

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
Accepting bribes in the private sector Article 3 - Prevention and Suppression of Bribery in the Private Sector	<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
Offering bribes in the private sector Article 4 - Prevention and Suppression of Bribery in the Private Sector	<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'.

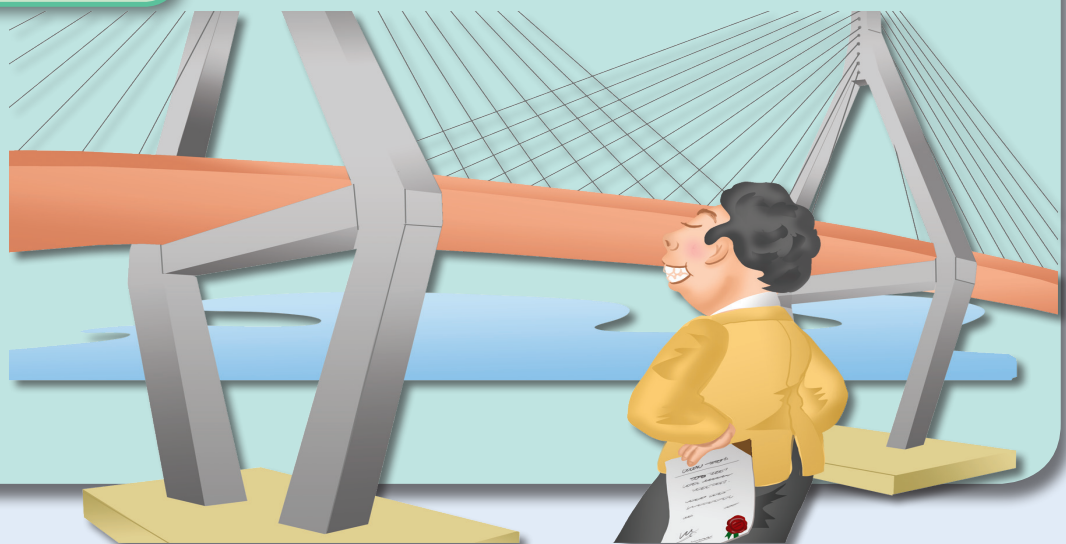
Key features

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:
 - ♦ 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.

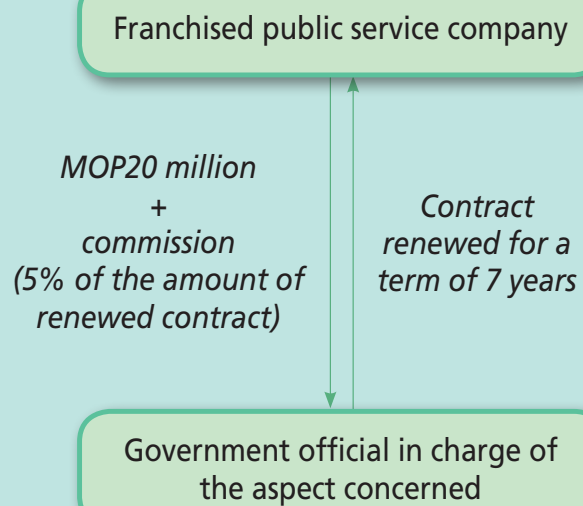
Case 2 Company A, a private company, had been awarded a term contract for the provision of a public service by the government. As the current term contract was due to expire, the government was considering whether to renew the existing contract or open it for tender.

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**.*

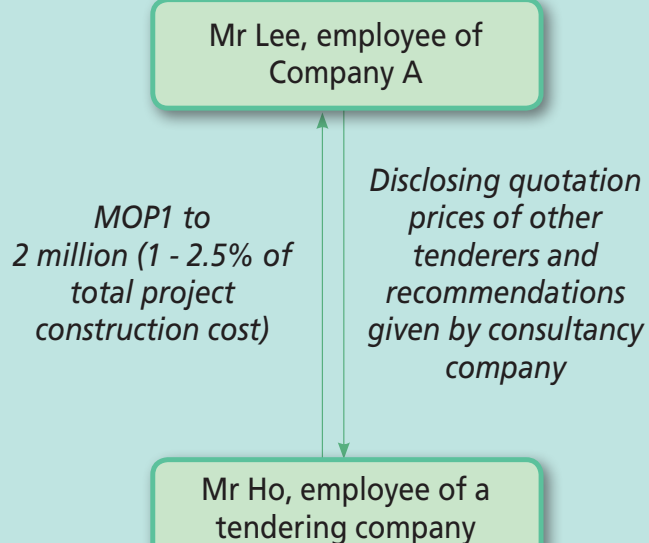
Case 3 Company A was planning to carry out a large-scale residential development project on a piece of land in Macao that was owned by their company. The Company decided to select a contractor by open tender.

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.

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.*