie, Beijing, China	(86) 010 65101583	(86) 010 65101584	hkccc@hkccc.com.cn	www.hkccc.com.cn

Due to space limitation, we are unable to include information of all chambers of commerce. Investors are advised to visit the Trade and Industry Department website (www.tid.gov.hk) for more information.

Appendix 19

Contact information of organisations providing services to business operators in Guangdong

(I) Service organisations

1. Relevant government departments

Name of Organisation	Address	Telephone (Domestic)	Telephone (International)	Postal Code	Website
Department of Foreign Trade and Economic Cooperation of Guangdong Province	351 Tianhe Road, Guangzhou	020—38802165	8620—38802165	510620	www.gddoftec.gov.cn
Development and Reform Commission of Guangdong Province	305 Dongfeng Central Road, Guangzhou	020—83484985	8620—83484985	510031	www.gddpc.gov.cn
The Economic and Information Commission of Guangdong Province	100 Jixiang Road, Guangzhou	020—83133200	8620—83133200	510030	www.gdet.gov.cn
Guangdong Province Administration for Industry and Commerce	1 Tiyu Xi Heng Jie, Guangzhou	020—85584330	8620—85584442	510620	www.gdgs.gov.cn
Department of Environmental Protection of Guangdong Province	213 Longkou Xi Road, Guangzhou	020—87532329	8620—87532329	510630	www.gdepb.gov.cn
Department of Health of Guangdong Province	17 Xianlie Road South, Guangzhou	020—83828646	8620—83828646	510060	www.gdwst.gov.cn
Guangdong Provincial Public Security Department	97 Huanghua Road, Guangzhou	020—83832980	8620—83832980	510050	www.gdga.gov.cn
Labour and Social Security Department of Guangdong Province	88 Jiaoyu Road, Guangzhou	020—83332026	8620—83332026	510630	www.gdhrss.gov.cn
Guangdong Sub-administration of China Customs	53 Shamian Mian Road, Guangzhou	020—81108000	8620—81108000	510130	guangdong_sub.customs.gov.cn
Guangdong Provincial Office, State Administration of Taxation	19 Huacheng Main Road, Tianhe District, Guangzhou	020—37632888	8620—37632888	510623	www.gd-n-tax.gov.cn
Guangdong Provincial Local Taxation Bureau	600 Tianhe Road North, Guangzhou	020—85299032	8620—85299032	510630	www.gdltax.gov.cn
State Administration of Foreign Exchange, Guangdong Branch	137 Yanjiang North Road, Guangzhou	020—83288685	8620—83288685	510120	www.safe.gov.cn
Guangdong Entry-Exit Inspection and Quarantine Bureau	66 Huacheng Main Road, Zhujiang Xin Cheng, Guangzhou	020—38290073	8620—38290073	510623	www.gdcic.gov.cn
Foreign Affairs Office, People's Government of Guangdong Province	45 Shamian Main Road, Guangzhou	020—81218888	8620—81218888	510130	www.gdfao.gd.gov.cn
Administration of Quality and Technology Supervision of Guangdong Province	363 Huangpu Dadao Road West, Tianhe District, Guangzhou	020—38835114	8620—38835114	510627	www.gdqts.gov.cn

(II) Professional service organisations

1. Major banks in Guangdong

Name of Organisation	Address	Telephone (Domestic)	Telephone (International)	Postal Code	Website
The People's Bank of China (Guangzhou Branch)	137 Yanjiang Road West, Guangzhou	020—81322411	8620—81322411	510120	guangzhou.pbc.gov.cn
Bank of China, Branch of Guangdong Province	197 Dongfeng Road West, Guangzhou	020—83398888	8620—83398888	510180	www.bocgd.com
Industrial and Commercial Bank of China, Branch of Guangdong Province	123 Yanjiang Road West, Guangzhou	020—81302130	8620—81302130	510120	www.gd.icbc.com.cn
China Construction Bank, Branch of Guangdong Province	509 Dongfeng Road Central, Guangzhou	020—83608888	8620—83608888	510045	www.ccb.com/gd
Agricultural Bank of China, Branch of Guangdong Province	425 Zhujiang Road East, Zhujiang Xin Cheng, Guangzhou	020—38008888	8620—38008888	510623	www.abchina.com/cn/branch/gd
Bank of Communications, Guangdong Branch	123 Jiefang Road South, Guangzhou	020—83270008	8620—83270008	510120	www.bankcomm.com/guangdong
China Guangfa Bank	713 Dongfengdong Road Guangzhou	020—38323832	8620—38323832	510080	www.cgbchina.com.cn

2. Consultation, patents, trademarks, etc

Name of Organisation	Address	Telephone (Domestic)	Telephone (International)	Postal Code	Website
Guangdong WTO Affairs Consultation Service Centre	11/F, 774 Dongfeng Dong Road, Guangzhou	020—87337616	8620—87337616	510087	www.gdwto.org.cn
Guangdong Province Foreign Trade Development Division	11/F, 774 Dongfeng Dong Road, Guangzhou	020—87337769	8620—87337769	510087	www.gdwto.org.cn
Guangdong Provincial Quota License Affairs Bureau	31/F, Guangdong Foreign Trade & Economic Building, 351 Tianhe Road, Guangzhou	020—38819386	8620—38819386	510620	www.gddoftec.gov.cn
Guangdong Board of Investment Promotion	4/F, Guangdong Foreign Trade & Economic Building, 351 Tianhe Road, Guangzhou	020—38819376(6)	8620—38819376(6)	510620	www.gdbip.org.cn
Guangdong Complaints Centre for Foreign Investment	Room 3120, Guangdong Foreign Trade & Economic Building, 351 Tianhe Road, Guangzhou	020—38819398(9)	8620—38819398(9)	510620	—
Guangzhou Zhiyou Patent and Trademark Agency Co Ltd	Suite 2604, Yuehai Group Building, 555 Dong Feng Dong Road, Guangzhou	020—87684609	8620—87684609	510070	www.gdzhijyou.com
Guangdong Provincial Trademark Service	15/F, West Tower, Fuxing Commercial Building, 159 Huangpu Dadao Road West, Tianhe District, Guangzhou	020—87563998	8620—87563998	510620	www.gdpt.com.cn
Guangdong Province Land Valuation Service	Unit 210, 2/F, Leijing Court, No. 3, 10 Zhiyou Second Cross Road, Guangzhou	020—87752493 (fax)	8620—87752493 (fax)	510600	—
Guangdong Provincial Notary	2/F, 26 Cangbian Road, Guangzhou	020—83326533	8620—83326533	510030	www.gd-notary.com

(III) Useful websites

Ministry of Commerce of the People's Republic of China
www.mofcom.gov.cn

Guangdong Price Information Website
www.gdpi.gov.cn

Contact information of organisations providing services to business operators in Macao

(I) Service organisations

1. Relevant government departments

Name of Organisation	Address	Telephone	Fax	Email	Website
Macao Trade and Investment Promotion Institute	World Trade Centre Building, 1st & 4th Floors, 918, Avenida da Amizade, Macao	(853) 2871 0300 (853) 2888 1212	(853) 2859 0309	ipim@ipim.gov.mo	www.ipim.gov.mo
Commerce and Movable Property Registry	Rua do Campo, n.º 162, Edifício Administração Pública, 1.º andar, Macau	(853) 2837 4371 (853) 2837 4374	(853) 2833 0741	crcbm@dsaj.gov.mo	www.dsaj.gov.mo
Financial Services Bureau	Av. da Praia Grande, No.575, 579 e 585, Macau	(853) 2833 6366	(853) 2830 0133	dsfinfo@dsf.gov.mo	www.dsf.gov.mo
Macao Economic Services	Rua Dr. Pedro José Lobo, 1-3, Luso International Bank Building, 6/F, Macao	(853) 2856 2622	(853) 2871 2552	info@economia.gov.mo	www.economia.gov.mo
Civic and Municipal Affairs Bureau	Avenida de Almeida Ribeiro, No. 163, IACM Building	(853) 2838 7333	(853) 2833 6477	webmaster@iacm.gov.mo	www.iacm.gov.mo
Macau Government Tourist Office	Alameda Dr. Carlos d'Assumpcao, n.ºs 335-341, Edifício "Hot Line", 12º andar, Macao	(853) 2831 5566 (853) 2851 3355	(853) 2851 0104	mgto@macautourism.gov.mo	www.macautourism.gov.mo
Labour Affairs Bureau	Edifício Advance Plaza sito na Avenida do Dr. Francisco Vieira Machado, nos. 221 a 279, em Macao	(853) 2856 4109	(853) 2855 0477	dsalinfo@dsal.gov.mo	www.dsal.gov.mo
Fire Services Bureau	Av. Doutor Stanley Ho, Macao	(853) 8989 1373 (853) 8989 1374	(853) 2836 1128	-	www.fsm.gov.mo/cb
Transport Bureau	Estrada de D. Maria II, N.º33, Macao	(853) 8866 6666	(853) 2875 0626	info@dsat.gov.mo	www.dsat.gov.mo
Macao Monetary Authority	Calçada do Gaio, No. 24 – 26, Macao	(853) 2856 8288	(853) 2852 3622	general@amcm.gov.mo	www.amcm.gov.mo
Department of Pharmaceutical Affairs, Health Bureau	Avenida Sidónio Pais, n.º 51, Edif. "China Plaza", 1º a 4º andar	(853) 8598 3508 (853) 8598 3501	(853) 2852 4016	daf@ssm.gov.mo	www.ssm.gov.mo
Macao Customs Service	Rua S. Tiago da Barra, Doca D. Carlos I, SW, Customs Headquarter, Macao	(853) 2855 9944	(853) 2837 1136	info@customs.gov.mo	www.customs.gov.mo
Human Resources Office	Avenida do Dr. Rodrigo Rodrigues, NO. 614A-640, Long Cheng Building, Floor 9 ~ 11, Macao	(853) 2833 6960	(853) 2871 2749	info@grh.gov.mo	www.grh.gov.mo

2. Public utilities

Name of Organisation	Address	Telephone	Fax	Email	Website
Macao Industrial Parks Development Co. Ltd.	Praceta do Parque Industrial da Ilha Verde, Posto Fronteiriço do Parque Industrial Transfronteiriço, 6.o andar, Macau	(853) 2878 6636	(853) 2878 5374	sdpim@macau.ctm.net	www.sdpim.com.mo
Macao Productivity and Technology Transfer Center	Rua de Xangai n.º175, Edifício ACM, 6.º-7.º andares, Macau	(853) 2878 1313	(853) 2878 8233	cpttm@cpttm.org.mo	www.cms.cpttm.org.mo

(II) Professional service organisations

1. Chambers of commerce providing support for business organisations or SMEs

Name of Organisation	Address	Telephone	Fax	Email	Website
Macao Chamber of Commerce	Rua de Xangai 175, Ed. ACM. 5, Macau	(853) 2857 6833	(853) 2859 4513	acmmcc@macau.ctm.net	www.acm.org.mo
The Macao Chinese Enterprises Association	Avenida do Dr.Rodrigo Rodrigues 223-225 Edif. Nam Fong, 13 andar, Macao	(853) 8391 2368	(853) 2871 2877	-	-

Due to space limitation, we are unable to include information of all chambers of commerce. Investors are advised to visit the Macao Trade and Investment Promotion Institute website (www.ipim.gov.mo) for more information.

Public services in Hong Kong

Useful telephone numbers of public services

Hong Kong directory enquiries	1083
International directory enquiries	10015
Hong Kong Observatory weather report	1878200
Hongkong Post Speedpost service	29212288
Hong Kong International Airport enquiry hotline	21818888

Telephone numbers of emergency services

Emergency number for crime reporting and rescue	999
Emergency ambulance service	27353355

Note: The above numbers are Hong Kong local numbers. The country code for Hong Kong is 852.

Office hours of government department

In general, government departments adopt a 5-day work week, i.e. to close on Saturdays, Sundays and Hong Kong public holidays.

Office hours may vary with departments. For enquiries about office hours, please call the 24-hour enquiry line at 1823.

Public services in Guangdong

Useful telephone numbers of public services

China Telecom telephone enquiry service	114
International call enquiry service	160
IDD collect call service	108
Crime reporting	110
Fire services	119
First aid centre	120
Weather forecast	12121
Traffic incidents reporting	122
EMS express mail service	11185
Baiyun Airport flight information enquiry service	36066999

Note: The above numbers are mainland China local numbers. The country code for China is 86.

Office hours of government departments

Government departments open 5 days a week, i.e. closed on Saturdays and Sundays.
Office hours: 8:30 am to 12:00 noon; 2:00 pm to 5:30 pm.

Business hours of banks

9:00 am to 5:00 pm. Banks may open for certain hours on Saturdays and Sundays.

Business hours of shops

9:30 am to 10:00 pm. Some convenience stores open 24 hours a day.

Public services in Macao

Useful telephone numbers of public services

CTM telephone directory enquiries	181
CTM international telephone enquiries	101
Weather forecast	1311
Macao Post express mail service (EMS)	28596688
Macao Airport flight information enquiry service	28861111

Telephone numbers of emergency services

Emergency number for crime reporting and rescue	999, 110, 112 or 993
Emergency ambulance service	28572222, 119 or 120

Note: The above numbers are Macao local numbers. The country code for Macao is 853.

Macao SARG portal

<http://portal.gov.mo/web/guest/welcomepage>

Office hours of government departments

Government departments open 5 days a week, i.e. closed on Saturdays, Sundays and Macao public holidays.

Office hours: Monday to Thursday: 9:00- 13:00, 14:30- 17:45

Friday: 9:00- 13:00, 14:30- 17:30

Title : **'Business Success: Integrity & Legal Compliance'**
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