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金融服務業實務錦囊

A Tool Kit on Managing Staff Integrity
for Financial Services Sector

「知法守法」金融服務業法律指引

“Observing the Law”

A Guide for Financial Services Practitioners

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編輯小組按

為更有效地闡釋法律條文，本刊物透過不同類型的個案帶出在內地與香港從事金融服務業人士可能遇到的行賄、受賄或道德上進退兩難的情況；並分析僱主、僱員及相關人士應負的法律責任。由於涉及的法例問題複雜，本刊物不能把所有有關反貪污的法規一一盡錄，為方便讀者，現只輯錄主要的法規，內容可參考附錄一至六。有關內地的法規，讀者可瀏覽下列網站：

中華人民共和國商務部 www.mofcom.gov.cn

中華人民共和國最高人民檢察院 www.spp.gov.cn

本刊物只提供一般的指引，不會就每種情況下可能出現的所有事件提出討論。刊物中有關法例規定的解釋，亦只屬一般和概括性質，不可取代原本的法律條文。因此，讀者不論遇到任何情況，均應細閱有關法例，或在有需要時徵詢法律意見。任何人士因為本刊物的內容作出或放棄作出任何行動而招致損失，廉政公署概不承擔任何責任。

指引內列出的個案是綜合真實案例和虛構情況而編成，僅供參考之用。

在本刊物中，代名詞「他」同時包括男性及女性，並沒有任何性別歧視的含義。

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From the Editor

To explain the legal provisions more effectively, this publication uses a number of case studies to illustrate situations where offering / acceptance of bribes or ethical dilemma may be encountered by financial services practitioners in Hong Kong and the Mainland. It also analyses the legal responsibilities of the employers, employees and relevant parties. Due to the complexity of the legal issues involved, the anti-bribery laws listed in this publication are by no means exhaustive. Only extracts of the major provisions are provided in *Appendices 1 to 6* for readers' easy reference. For more details of the Mainland legislation, please visit the following websites:

Ministry of Commerce of the People's Republic of China www.mofcom.gov.cn

Supreme People's Procuratorate of the People's Republic of China www.spp.gov.cn

This publication aims to provide general guidance only and does not purport to deal with all possible issues that may arise in any given situation. Explanations of legal requirements under any relevant legislation are necessarily general and cannot be relied upon to relieve the need to review relevant legislation in detail, and where appropriate, to obtain specific legal advice on any issue which may arise. The Independent Commission Against Corruption accepts no liability or responsibility for any loss caused to any person acting or refraining from acting in any way as a result of any material contained in this publication.

The scenarios given in this publication are based on a mixture of past prosecutions and hypothetical cases and are for illustration only.

Throughout this publication, the male pronoun is used to cover references to both the male and female. No gender preference is intended.

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• 序言

亞洲是全球經濟熱點地區，隨著中國正式加入世界貿易組織，內地陸續降低關稅及開放銀行、保險等多個行業，現在有很多跨國企業選擇以香港和中國的主要城市作為其亞太區總部所在地，借助兩地優越的投資環境，進一步開拓商機。

金融服務業也不例外。香港是全球重要的金融市場之一，各項投資活動和銀行服務均十分蓬勃。近年隨著內地和香港商業往來日趨頻繁，香港的金融服務業亦逐步向國內發展。

重法治、倡廉潔、崇尚公平競爭等，是一個地方能夠吸引投資者的重要元素。推崇公平法治的經濟體系能保持在市場上的發展優勢；而尊重法治的企業亦能以廉潔的信譽獲得更多商機。

香港與內地奉行一國兩制，從事跨境金融服務業的人士，須遵從不同地域的法律規定和經濟政策。國家的執法現在越加嚴謹，故金融從業員切忌按習以為常的方式辦事，以避免不必要的糾紛及訴訟，甚或抵觸反貪污賄賂法例。

為此，香港特別行政區廉政公署編印這本刊物，為從事跨境金融服務業的人士提供一套實用的參考資料，使他們能守法循規，有效地保障自己的權益。有關個案絕大部分是參照實案改編，但其中涉及的人物、企業等名稱，全屬虛構，如有雷同，實屬巧合。這些個案涉及銀行業務及證券、期貨與投資的經濟活動，旨在帶出法律要點，並指出在管理上可能出現的漏洞。

我們誠盼這本刊物可為金融服務業的業界人士提供實用的協助及指引。

香港特別行政區
廉政公署社區關係處
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第一章

內地與香港 反貪法例要點



內地與香港反貪法例要點

香港的反貪污法例

香港法例第201章《防止賄賂條例》，旨在維護社會的廉潔公平，保障僱主及僱員雙方的合法權益。機構內若出現貪污受賄的行為，將會為機構招致不必要的損失，而有關的犯案人士更要負上刑事責任。

《防止賄賂條例》第9條主要針對私營機構的貪污罪行。根據此條例，任何代理人（一般是指僱員）如未獲其主事人（一般是指僱主）的許可，向任何人索取或收受利益，作為影響與主事人有關業務決定的報酬，即屬違法。而提供利益者亦屬違法。

《防止賄賂條例》中的有關係款	法例內容摘要	須留意的重點
私營機構僱員受賄 第9條第1款	<ul style="list-style-type: none">◆ 任何代理人◆ 未得其主事人許可◆ 索取或接受任何利益◆ 藉以影響其執行或不執行與主事人有關的事務	<ul style="list-style-type: none">◆ 除非獲得僱主的批准，否則僱員不可因工作關係索取或接受利益
向私營機構僱員行賄 第9條第2款	<ul style="list-style-type: none">◆ 任何人士◆ 未得對方主事人許可◆ 向任何代理人提供利益◆ 誘使或酬謝對方執行或不執行與其主事人有關的事務	<ul style="list-style-type: none">◆ 若要向私營機構僱員提供利益，必須事先了解清楚對方是否已獲其僱主許可收受該等利益
利用虛假文件欺騙僱主 第9條第3款	<ul style="list-style-type: none">◆ 任何代理人◆ 在與主事人有利害關係的事務上◆ 使用虛假、錯漏不全的收據 / 帳目 / 其他文件誤導主事人◆ 意圖欺騙其主事人	<ul style="list-style-type: none">◆ 即使沒有收取利益，僱員利用虛假文件欺騙僱主亦會觸犯《防止賄賂條例》

觸犯《防止賄賂條例》第9條的最高刑罰

觸犯《防止賄賂條例》第9條最高可被判監禁7年及罰款港幣50萬元。此外，法庭也可頒令受賄者賠償其主事人。在某些案件中，如涉及其他嚴重刑事罪行，法庭亦會引用有關法例頒令充公從非法行為所得的利益。

(有關《防止賄賂條例》的原文摘錄，請參閱附錄一。)

詞句釋義

主事人

一般指僱主。在私營機構中，「僱主」是指一家公司的東主或整個董事局。

代理人

指受僱於主事人或代主事人辦事的人。在商業機構中，個別董事或僱員均屬公司的代理人。

主事人許可

指主事人（一般是指僱主）對代理人（一般是指僱員）藉其職務收受利益的批准或同意。一般而言，有關的許可必須在代理人獲提供、索取或接受利益之前給予。倘若是在得到許可前獲提供或接受利益，代理人必須事後在合理的時間內盡快申請及取得主事人的同意。

利益

包括金錢、禮物、貸款、報酬、佣金、職位、契約、服務、優待及免除法律上全部或部分的責任。但利益不包括款待。

款待

指供應在即場享用的食物或飲品，以及同時提供的其他款待，例如歌舞表演等。雖然接受款待並不會抵觸《防止賄賂條例》，很多公司仍會就職員接受款待的情況作出規定。

第一章

習慣不能作免責辯護

專業、行業、職業或業務之慣例，不可作為授受利益的辯護理由。法庭只會根據主事人有否給予批准而作出判決。

口頭承諾亦算違法

行賄者和受賄者如達成口頭貪污協議，即使目的未達，雙方亦已違法。

內地的反貪污賄賂法律

《中華人民共和國刑法》關於貪污賄賂罪的規定，旨在維護社會經濟秩序，督促國家工作人員廉潔自律、公正辦事，懲治貪污賄賂、以權謀私、權錢交易的不法行為。

在國內從事金融服務業，與國家工作人員交往在所難免。因此，金融從業員必須充分了解內地法律有關貪污賄賂罪的規定，學會以法律保護自身合法權益免受不法侵害，勇於對抗此等不法行為，並自覺防止介入、參與貪污賄賂活動。

在內地，所謂貪污，是指利用職務上的便利，侵吞、竊取、騙取或以其他手段非法佔有公共財物的行為。貪污罪的犯罪主體為國家工作人員，稱為「特殊主體」；任何個人和單位與國家工作人員勾結，伙同貪污的，則成為共犯，即「一般主體」。

所謂賄賂，即受賄與行賄之總稱。受賄是指利用職務上的便利，索取他人財物，或非法收受他人財物，為他人謀取利益的行為。國家工作人員或公司、企業等單位的人員，利用職務上的便利，非法謀取私利，還可能觸犯其他罪行。

貪污、職務侵佔、挪用罪行

罪名及《中華人民共和國刑法》中之有關條款	法例內容摘要	須留意的重點
貪污罪 第382條、 第383條、 第183條第2款、 第271條第2款、 第394條	<ul style="list-style-type: none"> ◆ 國家工作人員 ◆ 利用職務上的便利 ◆ 以非法手段 ◆ 佔有公共財物 <hr/> <ul style="list-style-type: none"> ◆ 被派往非國有單位從事公務的國家工作人員 ◆ 利用職務上的便利 ◆ 將該單位的財物非法佔為己有 <hr/> <ul style="list-style-type: none"> ◆ 非國家工作人員受國家機關、國有單位委託管理、經營國有財產的人員 ◆ 利用職務上的便利 ◆ 非法佔有國有財物 <hr/> <ul style="list-style-type: none"> ◆ 與上述人員勾結、伙同貪污的非國家工作人員，以共犯論處 <hr/> <ul style="list-style-type: none"> ◆ 國家工作人員 ◆ 在公務活動中接受禮物（數額較大的） ◆ 而未按規定交公 	<ul style="list-style-type: none"> ◆ 非國家工作人員參與佔有公共財物的活動，即使沒有獲取利益，都可能成為貪污罪的共犯
職務侵佔罪 第271條第1款	<ul style="list-style-type: none"> ◆ 公司、企業或其他單位工作人員 ◆ 利用職務上的便利 ◆ 將本單位財物非法佔為己有 	<ul style="list-style-type: none"> ◆ 不論由香港派駐內地或內地聘用的員工，都可能成為犯罪主體
私分國有資產罪 第396條第1款	<ul style="list-style-type: none"> ◆ 違反國家規定 ◆ 以單位名義 ◆ 將國有資產 ◆ 集體私分給個人 	

第一章

挪用公款罪 第384條、 第185條第2款、 第272條第2款	<ul style="list-style-type: none">◆ 國家工作人員◆ 利用職務上的便利◆ 挪用公款歸個人使用超過三個月未還◆ 或進行非法或營利活動	
挪用資金罪 第272條第1款	<ul style="list-style-type: none">◆ 公司、企業或其他單位工作人員◆ 利用職務上的便利◆ 挪用單位資金歸個人使用或借貸給他人超過三個月未還◆ 或進行非法或營利活動	◆ 不論由香港派駐內地或內地聘用的員工，都可能成為犯罪主體

賄賂罪

(1) 與國家工作人員或單位有關的受賄、行賄及介紹賄賂罪行

罪名及《中華人民共和國刑法》中之有關條款	法例內容摘要	須留意的重點
受賄罪 第385條、 第163條第3款、 第184條第2款、 第388條	<ul style="list-style-type: none"> ◆ 國家工作人員 ◆ 利用職務上的便利 ◆ 索取他人財物 ◆ 或非法收受他人財物而為他人謀利益 	◆ 應明確拒絕任何索賄，並立即舉報
	<ul style="list-style-type: none"> ◆ 國家工作人員 ◆ 違反國家規定 ◆ 收受各種名義的回扣、手續費，歸個人所有 	
	<ul style="list-style-type: none"> ◆ 國家工作人員 ◆ 利用職權或地位形成的便利條件 ◆ 通過其他國家工作人員職務上的行為 ◆ 索取或收受請託人的財物而為其謀不正當的利益 	
單位受賄罪 第387條	<ul style="list-style-type: none"> ◆ 國家機關及國有企業等單位 ◆ 索取或非法收受他人財物而為他人謀利益 ◆ 或在帳外暗中收受各種名義的費用 	
中介組織人員提供虛假證明文件罪 第229條第2款	<ul style="list-style-type: none"> ◆ 中介組織如法律、會計、驗證等服務人員 ◆ 索取或非法收受他人財物 ◆ 故意提供虛假證明文件 	◆ 不應聽從中介人士的違法建議

第一章

<p>行賄罪 第389條</p>	<ul style="list-style-type: none"> ◆任何人士 ◆為謀取不正當利益 ◆向國家工作人員 ◆提供財物 <hr/> <ul style="list-style-type: none"> ◆任何人士 ◆違反國家規定 ◆給予國家工作人員財物或各種名義的回扣、手續費 # <p># 因被勒索而給予國家工作人員利益，又沒有獲得不正當利益者，則不算行賄。</p>	<ul style="list-style-type: none"> ◆行賄罪的犯罪主體包括外商投資者及跨境經商人士
<p>單位行賄罪 第393條</p>	<ul style="list-style-type: none"> ◆任何單位 ◆為謀取不正當利益而行賄 ◆或違反國家規定 ◆給予國家工作人員以回扣、手續費 	<ul style="list-style-type: none"> ◆以公司或企業名義行賄亦能入罪
<p>對單位行賄罪 第391條</p>	<ul style="list-style-type: none"> ◆任何人士 ◆為謀取不正當利益 ◆或違反國家規定 ◆向國家機關及國有企業等單位 ◆提供財物或各種名義的回扣、手續費 	<ul style="list-style-type: none"> ◆切勿以為向機關、國家企業、事業單位提供利益，便不構成賄賂
<p>介紹賄賂罪 第392條</p>	<ul style="list-style-type: none"> ◆任何人士 ◆向國家工作人員 ◆介紹賄賂或各種名義的回扣、手續費 	<ul style="list-style-type: none"> ◆撮合任何行賄受賄勾當，亦屬犯法

賄賂罪

(II) 商業上的受賄及行賄罪行

罪名及《中華人民共和國刑法》中之有關條款	法例內容摘要	須留意的重點
公司、企業人員 受賄罪 第163條	<ul style="list-style-type: none">◆公司、企業的工作人員◆利用職務上的便利◆索取他人財物◆或非法收受他人財物而為他人謀利益	◆內地有明確法律規定，派駐內地人員應多加留意，以免觸犯法律
	<ul style="list-style-type: none">◆公司、企業的工作人員◆違反國家規定◆收受各種名義的回扣、手續費，歸個人所有	
對公司、企業人員 行賄罪 第164條	<ul style="list-style-type: none">◆任何人士或單位◆為謀取不正當利益◆向公司或企業的工作人員◆提供財物	

其他罪行

罪名及《中華人民共和國刑法》中之有關條款	法例內容摘要
巨額財產來源不明罪 第395條第1款	<ul style="list-style-type: none">◆國家工作人員的財產 / 支出◆明顯超出合法收入，差額巨大◆而本人又不能說明其來源
隱瞞境外存款罪 第395條第2款	<ul style="list-style-type: none">◆國家工作人員◆故意隱瞞不報在境外的存款

觸犯貪污賄賂等罪名的最高刑罰

貪污賄賂等罪的具體罪名	最高刑罰
貪污罪、受賄罪	死刑
挪用公款罪、行賄罪	無期徒刑
職務侵佔罪 公司、企業人員受賄罪	十五年有期徒刑
挪用資金罪 對公司、企業人員行賄罪 中介組織人員提供虛假證明文件罪	十年有期徒刑
私分國有資產罪	七年有期徒刑
單位行賄罪、單位受賄罪、巨額財產來源不明罪	五年有期徒刑
對單位行賄罪、介紹賄賂罪	三年有期徒刑
隱瞞境外存款罪	兩年有期徒刑

除判刑外，貪污賄賂罪所涉的贓款贓物還會被追繳或須退賠，更可能依法判處罰金、沒收財產。至於單位犯罪的，除單位有可能被追究責任外，涉案者亦可能被判處刑罰。

(以上是內地反貪污賄賂法律的內容摘要，原文見附錄二。)

除了解刑法關於貪污賄賂罪的規定外，從事跨境金融服務業的人士，也應明白內地一些相關法規。由於中國地域廣闊，從事商業活動時除了要遵守全國性的法律規定外，更要了解和遵循所在地的法規及政策，其中包括：

- ◆ 地方性法規 —— 內地各省、自治區、直轄市和較大的市人民代表大會可以制訂地方性法規，政府可以制訂規章。所以，金融從業員打算在某地區從事金融業務，必須先了解所有相關法規，包括其內容、適用性及對有關業務的影響。
- ◆ 地區政策 —— 內地各省、市、自治區有一些經貿規定都是以政策而非法律條文的形式出現。這類政策可影響地區開放給外商的投資項目類別、投資額、審批條件或審批所需時間等。

詞句釋義

國家工作人員

國家機關中從事公務的人員。國有公司、企業、事業單位、人民團體中從事公務的人員和國家機關、國有公司、企業、事業單位委派到非國有公司、企業、事業單位、社會團體從事公務的人員，以及其他依照法律從事公務的人員，以國家工作人員論。

利用職務上的便利

利用自己職務範圍內的權力和地位所形成的主管、管理、經手財物的便利條件。

利用本人職權或地位形成的便利條件

利用自己的職權或地位去指揮、影響同一部門的任何級別工作人員或與工作有密切來往的部門或單位的國家工作人員。

違反國家規定

違反全國人民代表大會及其常務委員會制定的法律和決定，國務院制定的行政法規、規定的行政措施、發布的決定和命令。

財物

可以用價值數額計算的錢財、物品，如貨幣、金銀及其他各種物品。

利益

除財物之外，還包括各種不能用價值數額計算的勞務，如調動工作、安置戶口、安排就業等。

營利活動

經商辦企業、投資股市、放貸等經營活動。

第一章

帳外暗中收受

未在依法設立的財務帳目上按照財物會計制度如實記載。

公共財產

包括下列財產：(1) 國有財產；(2) 勞動群眾集體所有的財產；(3) 用於扶貧和其他公益事業的社會捐助或專項基金的財產。在國家機關、國有公司、企業、集體企業和人民團體管理、使用或運輸中的私人財產，以公共財產論。

挪用公款歸個人使用

既包括挪用者本人使用，也包括給其他個人使用。為私利以個人名義將挪用的公款給企業、事業單位、機關、團體使用，也視為挪用公款歸個人使用。

公司、企業或其他單位

「公司」指按照《公司法》設立的非國有的有限責任公司和股份有限公司；「企業」指公司以外的非國有的依法從事經營活動的各種經濟組織。「其他單位」指除公司、企業以外的非國有的社會團體或經濟組織。

行政執法機關

依照有關行政、經濟方面的法律，對公民和單位有行政處罰權的政府機關，如工商、稅務、海關、環保、林業、交通等有關政府部門。

司法機關

人民法院、人民檢察院及公安機關。

第二章

金融服務業 個案分析



金融服務業個案分析

金融服務業的業務種類多元化，涉及的金額亦動輒以百萬元計，貪污舞弊的誘惑相對增加，管理人員時刻必須加倍留神，以免犯罪份子有機可乘。無論在香港或其他地方從事金融服務業，管理人員必須洞察各工作範疇可能出現的貪污舞弊行為，才能有效加以防範。

以下三十三個個案¹，就金融服務業的十個不同範疇，逐一分析當中可能出現的貪污舞弊行為及在香港《防止賄賂條例》內的有關賄賂的條文。個案背景多數以香港為主，以帶出《防止賄賂條例》的應用範疇；部份個案的背景則於內地發生，因此亦會提及內地的相關法規。

個案分類目錄

範疇	個案重點
何謂賄賂	個案1 行賄、受賄同樣犯法 個案2 行賄的利益尚未兌現已屬違法 個案3 提供利益以爭取業務 個案4 奢華款待及饋贈 個案5 習慣不能作為免責辯護
銀行貸款	個案6 不實評估抵押品價值以獲取更高信貸額 個案7 境外賄賂行為 個案8 文件不全卻獲發放貸款 個案9 不尋常的信用透支
信用證	個案10 信用證輪 個案11 以假信用證騙取資金以作炒賣活動 個案12 間接收取非法回佣以批出信用證
洩露資料	個案13 披露客戶資料 個案14 銀行內部的違規披露
內幕交易	個案15 透露重組及收購計劃 個案16 利用內幕消息買賣公司股票
利益衝突	個案17 接受客戶特別優惠 個案18 向親友批出信貸 個案19 未經批准擔任外間工作 個案20 假公濟私 個案21 濫用酌情權

超前交易	個案22 提前沽貨 個案23 利用職位之便謀取私利
挪用資金	個案24 擅自動用客戶資金屬挪用資金 個案25 挪用資金兌換外幣賺取差價 個案26 利用電腦會計系統作弊侵吞公款
上市 / 造市	個案27 誇大公司財政實力以便上市集資 個案28 編造假文件騙取上市 個案29 造市及披露虛假資料 個案30 違反香港證券及期貨事務監察委員會發出的《公司收購、合併及股份購回守則》 個案31 違規融資回購股票
清洗黑錢活動	個案32 利用他人公司進行詐騙及清洗黑錢等活動 個案33 提供銀行機密資料及協助清洗黑錢

¹ 本章個案節錄自以下三本由香港特別行政區廉政公署社區關係處編印之指引。讀者如有需要，可瀏覽廉政公署網頁 www.icac.org.hk 下載各指引之全部內容：

《以德為本 誠信經商 —— 滬港法律指南》

《理財有道 —— 銀行界專業道德實務指引》

《財經有道 —— 證券、期貨及投資界專業道德實務指引》

何謂賄賂

個案1

行賄、受賄同樣犯法

在香港，一名財務公司董事與一名銀行借貸部經理因公事經常接觸，並慢慢建立了友誼。由於兩人都喜歡麻將耍樂，亦好品嚐紅酒，故經常一起吃喝玩樂，但差不多每次都是由財務公司董事結帳。

一場亞洲金融風暴令貸款需求大增，財務公司董事為了多做點生意，便向銀行經理要求增加信貸額。但他自知抵押不足，於是私下與銀行經理達成協議，以5萬元回佣作為其每次增加財務公司100萬元信貸額的報酬。

短短18個月期間，銀行在沒有足夠抵押的情況下，向財務公司提供多次信貸，合共900萬元。後來事件被銀行稽核部揭發，並轉交廉政公署調查。

法律重點及案情分析

個案中，銀行經理是僱員，即《防止賄賂條例》第9條所指的「代理人」，而「主事人」或「僱主」便是銀行。

銀行當然不會准許經理利用職權收受報酬，所以上述回佣屬非法「利益」，而收受非法「利益」屬受賄行為。藉著向一個機構的職員提供非法「利益」以求對方在工作上予以方便，則屬行賄。行賄、受賄同樣犯法。

根據《防止賄賂條例》，供應在即場享用的食物或飲品屬「款待」，而「款待」並非「利益」的一種。但銀行經理經常接受財務公司董事的吃喝玩樂邀請，則可能令他在處理公務時偏私。由於奢華的款待極可能是貪污賄賂行為的前奏，在香港金融管理局於2002年發出的《監管政策手冊——行為守則》中（請參閱附錄五），亦申明了銀行職員可接受正常的業務酬酢（例如普通的飲宴），但應避免參與性質或次數屬過度的飲宴或消遣活動。

個案2

行賄的利益尚未兌現已屬違法

在香港，一名商人李先生透過顧問公司的安排，以公司名義向一間銀行申請2,700萬元定期貸款。申請期間，李先生以物業作抵押。顧問公司一名董事陳先生聲稱銀行經理要求私下獲得貸款額的3%作為回佣，才會向李先生的公司批出貸款，並說可代為將回佣轉交銀行經理。李先生於是開出一張81萬元的期票予陳先生開設的一間公司，雙方更簽署了一份虛假的81萬元購貨合同作為掩飾。

一場亞洲金融風暴令商人無力償還貸款，而用作抵押的物業亦因價格大跌以致抵押不足，銀行立即全力追討欠款。李先生於是與銀行經理接觸，並透露他的81萬元期票絕對可兌現。銀行經理聞言感到莫名其妙，但他很快便意會到其中可能有人假借他的名義收取利益。他佯稱一切沒有問題，但卻仔細查看所有相關文件，其後並向廉政公署舉報。

廉署在接獲有關貪污舉報後進行調查，發現是陳先生捏造銀行經理要求回佣以欺騙李先生。陳先生因訛騙罪被判刑，李先生亦因行賄罪被判入獄。

法律重點及案情分析

李先生聽從陳先生的提議開出81萬元的期票用作行賄，無論行賄的對象最終是否收取了該項利益，只要行賄者相信其所提供的利益是作為對方在業務上予其方便的報酬，他已觸犯了《防止賄賂條例》的行賄罪。

由於陳先生並非負責批核貸款的銀行職員，他不是受賄，而是以欺詐行為藉詞騙取李先生81萬元。雖然收到的期票未有兌現，亦已犯法。

個案3

提供利益以爭取業務

立仁是一名極度渴望升職的香港銀行分行經理，可惜他於現時崗位工作已近十年，但仍未有晉升機會。相反，與他同輩的同事則已全部獲得晉升，部分更位居高層要職。

隨著區內一個私人樓盤開售，立仁的分行準備推出一項優惠按揭計劃，用以吸引買家。立仁的姐夫耀明是一名地產經紀，亦視新樓盤為拓展生意的黃金機會。在某次家庭聚會中，立仁向耀明表示其上司終於考慮擢升他，並告知如果能藉此新樓盤取得可觀的按揭生意，將對他的晉升有莫大幫助。

由於銀行間的競爭相當激烈，立仁要達到目的殊不容易。耀明於是答應幫立仁一把，介紹買家給立仁。立仁為表謝意，建議自掏腰包付佣金予耀明。

法律重點及案情分析

耀明在收取佣金前必須取得其主事人的同意，否則他與立仁將一同觸犯《防止賄賂條例》第9條。立仁為行賄者，而耀明則是受賄者。

即使耀明最終未能夠說服客戶使用立仁分行的按揭服務，而立仁亦沒有支付佣金，但只要雙方達成口頭協議，已違反《防止賄賂條例》，兩者均會受到檢控。

立仁同時也違反了香港金融管理局發出的《監管政策手冊——行為守則》的規定。該守則明確指出，銀行職員不得為銀行爭取業務而向他人提供任何形式的賄賂。

個案4

奢華款待及饋贈

美琪是一間香港經紀行的客戶經理，經常與客戶分享投資心得。某日，客戶盧狄來電，說在最近升市中甚有「斬獲」，故邀請美琪和一班同事到一間豪華食肆晚膳。盛宴過後，盧狄更送了一隻古董手錶給美琪。

法律重點及案情分析

如果美琪獲提供的利益，即那隻古董手錶，並非是用來答謝她執行或不執行與其僱主有關的事務的報酬，她便沒有抵觸《香港證券及期貨事務監察委員會持牌人或註冊人操守準則》和《防止賄賂條例》。但美琪應對一些可能導致違反操守準則及抵觸法例的情況加倍小心。倘若她認為收下該禮物會令她日後要向饋贈者履行某些責任，她應該拒絕接受。如有疑問，最好先徵詢僱主意見。

雖然酬酢在商界甚為普遍，但美琪仍須避免接受過於奢華的款待，以免未能客觀公正地處理客戶事務。

個案5

習慣不能作為免責辯護

唐文是一間香港小型期貨交易行的交易經理，他的好友澤基亦跟他開設戶口買賣期貨合約。由於亞洲區的經濟逐漸復蘇，澤基預期恆生指數將會上揚，於是落盤買入10手期貨合約，並請唐文多加關照，將最佳成交價的合約分配給他。

當日收市後，唐文收到公司在交易上買賣的期貨合約。他罔顧其他客戶利益和落盤次序，將最佳成交價的合約撥入澤基的帳戶。澤基其後為表謝意，邀請唐文一家免費到加勒比海歡渡聖誕假期。唐文欣然接受這份禮物。

法律重點及案情分析

唐文收受澤基提供的利益，即免費旅遊，作為分配最佳成交價期貨合約予澤基的報酬，觸犯了《防止賄賂條例》第9條。雖然唐文在聖誕節期間接受該利益，但他不能以接受饋贈是一般習慣為抗辯藉口，因為《防止賄賂條例》訂明習慣不能作為免責辯護。即使唐文沒有接受免費旅遊，他的行為仍然違反《香港證券及期貨事務監察委員會持牌人或註冊人操守準則》，因為他沒有即時向客戶確認完成的買賣，而事後又以不公平手法分配期貨合約予客戶。

銀行貸款

個案6

不實評估抵押品價值以獲取更高信貸額

黃先生在內地設有工廠，最近需要向銀行申請一筆總值800萬元的信貸以支持急速發展的業務。黃先生與香港一間銀行信貸部的陳經理商量。他建議黃先生可把一批最近購置的生產器材作抵押。

銀行派遣陳經理及其上司到內地實地審核申請資料及檢驗有關機器。陳經理的上司質疑該批機器實際上已投產一段時間，並不如申請所述是新購置的。他要求黃先生提交很多文件以茲證實，但部分單據的確不全。黃先生馬上安排職員從香港把單據傳真到內地，並答應回港後會向銀行補交正本，希望對方能盡快處理。陳經理表示其上司可考慮運用酌情權，略為高估機器的抵押值，並向黃先生要求一封20萬元的紅包，稱可代為轉交予上司。

法律重點及案情分析

銀行職員最能掌握客戶在財務安排方面的急切性；個別心懷不軌的從業員因此可伺機圖利。由於陳經理知道黃先生渴望盡快獲得貸款，故此便利用這機會向他索取金錢。由於銀行不容許職員在此情況下收受利益，黃先生絕對不能向他們提供利益，否則會觸犯《防止賄賂條例》。至於陳經理，無論他是否只是利用其上司的名義索賄，他的行徑已觸犯了《防止賄賂條例》。

個案7

境外賄賂行為

志明是一間香港銀行的高級信貸主任，負責審核客戶的貸款申請資料。世釗是他的客戶，他的運輸企業設於廣東東莞。某天，世釗以需要購買一批新貨車為理由，向銀行申請一筆總值430萬元的租購信貸。他表示歡迎志明到東莞一行，到時候一定不會待薄他。言談之間，世釗希望志明寬鬆處理他的申請。志明清楚知道世釗的行賄意圖，他亦暗中通知其上司國標。及後，志明及國標到東莞實地視察，以核實該信貸申請，但卻發現該批貨車並非全新。當志明質疑世釗購買新貨車的真確性時，世釗即送予志明及國標各一隻名貴手錶，希望他們回港後向銀行隱瞞事實，使其信貸申請順利獲得批核。

為了安撫志明，世釗不斷強調交易於香港境外進行，他們均不會觸犯香港的反貪法例。正當志明忐忑猶豫之際，國標卻心安理得地收下禮物，更向志明說若然他拒絕，則會令大家感到尷尬。志明覺得既然上司允許，最終還是把手錶收下。

法律重點及案情分析

沒有取得主事人批准而私下收受利益，志明及國標二人與世釗同樣觸犯了《防止賄賂條例》第9條。在上述情況，志明應向其主事人（即銀行方面）尋求明確指示。而其上司的意見，並不能等同僱主的批准。不過，無論是否有主事人的批准，他倆的行為皆會觸犯香港法例第155章《銀行業條例》第124條（請參閱附錄四）。

另外，雖然利益收受的行為於香港境外進行，但由於世釗曾在香港表示歡迎志明到東莞一行，到時一定不會待薄他，該行為是誘使受益一方回港後就有關的視察報告中作虛假陳述，使其信貸申請順利獲得批核。故此，這種賄賂行為同樣受到香港反貪法例的約束。

志明和國標收受銀行客戶提供的個人利益，亦已違反香港金融管理局發出的《監管政策手冊——行為守則》。他們遇到這種情況時，實應予以拒絕。

個案8

文件不全卻獲發放貸款

一名香港投資公司董事王先生要為內地的商場發展工程向香港一間銀行申請3,000萬美元的貸款，王董事遂與銀行負責業務發展的助理總經理張先生接觸。銀行經過多番內部會議商討，決定由張助總所主管的部門擬訂一份融資申請建議書，以確保這宗申請能符合銀行的審批指引，並由張助總跟進，向王董事索取更多資料。張助總並向王董事透露銀行已在初級審批時同意該項融資計劃的估值及資產抵押條件。

在銀行批出資金後，投資公司便在銀行的內地分行分期提取款項，卻因未能呈交足夠文件而遇到困難。王董事隨即致電回港找張助總與內地分行聯絡。結果，內地分行雖然尚未收到應有的文件，仍將部分款項發放。王董事為了表示謝意，便安排把一些股票賣給張助總，再把股票經相熟的經紀向張助總高價買回。結果張助總毋需動用任何資金便在股票買賣中得到100多萬元的利益。

法律重點及案情分析

銀行職員理應以良好的態度為客戶提供優質服務。在個別情況下，如數額較大的特別融資，可能有不同程序，但仍須符合一些內部指引。故此銀行職員會在客戶擬訂融資申請建議書時向其提供專業意見，使其申請條件符合銀行的審批指引，過程中客戶毋需以利益酬謝。

再者，根據香港金融管理局發出的《監管政策手冊——行為守則》，銀行職員不應利用職權謀取個人或間接利益，或影響其他員工採取任何行動，以圖獲取個人或間接利益。如果銀行職員收取的報酬是與其銀行的業務有關而又未得銀行同意，則該筆報酬便屬非法利益，即使以股票買賣或任何藉口作為行賄受賄的掩飾，授受雙方均會觸犯《防止賄賂條例》第9條。

個案9

不尋常的信用透支

浩德在香港擔任高級銀行經理一職已達五年之久。他於樓市高峰期購入了一個豪宅單位，每月須繳付高昂的按揭供款。很不幸地，他置業後不久便遇上金融風暴，樓價狂瀉近300萬元。

志達是浩德的一名客戶，正向浩德所屬銀行申請一項價值100萬元的信用透支。而根據該銀行的政策，分行經理有權批出最高達120萬元的無抵押透支。在浩德處理該項申請期間，志達請求他盡快批出。

浩德考慮到自己的經濟環境捉襟見肘，於是提出只要志達於三日內將五萬元存入他的銀行戶口，他便會立刻批出該項透支。

豈料在浩德批出透支前，銀行的內部審核部門已發現浩德戶口有不尋常的進帳，隨即向廉政公署舉報。在調查進行期間，銀行暫停浩德所有職權，包括批核志達透支申請的權力。

法律重點及案情分析

浩德濫用他作為銀行經理的權力，在未得僱主的同意下收受利益，加快審批信用透支的申請，觸犯了《防止賄賂條例》第9條。同樣，志達向浩德提供非法利益，亦抵觸了《防止賄賂條例》。雖然浩德及志達的「檯底」交易尚未完成，但他們均已觸犯賄賂罪行。根據《防止賄賂條例》，即使貪污的目的未遂，行賄、受賄雙方仍屬違法。

同時，浩德作為銀行僱員，收受客戶提供個人利益，影響正常執行職務，這種行為觸犯了香港《銀行業條例》第124條，亦違反了香港金融管理局發出的《監管政策手冊——行為守則》。

信用證

個案10

信用證輸

方先生在香港有一進出口公司，專營內地及香港的貿易生意，故經常穿梭兩地；公司的日常業務便交由陸經理處理。方先生最近發現公司有幾張問題信用證，涉及的交貨地點都在內地，但文件卻牽涉多間海外中介財務公司，部分付款期更長達90天或以上。方先生覺得事有蹊蹺，便吩咐陸經理跟進。一星期後，陸經理以探望移居外國的家人為名請假，隨後便失蹤了。

原來陸經理串通外人，假稱向對方買貨，以便向銀行申請信用證，訛稱用以支付該宗交易。對方取得信用證後，卻向另一間銀行貼現資金再存入第三間銀行作押取額，然後他們不斷重複整個過程，並利用還款期間的空檔套取現金。由於陸經理行賄了開證銀行的一名高級職員，以致這非法勾當得以持續了一年多而不被發現。最後雪球效應愈滾愈大，共牽涉七間銀行。除了方先生的公司面臨清盤外，各涉案銀行的壞帳更高達6,000多萬元。

法律重點及案情分析

陸經理行賄了開證銀行的職員，雙方會觸犯《防止賄賂條例》第9條。他們亦會被控串謀詐騙銀行。

這是一個嚴重管理失控的例子。與銀行交往，雙方都要以誠信為基礎。公司負責人應盡力監察每宗交易及平日生意往來中有否出現行賄受賄及詐騙的徵兆。

貿易公司以信用證付款，原意是減低營運風險。不過，由於信用證容許買家在收貨後一段時間才付錢，不法之徒便可利用這段時間騙財。

個案11

以假信用證騙取資金以作炒賣活動

文先生最近從內地被調派到香港出任某國企的財務副總監。他到任不久便發現有些信用證文件資料有缺漏，未能達到公司審計部的監察標準，但在申請銀行貼現時卻往往可順利過關。同事告訴他這是因為公司是銀行的長期大客戶，銀行方面對公司很有信心，所以獲得彈性處理。

經過三個月的了解後，文先生發現事情並非那麼簡單。他相信公司內部有人濫用職權，以假信用證向銀行申請貼現獲取資金，自設小金庫炒賣香港及美國的股票。他找到的資料顯示事情涉及兩名公司高層職員、兩間出入口公司、八間銀行及財務公司，涉及金額累計達兩億元，部分銀行職員可能已受賄或參與炒賣活動。他立即把案件交由廉政公署處理，最終將國企兩名高級職員、受賄的銀行職員及多名財務公司和出入口公司的董事繩之於法。涉案人士共18人，而其非法活動亦持續了接近兩年。

法律重點及案情分析

銀行職員接受利益，明知信用證有問題而批准貼現，會抵觸《防止賄賂條例》第9條。國企的兩名高級職員及其他涉案人士除會被控行賄外，亦會被控串謀詐騙銀行。

銀行職員雖然會監察及評估每宗交易中銀行所面對的風險，但如果企業內有職員賄賂了銀行職員，甚或串謀一起作炒賣活動，銀行方面便會失去保障。

銀行提供彈性的財務政策，原想鼓勵及支持企業的業務發展。如果企業內部發生問題，監管不當，企業的主管又沒有定期與銀行高層接觸，以了解公司與銀行的生意往來，則上述事件便很容易發生。東窗事發之後，銀行及財務公司作為企業的主要債權人，會就事件引致的經濟損失向企業作出追討；企業因此仍需負上債務責任。

個案12

間接收取非法回佣以批出信用證

偉洪是香港一間外資銀行的分行經理，負責管理其分行的日常運作，包括審批個人及機構客戶的信貸申請。嘉威是一間貿易公司的董事，亦是偉洪的客戶，兩人的關係十分密切。嘉威經常大灑金錢宴請偉洪，並相約到夜總會消遣，更免費借出公司名下的住宅單位，讓偉洪一家居住。

近年嘉威的公司陷入經濟困境，並在申請銀行信貸方面遇上困難。為此，嘉威約偉洪一起晚膳。席間嘉威向偉洪透露，他正向其所屬銀行申請信用證，並表明只要得到偉洪幫忙，他的申請必定能夠順利批出。同時，嘉威答應事成之後給予偉洪佣金，並存入他妻子的戶口。農曆新年期間，嘉威更邀請偉洪一家到馬來西亞打高爾夫球及渡假，而費用一概由嘉威支付。偉洪欣然接受嘉威的條件。

法律重點及案情分析

由於偉洪在未得銀行批准的情況下，收取嘉威提供的佣金及免費旅遊，以協助批出嘉威的信用證申請，他倆皆觸犯了《防止賄賂條例》第9條。雖然嘉威為了掩人耳目，將賄款存入偉洪太太的戶口，但根據《防止賄賂條例》，任何人即使由他人代為收取利益，亦等同自己接受利益，故此偉洪仍會觸犯法例。此外，偉洪不能以新春期間接受利益是習慣為抗辯藉口，根據同一條例，習慣是不能作為免責辯護的。

同時，偉洪的行為也違反了香港《銀行業條例》第124條和香港金融管理局發出的《監管政策手冊——行為守則》。該文件明確指出，職員不應接受任何正在使用或有意使用銀行服務的顧客所提供的個人利益。

雖然社交應酬在商界甚為普遍，而嘉威當初向偉洪提供免費住所時，亦沒有提出任何附帶條件，但偉洪仍須避免接受客戶過於奢華的款待或其他個人利益，以免欠下對方人情，影響他處理業務的客觀性。

洩露資料

個案13

披露客戶資料

潔琳在香港某銀行的信用卡中心工作，負責核證信用卡申請人的個人資料。她有一名感情要好的男朋友，兩人正準備結婚。為了將婚宴辦得豪華隆重，他們向財務公司借了10萬元，但未幾潔琳感到還款非常吃力。

某天，她的好友健新約她吃飯。潔琳告訴他為還款事情非常苦惱。健新乘機慫恿潔琳加入他任職的收數公司做兼職，並說工作十分簡單，薪金又高。每月該收數公司會給予潔琳一份欠債人名單，她只需要在銀行信用卡持卡人資料庫內找出名單上的姓名，然後把有關人士的個人資料交給健新，她可從每份資料中獲得300元報酬。潔琳因急需用錢，最後接受了對方「搵快錢」的建議。

法律重點及案情分析

首先，潔琳和健新兩人皆觸犯了《防止賄賂條例》第9條。潔琳身為銀行僱員，在未得其主事人同意下，接受健新提供的利益，以每份300元的報酬向他披露客戶資料，屬於受賄。健新作為提供利益的一方，則屬行賄。

此外，潔琳未獲客戶同意，將他們的個人資料提供予第三者，亦違反了香港金融管理局發出的《監管政策手冊——行為守則》、《銀行營運守則》（請參閱附錄六）、《個人資料（私隱）條例》和銀行的內部規定。該些規定都嚴格限制職員不得外洩客戶資料。

個案14

銀行內部的違規披露

家衡是香港某銀行的高級信貸主任，他正處理一份海外投資公司的貸款申請。該投資公司正計劃大量收購本港某電訊公司的股份。家衡得悉銀行方面極有可能支持該項計劃，並相信該收購計劃公布後，該電訊公司的股價一定會大幅上揚。為了確立他在銀行的地位，家衡致電給在股票投資部任職交易員的前上司婉文，向她透露該項收購計劃，並表示倘若銀行在收購行動公開前購入有關股票，必定會獲得豐厚利潤。

婉文於是為銀行大手買入該電訊公司的股票。但當收購行動公布後，監察主任質問婉文為何會預先購入電訊公司的股份，這明顯是因為有人通風報訊，向她提供內幕消息。

法律重點及案情分析

家衡披露未被公開及可影響股價的資料，而婉文則因取得這些內幕資料而進行交易，兩人同樣可能觸犯了香港法例第571章《證券及期貨條例》（請參閱附錄三）。他們令銀行因內幕消息而購入該股票，也可能導致銀行負上法律責任。

另外，雖然婉文與家衡是同一家銀行的僱員，但根據銀行內部對於處理機密消息的規定，家衡此舉仍屬於不當地將資料洩露予第三者。

內幕交易

個案15

透露重組及收購計劃

香港一間紅籌公司的財務董事歐先生一向與一間大型證券公司的營業經理洪先生相熟。一次晚宴後，兩人再到夜總會密謀賺錢大計。歐董事向洪經理透露公司將有重組及收購計劃，並會獲一國際知名集團注資，雙方已草簽了多份協議書。

二人認為可藉此機會圖利，但歐董事又不便調動個人資金以免受嫌，故此協議由他在適當時機知會洪經理，兩人合作炒賣這間紅籌公司的股票。洪經理遂傾盡個人積蓄，再向銀行及財務公司借款，以其子名義透過其他證券公司的多名經紀大量購入該紅籌公司的股份，以便掩人耳目。

兩星期後，該紅籌公司果然宣布重組及以換股方式低價收購一間利潤豐厚但缺乏資金的電訊公司，股價馬上飆升，而洪經理亦在帳面上賺了大錢。六星期後該紅籌公司再宣布正與一家欲發展中國市場之跨國電訊集團，商討在內地成立合營公司及注資之事宜，該紅籌股的股價再度飆升。其後紅籌公司與跨國電訊集團的洽談觸礁，歐董事在公司未向外發放消息之前即時通知洪經理，洪立即在高位沽出股票，因而逃避了消息發放後股價往下調整之損失。事後洪經理把75萬元存進歐董事的私人帳戶，作為他們合作行動中歐董事通風報訊的報酬。

法律重點及案情分析

作為財務董事，歐董事可接觸公司的機密資料。根據香港《證券及期貨條例》，他是一名「內幕人士」。洪經理利用來自歐董事所提供的非公開資料（買入股票時尚未公開的資料）先賺取賬面上的利潤，繼而逃避股價往下調整帶來之損失。他的行為不單只違反業內的操守準則，更屬內幕交易（請參閱附錄三的法律原文）。

內幕交易違例者可被刑事檢控，最高可被判處10年監禁及罰款1,000萬元。內幕交易亦可能轉介市場失當行為審裁處審訊，被定罪者即需向政府繳付一筆約等同在內幕交易所獲取利益或逃避損失的款

項，並賠償調查及法律訴訟之費用。違例者亦可被判不准擔任上市公司或其他指定公司的管理人員（為期最長五年）。

歐董事藉著向洪經理提供自己公司的機密資料，以換取洪的金錢報酬，屬受賄，而洪經理則屬行賄，雙方都抵觸了《防止賄賂條例》第9條。

個案16

利用內幕消息買賣公司股票

在國內，秦先生是某國企機電集團公司的財務管理處長，可接觸到集團公司業務策略上的重要文件及資料。在一次偶然機會中，他獲得一項內幕消息，知道集團公司參股的一間電器股份公司將與某高科技企業重組，他立即分兩次買入1萬股該電器股份公司的股票。

秦還將這一消息告訴一名港商王先生。王先生即透過另一間公司以法人名義買入5萬股該股份公司的股票。

一星期後股價上漲，秦、王兩人將股票悉數賣出。秦先生獲利5萬元，王先生則獲利21萬元。王某為酬謝秦，故另外送他4萬元。

法律重點及案情分析

秦先生利用內幕消息買賣公司股票，並將消息透露給他人，建議買賣股票；王先生通過不正當的手段獲得內幕消息，並據此買賣股票，都違反了內地《證券法》第73條和第76條的規定。身為國家工作人員的秦先生，利用職務之便，為他人謀取利益，收受對方錢財，已觸犯《中華人民共和國刑法》第385條，構成受賄罪。王先生亦觸犯刑法第389條，構成行賄罪。

利益衝突

個案17

接受客戶特別優惠

振邦是一間香港銀行的保險部經理。他的舊同學文強是一間租車公司的老闆，其公司所有汽車保險都是向振邦所屬的部門購買的。基於彼此對賽車運動的共同興趣，他們非但是好友，還經常結伴駕車郊遊。

文強某日約振邦吃晚飯，並問及振邦是否有意買下他剛於六個月前購買的「舊」跑車。振邦對此甚感興趣，但可惜沒有足夠現金。文強遂將跑車半賣半送，並容許振邦以每月免息分期的方法付款。振邦最初覺得不安，但是回心一想，既然文強的優待並沒有附帶條件，他亦沒責任向對方作出甚麼回報，於是接受了文強的「好意」。

法律重點及案情分析

振邦接受文強所提供的優惠車價及還款條件，雖然沒有提及需在公事上作出回報，但仍屬收取客戶提供的利益，違反了香港金融管理局發出的《監管政策手冊——行為守則》。其實振邦應婉拒文強的好意，或在決定接受前向銀行申請批准。

雖然文強所提供的利益，於交易時似乎與振邦的職務扯不上任何關係，但是倘若將來文強對振邦有所要求，振邦便可能置身於進退兩難的局面，最終更可能基於人情而答應對方要求。

個案18

向親友批出信貸

柏禮是一名香港銀行分行經理，因工作關係認識了一名於投資公司任職的客戶。該名客戶告訴他某大石油公司將於下月在香港上市，其首次公開招股將會成為市場的焦點。預期股價首日掛牌便將有最少兩倍升幅，是一次賺錢的好機會。

柏禮為了籌集多些現金用作認購大量新股，遂要求其太太向他所任職的銀行申請一筆私人貸款，並由他親自批核。而貸款額為根據其太太的薪金可批出的最高限額。不過，柏禮一直未有向銀行申報這件事情。

法律重點及案情分析

柏禮批出貸款予自己的太太，有可能觸犯香港《銀行業條例》第83條。此外，他亦違反了香港金融管理局發出的《監管政策手冊——行為守則》。該守則清楚訂明，任何職員不得向本人或其親屬，或由本人或其親屬擁有個人利益的公司，批出信貸。在處理太太的信貸申請前，柏禮應遵照銀行有關職員批核信貸的指引，向銀行申報他與信貸申請人的關係。

個案19

未經批准擔任外間工作

美美與丈夫同在一香港銀行工作。她的好友兼客戶家明開設了一家小型潔具批發公司，而美美亦是該公司的董事之一。但是，她從沒有向銀行披露其董事身份，皆因她覺得該公司業務與其銀行的工作並沒有抵觸。更重要的是，她不希望銀行及丈夫發現她與家明的一段婚外情。

由於經濟不景，家明的公司陷入了經濟困境。家明於是向美美的銀行申請一張信用證，以從外地進口大批皮鞋，但這項交易明顯地與他公司的主要業務扯不上任何關係。美美負責批核家明的申請，但並沒有向上司申明她與家明的關係。一個月後，銀行的內部稽核人員發現家明所提交的申請資料並不屬實，文件中提及的交易亦屬虛構，銀行管理層遂對美美展開調查。

法律重點及案情分析

美美知道家明的潔具公司乃銀行客戶，仍在未有事先取得其僱主的同意下便擔任該公司的董事一職，此舉已構成利益衝突。其後，她更批出信用證予自己有個人利益的公司，兩種行為皆違反了香港金融管理局發出的《監管政策手冊——行為守則》。若她早已得悉家明利用虛假文件申請卻仍批出信用證，更可能觸犯了串謀詐騙。

個案20

假公濟私

慧芬是一名香港銀行行政經理，她的弟弟子華是一間室內設計公司老闆。最近，銀行有意將董事局會議室翻新，於是委派慧芬挑選一間裝修公司負責有關工程。由於工程時間緊迫，而所涉及的費用亦不算龐大，於是慧芬沒有根據銀行揀選承辦商的既定程序，便把工程判給弟弟。不過，她沒有向銀行交待她與子華的姊弟關係。

法律重點及案情分析

根據香港金融管理局發出的《監管政策手冊——行為守則》，銀行職員應避免利益衝突的情況。如有疑問，理應向管理層查詢或申報。在事件中由於慧芬將裝修合同判予自己弟弟所開設的公司，但沒有向銀行說明其姊弟關係，慧芬已違反了該文件的規定。即使慧芬深信子華的公司能夠提供與其他公司同樣質素的服務，她仍須向僱主申報利益。

個案21

濫用酌情權

國才是一名香港銀行分行經理，與阿東相識已有20多年。阿東本身是一間卡拉OK酒廊的東主，數年前曾透過國才的協助，成功向銀行取得一筆2,000萬元貸款。根據銀行的政策，阿東的業務存在一定風險，但國才最終仍然批准了該筆借貸。

阿東一直以來都如期還款，但近期因社會整體經濟下調，他已欠下三期的供款。銀行信貸管理部遂委派國才了解阿東的財務狀況，並提交解決方案。

國才的調查發現，阿東的財務狀況確實出現問題，於是要求阿東立刻償還債項。阿東懇求國才放他一馬，否則他便要面臨破產危機。國才雖感到左右為難，但最終亦同意向阿東施予援手，未有向銀行報告阿東的實際財務狀況。

法律重點及案情分析

國才濫用職權，向銀行隱瞞阿東的真實業務狀況，可能已違反了銀行內部的信貸監控政策。國才明顯是因滲入了私人關係，而影響了工作的客觀性，令他違反了銀行的內部規定，亦令銀行承擔了不必要的風險。為保障本身利益，他應向銀行申報與阿東的關係，並詳細道出事件的始末，然後遵從銀行方面的決定。

超前交易

個案22

提前沽貨

范先生是一間H股公司的香港分公司總經理。自來港後，一直希望有所表現，故工作十分勤奮，並積極與商場上的朋友打好關係。

分公司在港主要處理該H股公司的部分出口業務及投資項目。由於規範嚴格，范總的投資決定往往需要得到總裁、甚至總公司的認同才可付諸實行。對此他常表不滿，認為公司應把權力下放。

范總認識了一間大型證券交易公司的交易經理陳先生，他的公司客戶主要為基金經理，交易量足以影響市場走勢。范總與陳經理合謀，由范總在香港的分公司自設的小金庫提取資金，陳經理接到大買盤時，先知會范總，著其經另一間交易公司以自己名義買入同一股票，然後陳經理才落盤將價位推高，范總便趁機沽售以賺取差價。

當陳經理接到客戶的大賣盤時，他會通知范先生先在市場沽空同一股票，待其把客戶股票沽出，股價大幅滑落之後，才叫范先生在市場以低價買入股票，賺取差價。每次范總都會向陳經理提供利潤的30%作為報酬。范總把賺取的利潤存進小金庫，並認為自己只是為公司多賺點錢，並無謀取私利。

法律重點及案情分析

非法沽空股票會觸犯香港《證券及期貨條例》，違例者可被判處最高2年監禁及罰款10萬元。陳經理也可能被控協助教唆范先生干犯沽空股票罪行，同樣被處罰。

陳經理清楚知道其公司客戶的買賣盤可能影響期貨市場的走勢，而且屬於非公開資料，但卻與范總合謀，故意拖延交易，以便利用這些市場敏感資料謀取私利，屬超前交易。此舉亦會損害其客戶的利益，違反證券及期貨事務監察委員會的《適當人選的指引》及《證券及期貨事務監察委員會持牌人或註冊人操守準則》，有關規則嚴禁持牌人洩露客戶的買賣盤，並要求他們以維護客戶最佳利益為行事原則。

陳經理藉著提供自己公司客戶的買賣盤資料以收取范總提供的利益，屬受賄，而范總則屬行賄，雙方都會觸犯《防止賄賂條例》第9條。

此外，范總自設小金庫提取公司資金炒賣期貨合約，屬違法行為，在香港與內地均有不同法規監管。在香港，范總的行為會構成盜竊罪，無論他挪用的公司資金數額多少、是否有歸還或何時歸還，都不會影響立案查處的考慮。

個案23

利用職位之便謀取私利

羅拔是一間在香港的國際資產管理公司的基金經理，負責管理多個大機構的公積金。一天，他收到證券分析員一份研究報告，預測高技地產的盈利在未來三年將會大幅增加。

羅拔於是計劃替其管理的公積金投資組合大手購入高技地產股份。他預料此舉會令高技地產股價上升，所以決定透過其他經紀替自己先行買入該股，然後才為公積金投資組合向盤房發出買賣指示。

法律重點及案情分析

羅拔替客戶購買高技地產股份前，自己先行買入該股圖利，違反了香港證券及期貨事務監察委員會發出的《持牌人或註冊人操守準則》和《基金經理操守準則》。該準則規定，如基金經理打算進行若干投資交易，而他本人或公司其他基金經理在當天亦同時有該證券的買賣盤等待執行，則在有關的買賣盤未執行或撤回前，該基金經理不能買入或賣出是項投資，故此羅拔的行為屬於超前交易。

挪用資金

個案24

擅自動用客戶資金屬挪用資金

翟女士是香港著名投資公司的高級經理。年多前她與朋友合資在上海經營時裝生意，但業務一直不大理想。最近，上海一投資公司游說她出任期貨部經理，翟女士遂辭去香港的職務。

為了盡快籌集資金以補貼其時裝生意，翟女士於是利用職權，擅自動用客戶資金5,000餘萬元在數個帳戶中買賣期貨。最後東窗事發，經審計後公司共虧損400萬元。

法律重點及案情分析

翟女士並非國家工作人員，她利用職務之便，擅自動用公司資金買貨，屬《中華人民共和國刑法》規定的「進行營利活動」。故雖然調查無法證明她曾從中獲取個人利益，而挪用資金亦未到三個月，仍可構成挪用資金罪。

翟女士最終是否歸還該筆款項，並不影響其挪用資金犯罪的性質。由於無法證明她將款項據為己有的意圖，故不能構成職務侵佔罪。

翟女士並非國家工作人員，所以她並非挪用公款而是挪用資金，除罪名不同之外，處罰亦有分別。這項罪名的犯罪主體可以是合營企業、私人企業的僱員，包括從境外聘請者。

個案25

挪用資金兌換外幣賺取差價

港商趙先生投資在內地一間合資企業，生產傳真機及室內無線家居電話，30%的產品供內地市場。

由於工廠工人要支付人民幣的薪金，港商趙先生將部分從內銷獲取的貨款留起，另一部分則交給副廠長阿維留作採購原材料及生產器材等，有關款項平均每月達數十萬元。

阿維跟隨趙先生打天下已20年，甚得趙先生信任。最近阿維的個人投資出了問題，他找著上海某銀行國際業務部外匯管理組的何組長訴苦。由於他們是老朋友，何組長見阿維有困難，主動提出阿維可將由其控制的人民幣存入該組長設立的一些假帳戶中，該組長會為他把人民幣違規兌換外幣並轉存款業務，再以偽單據把帳面做平。由於一切由這位組長親自操控，他們可把外幣現鈔現匯差價據為己有。考慮一晚後阿維便答應了組長的建議。其後18個月內，二人共侵吞並攤分了48萬元人民幣。

法律重點及案情分析

阿維挪用公司的資金作營利活動，觸犯公司、企業人員挪用資金罪。

銀行外匯管理組的組長乃國家工作人員，他收取了24萬元現鈔現匯差價，而這些金錢來自阿維的匯款，銀行外匯管理組的組長的行為屬於收了好處為他人謀取不正當利益，觸犯受賄罪。而阿維向對方提供好處要求對方在職務範圍內為自己謀取私利，觸犯行賄罪。

在內地經商，要小心處理賺取的金錢。由於內地對外匯買賣有法規管制，經商者應認識清楚，按法規辦事。

個案26

利用電腦會計系統作弊侵吞公款

小張在內地某國有銀行擔任會計科帳務組組長，並兼管會計電腦的編程和修改工作。在該銀行每季度對客戶往來款項進行核對、結息之時，他兩次擅自在會計電腦上對某貿易有限公司的帳務上的有關數據進行修改，在該公司的往來帳項中分別虛增了人民幣40萬元和30萬元，並將相應的金額存帳記錄，在電腦作核數之前則予以刪除，但仍保留在該公司的利息餘款額中。

由於在電腦核數時刪除了該公司往來帳項中的虛增記錄，其他核對該公司往來帳項與相應憑証的工作人員無法發現其人民幣40萬元和30萬元是虛擬增加的。然後，小張將修改後的客戶資料傳遞給櫃面工作人員，使櫃面工作人員只能按所傳遞的錯誤信息予以操作，致使貿易有限公司在同年3月和6月底的銀行帳務上餘款額憑空分別增加了人民幣40萬元和30萬元。

嗣後，小張向貿易公司的港商李先生說是電腦出錯，經該公司會計部核實後，把資金以現金從銀行有關帳戶中直接提取退回給銀行。

港商李先生事後亦看過會計職員及小張偽造的一份銀行文件，證明一切交收核實；其實小張把其中15萬給了該名會計員，要求他暗中配合。實際上銀行卻要平白付出這筆共70萬元的金錢。

小張其後再採取相同的手法，利用另一間實業公司的帳務又套取了現金人民幣35萬元，予以侵吞。終於銀行透過改善了的監察系統發現問題，小張兩次的行為終被一併揭發。

法律重點及案情分析

小張身為國家工作人員，利用職務之便侵吞金錢，其行為觸犯了《中華人民共和國刑法》第382條之規定，構成貪污罪。

會計部職員並非國家工作人員，但他作為公司、企業人員，接受15萬元，為他人謀取不正當利益，觸犯公司、企業人員受賄罪。小張

第二章

在要求這名會計部職員跟他配合時提供了15萬元，觸犯向公司、企業人員行賄罪。

港商李先生應小心管理及核實會計部的一切帳項，掌握所有數據，並應對不尋常事件作出調查，深入了解，以免被牽涉入詐騙銀行案件中。

上市 / 造市

個案27

誇大公司財政實力以便上市集資

內地某省幾間大型企業合組的一間集團公司近年出口業務大增，故委派兩名董事進駐香港的窗口公司，預備將集團在香港上市集資，並已取得中國證券監督管理委員會及國家商務部的基本同意。

香港的窗口公司委託了一間資深會計師行作為上市顧問及處理一切上市安排事宜。會計師行認為集團的子公司業務存在相互競爭情況，另集團亦需通過收購一些內地及香港公司來重組業務，以提供面額港幣5,000萬元或25%的股票流通量，才能達到在香港上市的基本要求。

會計師行專責此項上市計劃的小組其中一名成員陳先生，曾多次在市場分析中推薦收購幾間公司，並得到另一位組員黃先生的支持。收購過程雖然不太順利，但最終仍然達到目標。

集團上市後，陳、黃兩人相繼請辭。其後會計師行的負責人發現這集團一些子公司的財務資料出現問題，可能涉及信用證詐騙，而且懷疑在安排上市期間有人曾經受賄，所以將案件交給廉政公署處理。調查發現陳、黃二人及窗口公司的一名職員涉嫌收受賄賂，隱瞞集團在港所收購公司的業務虧損情況，並且與外間人士串謀，誇大那些公司的財政實力，以致在集團重組業務時能達到上市規定。

法律重點及案情分析

陳、黃二人及窗口公司的職員未獲僱主的同意而收取與工作有關的利益，會觸犯《防止賄賂條例》第9條。集團派駐窗口公司的兩名董事，因曾簽署一些與上市有關的文件，會被追究責任。法例嚴格要求上市公司的售股章程及上市文件等要準確地披露公司的資產值，所以公布任何不實的業績，將會違反香港交易所的《上市規則》及香港法例第571章《證券及期貨條例》。雖然最終他們或能證明自己也無辜被騙，但由於調查事件被公開時，往往會令公司股價出現大幅波動，而公司股票於調查期間亦可能要暫停買賣，繼而令股價大幅下挫及公司聲譽受損，所以公司在安排上市集資時，一定要小心謹慎。

個案28

編造假文件騙取上市

某股份有限公司是內地近年成立的企業，雖然含有外資成份，但以內地集體經濟體系形式成立。由於一些條件的限制，公司不能在證券交易所上市。為爭取公司掛牌交易，公司幾名董事，包括兩名港人，決意找有關主管公司企業註冊部門的主任黃先生求助，並由來自香港的唐某出面與黃主任應酬。兩人合謀編造假文件，由黃主任授意下屬竄改文件，將該公司註冊和成為試點企業的時間紀錄提前，唐某則指令公司人員編造股東大會決議和分紅方案。最終騙取了國家有關部門的同意，該公司從而獲得上市資格。公司股票上市後，唐某送給黃主任20萬元作為酬謝。

法律重點及案情分析

唐、黃兩人合謀編造假文件，以欺騙手段使該公司獲准上市，已經違反內地《證券法》第69條的規定。同時，黃某利用國家機關工作人員的職務便利，為他人謀取利益，收受對方錢財，已觸犯刑法第385條，構成受賄罪。唐某及幾名有關的董事亦觸犯刑法第389條，構成行賄罪。

個案29

造市及披露虛假資料

一間香港小型上市公司近期股價突然在兩個星期內由1元飆升至3元。在此期間，集團一名大戶楊先生串通三名股票經紀，借用12個不活躍客戶之戶口不停以同價進行互相買賣對敲活動，買賣數量不多，但股價卻不斷被抬高。與此同時，楊先生要求三名股票經紀在市場發放虛假消息，使投資者誤信集團已被買家看中，將會很快被高價收購。

當投資者對該公司之股票開始感興趣期間，楊先生乘機出售手頭上的股票，以高價套現。楊先生事後給予三名股票經紀優厚的報酬。

法律重點及案情分析

楊先生與三名股票經紀串通，利用12個戶口以同價進行互相對敲買賣，交易並不涉及股權轉變，卻可造成交投活躍的虛假或具誤導性的表象，並利用此手法把股價提高，觸犯香港《證券及期貨條例》。楊先生要求股票經紀向他人披露虛假資料，以誘使別人買賣集團之股票，從而方便自己以高價出售股票，因而觸犯同樣法例。按該法例，違例者可被刑事檢控，最高可被判處10年監禁及罰款1,000萬元。案件亦可被轉介至市場失當行為審裁處審訊。

三名股票經紀因收取利益而協助楊先生進行造市活動及披露虛假資料，亦會抵觸《防止賄賂條例》第9條。

個案30

違反香港證券及期貨事務監察委員會發出的《公司收購、合併及股份購回守則》

一個香港電器工程集團四個月前公布全年業績時出現巨額壞帳撥備，股價因而下挫了幾個價位，並從此低沉下來。最近，股價卻在一個月內由4元飆升至6元2角。在此期間，一名獨立第三者梁先生已購入及持有該公司的28%股份，並串通股票經紀馬先生，找來代名人戶口及以此另外購入該公司的4%股份。梁先生之所以要利用代名人持有股份，目的是要迴避證券及期貨事務監察委員會的《公司收購、合併及股份購回守則》之規定。若收購者取得某上市集團30%或以上投票權的股份時，必須向股東提出有條件之全面收購。梁先生此舉不但可以得到集團之控制權，亦毋須斥巨資作為全面收購。事後，他給予馬先生優厚的報酬。

法律重點及案情分析

梁先生利用馬先生提供之代名人持有屬於他的額外4%股份，使他在記錄上看來並未持有至逾30%的股份。此舉如被証實，梁先生會因違反證監會的《公司收購、合併及股份購回守則》（合併守則）而被制裁，包括向其他股東提出全面收購，而馬先生亦會被裁定與梁先生一致行動而被制裁。

合併守則要求收購者必須以不低於其過去半年的最高購入價作為全面收購價的出價，收購價一般會與股權變動時的配售價相同。這守則旨在確保股東們均能獲得公正和公平的對待，並且獲得足夠的市場資料作決定。如果有人故意造市，對受影響的股東便十分不公平。

馬先生因收取利益而協助梁先生違反合併守則，會抵觸《防止賄賂條例》第9條。

個案31

違規融資回購股票

莊先生在香港股票市場聲威顯赫，入行數年已鋒芒盡露。由於公司非常賞識他，遂把他調到內地，成為中國業務部的第二號人物，並有權支配單一交易不超過1,500萬元的業務。

莊先生的表姊夫韓某10年前開始在內地商界冒起，3年前入股某科技股份有限公司，現已成為該科技公司總裁。

科技股份有限公司為炒作本公司股票，利用屬下多間分公司開設的6個帳戶，先後買入母公司股票198萬股，共動用資金3,970萬元。由於資金調動緊張，韓某便透過莊先生的安排，向莊先生的證券公司借款1,300萬元。

一週後，科技股份有限公司公布董事會送股決議，股價大漲。公司將持有的科技股份股票全部賣出，獲利920萬元。韓某個人獲利亦極可觀。除了清還證券公司的短期貸款及利息外，韓某為酬謝莊某提供的方便，給了他42萬元。

法律重點及案情分析

科技股份有限公司在信息發布之前動用巨額資金買賣本公司股票，違反了內地《公司法》第149條公司未有法定情形不得收購本公司股份的規定。同時，這次交易涉及內幕消息，屬於內幕交易，違反了內地《證券法》第73條和第76條的規定。證券公司為科技股份公司買賣股票提供融資，違反了內地《證券法》第142條關於證券公司為客戶買賣證券提供融資服務，應當按照國務院的規定並經國務院證券監督管理機構批准的規定。證券公司經理莊某利用職務之便，為他人謀取利益，並收受錢財，已觸犯刑法第163條，構成公司、企業人員受賄罪。科技股份有限公司總裁韓某則已觸犯刑法第164條，構成向公司、企業人員行賄罪。

清洗黑錢活動²

個案32

利用他人公司進行詐騙及清洗黑錢等活動

莊先生內地的工廠近年業務發展迅速，由於分身不暇，其在香港的出入口公司已陷入半停頓狀態。莊先生在香港的朋友林先生任職銀行貸款部，甚為了解其公司的情況。他向莊先生提出欲借用其公司名義做生意，以免浪費銀行已經給予其公司的信貸額。他承諾除負責有關稅金外，並會提供3%的服務費給莊先生。鑑於對方是多年朋友，莊先生便一口答應。初期莊先生都很小心，每張單據都親自過目及簽署，更一再查核申請信用證的文件。但日子一久，他卻連公司印章都交給林先生。

後來林先生失蹤了。莊先生從帳目中發現公司欠銀行巨額款項，大驚之下，馬上報警。原來林先生並非真的以莊先生的公司做生意，他只是串通其他人士，多次利用該公司的名義以虛假的商業交易申請信用證，詐騙銀行。他又利用職權，從任職的銀行取得申請貸款者的資料，每當銀行成功批出一筆貸款後，他便致電有關客戶，向對方表示銀行的貸款確認書是錯誤發出的，著對方不必理會。他更行賄兩名貸款部的同事，以確保有關款項可順利透過多個不同帳戶轉進莊先生公司的帳戶中。莊先生因此亦被警方懷疑涉嫌通過25項虛構的借貸交易侵吞了銀行8,700萬元。

另一方面，銀行更發現透過莊先生的帳戶所存入及提取的款項極為可疑，經常有大量資金在公眾假期或週末前從多個帳戶匯入，而在緊接的星期一則分散匯往不同的帳戶，其中很可能涉及清洗黑錢的活動。

法律重點及案情分析

個案中，林先生借用了莊先生公司的名義及信貸額進行三項非法行為：(1)以虛假交易詐騙銀行開出信用證；(2)利用公司帳戶侵吞銀行批予客戶的貸款；及(3)利用公司帳戶清洗黑錢。

經商者為了保持原有貸款額度，或為了增加額外收入，有時會考慮借出信貸額度，但這些交易風險非常高，因為不法之徒為了欺騙銀行的融資，會偽造貨權文件令銀行以較寬鬆額度買單，以達到單、證相符來欺騙開證銀行。代開證的公司由於無監管有關的貿易，又

不能向銀行提供更多追查資料，往往因而要負上所有債務。

林先生利用職權謀取私利兼行賄同事，觸犯了詐騙及行賄罪，而侵吞銀行發放給別人的貸款，則會觸犯盜竊罪。此外，林先生若被證實協助他人清洗黑錢，並刻意隱瞞銀行，會違反香港法例第455章《有組織及嚴重罪行條例》及第405章《販毒(追討得益)條例》。另外，該銀行未能透過適當內部監控系統防範清洗黑錢活動，亦會抵觸香港金融管理局發出之有關防止清洗黑錢的指引。

² 如果一筆款項乃來自販毒及嚴重罪行而獲取的利益，則透過任何途徑的存取以企圖掩飾該款項的真正來源，皆會被視作清洗黑錢活動。

個案33

提供銀行機密資料及協助清洗黑錢

永倫任職香港銀行分行經理，平時喜歡到區內一間著名的夜總會消遣，因而認識夜總會領班康哥。由於永倫高度揮霍，經常入不敷支。

有一天，康哥向永倫介紹一位來自東歐的朋友祖域。祖域一向從事販毒及其他不法勾當。他計劃在香港成立公司，但實際是藉此清洗黑錢。他要求永倫向他提供銀行內部防範清洗黑錢活動的機密指引，並隨時通知他有關的最新程序。

永倫因財政緊絀，遂向祖域索取10萬元，作為提供上述資料的報酬。另外，為免清洗黑錢計劃遭銀行識破，在永倫的安排下，祖域在永倫任職的分行開設了多個理財戶口，並利用這些戶口進行其清洗黑錢的不法活動。

法律重點及案情分析

永倫協助他人清洗黑錢，又刻意隱瞞該等犯罪活動，已觸犯香港法例《有組織及嚴重罪行條例》或《販毒（追討得益）條例》，以及由金融管理局發出之有關防止清洗黑錢的指引。

此外，永倫向祖域索取利益，作為協助清洗黑錢和披露銀行機密資料的報酬，不但觸犯了《防止賄賂條例》第9條，也因外洩銀行內部資料而違反香港金融管理局發出的《監管政策手冊——行為守則》的規定。

第三章

認識香港與內地的 反貪專責機構



● 認識香港與內地的反貪專責機構

肅貪倡廉機構

在內地或香港從事金融服務業，如遇到懷疑貪污行賄的事情，應當盡快向當地的反貪污部門舉報。以下簡略介紹兩地反貪污部門的具體工作。

在香港

廉政公署

根據《中華人民共和國香港特別行政區基本法》第57條，香港特別行政區設立廉政公署獨立運作，並向行政長官負責。廉署設立三個部門：執行處、防止貪污處及社區關係處，分別負責調查、預防及教育工作。

1. 執行處

執行處是負責接受、審閱和調查任何涉及貪污指控的投訴。廉署所處理的投訴大部分來自市民大眾。他們可以透過廉署的熱線電話、投函或親臨廉署24小時舉報中心，或在地區設立的分區辦事處舉報貪污。

雖然打擊政府部門內部貪污是廉署的首要目標，但近年涉及私營企業的貪污案件佔廉署每年接獲的總貪污舉報數字逾50%。這些案件，不但類型不同，牽涉範圍亦廣。由於犯案的手法層出不窮，執行處往往因應需要設立專案小組展開調查。在某些情況下，調查員更要遠赴海外搜集貪污證據。

涉及商業貪污的案件經執行處調查後，若證據確鑿，會交由律政司司長決定是否檢控；若證據不足，防止貪污處的私營機構顧問組一般都會接觸有關機構，向他們提供防貪顧問服務。

2. 防止貪污處

防止貪污處的主要職責包括審視政府部門和公共機構的制度和工作程序，找出可能導致貪污的漏洞，並且建議改善的方法，藉以減少貪污機會。

自1985年，防止貪污處設有私營機構顧問組。該組為香港工商機構就採購、銷售及市場拓展、存點貨物、會計、人事及行政等系統管理提供免費和

保密的顧問服務。如欲聯絡該組，可致電防貪諮詢熱線（2526 6363）或電郵（asg@cpd.icac.org.hk）。

3. 社區關係處

社區關係處負責教育市民認識貪污的禍害，並策動市民支持肅貪倡廉的工作。

一直以來，工商機構是倡廉教育的重要對象。鑑於商界貪污的舉報數字近年維持於高水平，社區關係處遂致力聯絡工商界，解釋有關法例和貪污的後果，促使他們正視貪污賄賂的問題，並協助他們制訂紀律守則和採取防貪措施。社區關係處更為工商機構安排員工培訓，協助員工認識反貪法例和公司紀律守則，使他們無論在香港或內地工作，也明白知法守法的重要性。商界人士如有需要可與廉政公署各分區辦事處聯絡，要求安排有關服務。廉署各分區辦事處及香港道德發展中心的地址、電話號碼及電郵地址如下：

西港島及離島辦事處 (中西區、南區、離島)	香港上環干諾道中124號 海港商業大廈地下 (852) 2543 0000 hkw@crd.icac.org.hk
東港島辦事處 (灣仔、東區)	香港灣仔軒尼詩道201號 東華大廈地下 (852) 2519 6555 hke@crd.icac.org.hk
東九龍及西貢辦事處 (觀塘、黃大仙、西貢)	九龍藍田啟田道67號 啟田大廈地下4號 (852) 2756 3300 kesk@crd.icac.org.hk
西九龍辦事處 (九龍城、油尖旺、深水埗)	九龍油麻地彌敦道434-436號 彌敦商務大廈地下 (852) 2780 8080 kw@crd.icac.org.hk
新界東辦事處 (沙田、大埔、北區)	新界沙田上禾輦路1號 沙田政府合署地下G06-G13室 (852) 2606 1144 nte@crd.icac.org.hk

第三章

新界西南辦事處 (荃灣、葵青)	新界荃灣青山公路271-275號 富裕樓地下 (852) 2493 7733 ntsw@crd.icac.org.hk
新界西北辦事處 (元朗、屯門)	新界元朗青山公路元朗段230號 富興大廈地下 (852) 2459 0459 ntnw@crd.icac.org.hk
香港道德發展中心	香港灣仔軒尼詩道199-203號 東華大廈1樓 (852) 2587 9812 hkedc@crd.icac.org.hk

廉署網站

如欲查詢廉署服務的最新資料，可瀏覽廉政公署網站（www.icac.org.hk）或以電郵與廉政公署的香港道德發展中心（hkedc@crd.icac.org.hk）聯絡。基於保安理由，請勿以電郵方式舉報貪污。

在內地

紀律檢查委員會

紀律檢查委員會（紀委）是中國共產黨內負責黨紀的委員會。除中央設有紀律檢查委員會外，在內地各級黨組織亦有紀委。中央及各級紀委的任務和職權包括：

- ◆ 檢查中央直屬各部門、各級黨組織、黨幹部及黨員違反黨紀律的行為；及
- ◆ 受理、審查並決定中央直屬各部門、各級黨組織、黨幹部及黨員違反黨紀律的處分。

紀委只處理黨員違反黨紀的行為（包括貪污、賄賂）。

監察機關

國務院屬下設有監察部，在各級地方政府則設有監察廳和監察局，其職責是：

- ◆ 檢查國家各級行政機構及其工作人員，及在企業、事業單位中由國家行政機關任命的領導幹部在執行國家政策、法律法規、國民經濟和社會發展計劃的情況；
- ◆ 調查處理違法違紀行為，以保證政府廉潔；及
- ◆ 防止腐敗，改善和加強行政管理，提高行政效能。

監察機關主要是對一些有違法行為但未構成犯罪的國家工作人員進行行政處分。在調查中如發現有犯罪行為，則會移送公安或檢察院等有關機構依法辦理。

人民檢察院

向全國人大負責的最高人民檢察院及其轄下各級的人民檢察院是中國內地法律監督機關。人民檢察院的其中一項職權是對貪污賄賂等罪行進行偵查，並決定是否要逮捕涉案嫌疑人和提出公訴。

1. 反貪污賄賂局

最高人民檢察院及其各級人民檢察院分別設立了反貪污賄賂局，負責：

- ◆ 受理舉報中心移送的經濟罪案；
- ◆ 偵查貪污、賄賂等重大經濟罪案；
- ◆ 分析貪污賄賂等經濟犯罪的情況、特點、規律及主要犯罪發展趨勢；
- ◆ 研究偵查貪污賄賂等經濟犯罪的措施和手段；及
- ◆ 制訂偵查工作的有關規定。

2. 職務犯罪預防機構

職務犯罪預防機構也是檢察機關內一個反貪污賄賂和其它瀆職犯罪的部門，而最高人民檢察院亦設立了職務犯罪預防廳。職務犯罪預防部門的職責是：

- ◆ 結合查辦職務犯罪，及時對作案環節和作案手法進行分析研究，掌握犯罪的特點、規律及發生的原因，幫助案發單位汲取教訓，堵漏建制，加強防範。根據實際情況，制訂預防職務犯罪的基本和具體措施，向案發單位及時提出切實合理的檢察建議；
- ◆ 圍繞檢察機關法律監督職能，宣傳及介紹檢察機關開展預防職務犯罪工作的做法和對策，推動全社會職務犯罪預防工作的開展；及
- ◆ 加強與有關部門的聯繫和配合，建立專門預防和系統預防、檢察機關預防與社會預防相結合的預防職務犯罪工作機制，有效遏制和減少職務犯罪。

附錄



《防止賄賂條例》(香港法例第201章)摘錄

第9條 代理人的貪污交易

- (1) 任何代理人無合法權限或合理辯解，索取或接受任何利益，作為他作出以下行為的誘因或報酬，或由於他作出以下行為而索取或接受任何利益，即屬犯罪——
 - (a) 作出或不作出，或曾經作出或不作出任何與其主事人的事務或業務有關的作為；或
 - (b) 在與其主事人的事務或業務有關的事上對任何人予以或不予，或曾經予以或不予優待或虧待。

- (2) 任何人無合法權限或合理辯解，向任何代理人提供任何利益，作為該代理人作出以下行為的誘因或報酬，或由於該代理人作出以下行為而向他提供任何利益，即屬犯罪——
 - (a) 作出或不作出，或曾經作出或不作出任何與其主事人的事務或業務有關的作為；或
 - (b) 在與其主事人的事務或業務有關的事上對任何人予以或不予，或曾經予以或不予優待或虧待。

- (3) 任何代理人意圖欺騙其主事人而使用如下所述的任何收據、帳目或其他文件——
 - (a) 對其主事人有利害關係；及
 - (b) 在要項上載有虛假、錯誤或欠妥的陳述；及
 - (c) 該代理人明知是意圖用以誤導其主事人者，即屬犯罪。

- (4) 代理人如有其主事人的許可而索取或接受任何利益，而該項許可符合第(5)款的規定，則該代理人及提供該利益的人均不算犯第(1)或(2)款所訂罪行。

- (5) 就第(4)款而言，該許可——
 - (a) 須在提供、索取或接受該利益之前給予；或
 - (b) 在該利益未經事先許可而已提供或接受的情況下，須於該利益提供或接受之後在合理可能範圍內盡早申請及給予，

同時，主事人在給予該許可之前須顧及申請的有關情況，該許可方具有第(4)款所訂效力。

第11條 行賄者與受賄者即使目的未達仍屬有罪

- (1) 在因本部任何一條所訂罪行而進行的法律程序中，如經證明被控人接受任何利益，且接受時相信或懷疑，或有理由相信或懷疑所獲給予的利益是作為他作出或不作出，或曾經作出或不作出該條所指作為的誘因或報酬，或是由於他作出或不作出，或曾經作出或不作出該等作為而獲給予的，則以下情況不得成為免責辯護
 - (a) 被控人實際上沒有權力、權利或機會作出或不作出該行為；
 - (b) 被控人接受該利益但無意作出或不作出該行為；或
 - (c) 被控人事實上未有作出或不作出該行為。
- (2) 在因本部任何一條所訂罪行而進行的法律程序中，如經證明被控人向他人提供任何利益，作為該人作出或不作出，或曾經作出或不作出該條所指作為的誘因或報酬，或由於該人作出或不作出，或曾經作出或不作出該等作為而向他提供任何利益，同時被控人相信或懷疑，或有理由相信或懷疑該人有權力、權利或機會作出或不作出該行為，則該人沒有此權力、權利或機會，不得成為免責辯護。

第19條 習慣不能作為免責辯護

在因本條例所訂罪行而進行的法律程序中，即使顯示本條例所提及的利益對任何專業、行業、職業或事業而言已成習慣，亦不屬免責辯護。

第2條 釋義

「利益」指——

- (a) 任何饋贈、貸款、費用、報酬或佣金，其形式為金錢、任何有價證券或任何種類的其他財產或財產權益；

- (b) 任何職位、受僱工作或合約；
- (c) 將任何貸款、義務或其他法律責任全部或部分予以支付、免卻、解除或了結；
- (d) 任何其他服務或優待(款待除外)，包括維護使免受已招致或料將招致的懲罰或資格喪失，或維護使免遭採取紀律、民事或刑事上的行動或程序，不論該行動或程序是否已經提出；
- (e) 行使或不行使任何權利、權力或職責；及
- (f) 有條件或無條件提供、承諾給予或答應給予上文(a)、(b)、(c)、(d)及(e)段所指的任何利益，

但不包括《選舉(舞弊及非法行為)條例》(第554章)所指的選舉捐贈，而該項捐贈的詳情是已按照該條例的規定載於選舉申報書內的。

「款待」指供應在當場享用的食物或飲品，以及任何與此項供應有關或同時提供的其他款待。

附錄二

《中華人民共和國刑法》關於貪污賄賂等罪的摘錄

(1) 貪污罪

第382條

國家工作人員利用職務上的便利，侵吞、竊取、騙取或者以其他手段非法佔有公共財物的，是貪污罪。

受國家機關、國有公司、企業、事業單位、人民團體委托管理、經營國有財產的人員，利用職務上的便利，侵吞、竊取、騙取或者以其他手段非法佔有國有財物的，以貪污論。

與前兩款所列人員勾結，伙同貪污的，以共犯論處。

第383條

對犯貪污罪的，根據情節輕重，分別依照下列規定處罰：

- (1) 個人貪污數額在十萬元以上的，處十年以上有期徒刑或者無期徒刑，可以並處沒收財產；情節特別嚴重的，處死刑，並處沒收財產。
- (2) 個人貪污數額在五萬元以上不滿十萬元的，處五年以上有期徒刑，可以並處沒收財產；情節特別嚴重的，處無期徒刑，並處沒收財產。
- (3) 個人貪污數額在五千元以上不滿五萬元的，處一年以上七年以下有期徒刑；情節嚴重的，處七年以上十年以下有期徒刑。個人貪污數額在五千元以上不滿一萬元，犯罪後有悔改表現、積極退贓的，可以減輕處罰或者免予刑事處罰，由其所在單位或者上級主管機關給予行政處分。
- (4) 個人貪污數額不滿五千元，情節較重的，處二年以下有期徒刑或者拘役；情節較輕的，由其所在單位或者上級主管機關酌情給予行政處分。

對多次貪污未經處理的，按照累計貪污數額處罰。

第183條 第2款

國有保險公司工作人員和國有保險公司委派到非國有保險公司從事公務的人員有前款行為的（指利用職務上的便利，故意編造未曾發生的保險事故進行虛假理賠，騙取保險金歸自己所有的），依照本法第三百八十二條、第三百八十三條的規定定罪處罰。

第271條 第2款

國有公司、企業或者其他國有單位中從事公務的人員和國有公司、企業或者其他國有單位委派到非國有公司、企業以及其他單位從事公務的人員有前款行為的（指利用職務上的便利，將本單位財物非法佔為己有），依照本法第三百八十二條、第三百八十三條的規定定罪處罰。

第394條

國家工作人員在國內公務活動或者對外交往中接受禮物，依照國家規定應當交公而不交公，數額較大的，依照本法第三百八十二條、第三百八十三條的規定定罪處罰。

(2) 職務侵佔罪

第271條 第1款

公司、企業或者其他單位的人員，利用職務上的便利，將本單位財物非法佔為己有，數額較大的，處五年以下有期徒刑或者拘役；數額巨大的，處五年以上有期徒刑，可以並處沒收財產。

(3) 私分國有資產罪

第396條 第1款

國家機關、國有公司、企業、事業單位、人民團體，違反國家規定，以單位名義將國有資產集體私分給個人，數額較大的，對其直接負責的主管人員和其他直接責任人員，處三年以下有期徒刑或者拘役，並處或者單處罰金；數額巨大的，處三年以上七年以下有期徒刑，並處罰金。

(4) 挪用公款罪

第384條

國家工作人員利用職務上的便利，挪用公款歸個人使用，進行非法活動的，或者挪用公款數額較大、進行營利活動的，或者挪用公款數額較大、超過三個月未還的，是挪用公款罪，處五年以下有期徒刑或者拘役；情節嚴重的，處五年以上有期徒刑。挪用公款數額巨大不退還的，處十年以上有期徒刑或者無期徒刑。

挪用用於救災、搶險、防汛、優撫、扶貧、移民、救濟款物歸個人使用的，從重處罰。

第185條 第2款

國有商業銀行、證券交易所、期貨交易所、證券公司、期貨經紀公司、保險公司或者其他國有金融機構的工作人員和國有商業銀行、證券交易所、期貨交易所、證券公司、期貨經紀公司、保險公司或者其他國有金融機構委派到前款規定中的非國有機構從事公務的人員有前款行為的（指利用職務上的便利，挪用本單位或者客戶資金），依照本法第三百八十四條的規定定罪處罰。

第272條 第2款

國有公司、企業或者其他國有單位中從事公務的人員和國有公司、企業或者其他國有單位委派到非國有公司、企業以及其他單位從事公務的人員有前款行為的（指利用職務上的便利，挪用本單位資金歸個人使用或者借貸給他人），依照本法第三百八十四條的規定定罪處罰。

(5) 挪用資金罪

第272條 第1款

公司、企業或者其他單位的工作人員，利用職務上的便利，挪用本單位資金歸個人使用或者借貸給他人，數額較大，超過三個月未還的，或者雖未超過三個月，但數額較大，進行營利活動的，或者進行非法活動的，處三年以下有期徒刑或者拘役；挪用本單位資金數額巨大的，或者數額較大不退還的，處三年以上十年以下有期徒刑。

(6) 受賄罪

第385條

國家工作人員利用職務上的便利，索取他人財物的，或者非法收受他人財物，為他人謀取利益的，是受賄罪。

國家工作人員在經濟往來中，違反國家規定，收受各種名義的回扣、手續費，歸個人所有的，以受賄論處。

第163條 第3款

國有公司、企業中從事公務的人員和國有公司、企業委派到非國有公司、企業從事公務的人員有前兩款行為的（指利用職務上的便利，索取他人

財物或者非法收受他人財物，為他人謀取利益，或者在經濟往來中，違反國家規定，收受各種名義的回扣、手續費，歸個人所有的），依照本法第三百八十五條、第三百八十六條的規定定罪處罰。

第184條 第2款

國有金融機構工作人員和國有金融機構委派到非國有金融機構從事公務的人員有前款行為的（指在金融業務活動中索取他人財物或者非法收受他人財物，為他人謀取利益的，或者違反國家規定，收受各種名義的回扣、手續費、歸個人所有），依照本法第三百八十五條、第三百八十六條的規定定罪處罰。

第388條

國家工作人員利用本人職權或者地位形成的便利條件，通過其他國家工作人員職務上的行為，為請托人謀取不正當利益，索取請托人財物或者收受請托人財物的，以受賄論處。

(7) 單位受賄罪

第387條

國家機關、國有公司、企業、事業單位、人民團體，索取、非法收受他人財物，為他人謀取利益，情節嚴重的，對單位判處罰金，並對其直接負責的主管人員和其他直接責任人員，處五年以下有期徒刑或者拘役。

前款所列單位，在經濟往來中，在帳外暗中收受各種名義的回扣、手續費的，以受賄論，依照前款的規定處罰。

(8) 中介組織人員提供虛假證明文件罪

第229條 第2款

前款規定的人員（指承擔資產評估、驗資、驗證、會計、審計、法律服務等職責的中介組織的人員），索取他人財物或者非法收受他人財物，犯前款罪的（故意提供虛假證明文件），處五年以上十年以下有期徒刑，並處罰金。

(9) 行賄罪

第389條

為謀取不正當利益，給予國家工作人員以財物的，是行賄罪。

在經濟往來中，違反國家規定，給予國家工作人員以財物，數額較大的，或者違反國家規定，給予國家工作人員以各種名義的回扣、手續費的，以行賄論處。

因被勒索給予國家工作人員以財物，沒有獲得不正當利益的，不是行賄。

(10) 單位行賄罪

第393條

單位為謀取不正當利益而行賄，或者違反國家規定，給予國家工作人員以回扣、手續費，情節嚴重的，對單位判處罰金，並對其直接負責的主管人員和其他直接責任人員，處五年以下有期徒刑或者拘役。因行賄取得的違法所得歸個人所有的，依照本法第三百八十九條、第三百九十條的規定定罪處罰。

(11) 對單位行賄罪

第391條

為謀取不正當利益，給予國家機關、國有公司、企業、事業單位、人民團體以財物的，或者在經濟往來中，違反國家規定，給予各種名義的回扣、手續費的，處三年以下有期徒刑或者拘役。

單位犯前款罪的，對單位判處罰金，並對其直接負責的主管人員和其他直接責任人員，依照前款的規定處罰。

(12) 介紹賄賂罪

第392條

向國家工作人員介紹賄賂，情節嚴重的，處三年以下有期徒刑或者拘役。

介紹賄賂人在被追訴前主動交待介紹賄賂行為的，可以減輕處罰或者免除處罰。

(13) 公司、企業人員受賄罪

第163條 第1款及第2款

公司、企業的工作人員利用職務上的便利，索取他人財物或者非法收受他人財物，為他人謀取利益，數額較大的，處五年以下有期徒刑或者拘役；數額巨大的，處五年以上有期徒刑，可以並處沒收財產。

公司、企業的工作人員在經濟往來中，違反國家規定，收受各種名義的回扣、手續費，歸個人所有的，依照前款的規定處罰。

(14) 對公司、企業人員行賄罪

第164條

為謀取不正當利益，給予公司、企業的工作人員以財物，數額較大的，處三年以下有期徒刑或者拘役；數額巨大的，處三年以上十年以下有期徒刑，並處罰金。

單位犯前款罪的，對單位判處罰金，並對其直接負責的主管人員和其他直接責任人員，依照前款的規定處罰。

行賄人在被追訴前主動交待行賄行為的，可以減輕處罰或者免除處罰。

(15) 巨額財產來源不明罪

第395條 第1款

國家工作人員的財產或者支出明顯超過合法收入，差額巨大的，可以責令說明來源。本人不能說明其來源是合法的，差額部分以非法所得論，處五年以下有期徒刑或者拘役，財產的差額部分予以追繳。

(16) 隱瞞境外存款罪

第395條 第2款

國家工作人員在境外的存款，應當依照國家規定申報。數額較大、隱瞞不報的，處二年以下有期徒刑或者拘役；情節較輕的，由其所在單位或者上級主管機關酌情給予行政處分。

附錄三

《證券及期貨條例》(香港法例第571章)摘錄

交易 附表一

“交易”(dealing)

- (a) 就證券而言，指不論以主事人或代理人身分而與另一人訂立或要約與另一人訂立協議，或誘使或企圖誘使另一人訂立或要約訂立協議，而——
- (i) 目的是或旨在取得、處置、認購或包銷證券；或
 - (ii) 該等協議的目的或伴稱目的是使任何一方從證券的收益或參照證券價值的波動獲得利潤；或
- (b) 就期貨合約而言，指不論以主事人或代理人身分而——
- (i) 為訂立、取得或處置期貨合約而與另一人訂立或要約與另一人訂立協議；
 - (ii) 誘使或企圖誘使另一人訂立或要約訂立期貨合約；或
 - (iii) 誘使或企圖誘使另一人取得或處置期貨合約。

收購要約 附表一

“收購要約”(take-over offer)就法團而言，指向法團的股份的所有持有人（或提出要約的人及其代名人以外的所有持有人）提出為取得該等股份或某一指明比例的該等股份而提出的要約，或向該等股份的某一類別的所有持有人（或提出要約的人及其代名人以外的該類別股份的所有持有人）提出為取得該類別股份或某一指明比例的該類別股份而提出的要約。

有關消息 第245條

- “有關消息”(relevant information)就某法團而言，指關於——
- (a) 該法團的；
 - (b) 該法團的股東或高級人員的；或
 - (c) 該法團的上市證券的或該等證券的衍生工具的，

而並非普遍為慣常（或相當可能會）進行該法團上市證券交易的人所知的具體消息或資料，但該等消息或資料如普遍為他們所知，則相當可能會對該等證券的價格造成重大影響。

內幕交易何時發生 第270條

- (1) 當以下情況出現時，與某上市法團有關的內幕交易即告發生——
 - (a) 與該法團有關連的人，掌握他知道屬關於該法團的有關消息的消息，並——
 - (i) 進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或
 - (ii) 在知道或有合理理由相信另一人會進行該等證券或工具的交易的情況下，慫使或促致該另一人進行該等交易；
 - (b) 正意圖或曾意圖提出收購該法團的要約的人（不論是否聯同別人提出），在知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的有關消息的情況下——
 - (i) 為該項收購以外的目的，進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或
 - (ii) 為該項收購以外的目的，慫使或促致另一人進行該等證券或工具的交易；
 - (c) 與該法團有關連的人，直接或間接向另一人披露任何消息，而他知道該消息是關於該法團的有關消息，並知道或有合理理由相信該另一人會利用該消息而進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易，或慫使或促致他人進行該等交易；
 - (d) 正意圖或曾意圖提出收購該法團的要約的人（不論是否聯同別人提出），在知道該項收購意圖的消息或已打消該意圖的消息是關於該法團的有關消息的情況下，直接或間接向另一人披露該消息，並知道或有合理理由相信該另一人會利用該消息而進行該法團（或該法團的有

連繫法團) 的上市證券或其衍生工具的交易，或慫使或促致他人進行該交易；

(e) 任何人知道另一人與該法團有關連，並知道或有合理理由相信該另一人因該項關連而掌握關於該法團的有關消息，而他在直接或間接從該另一人收到他知道屬關於該法團的有關消息的消息的情況下——

(i) 進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或

(ii) 慫使或促致他人進行該等證券或工具的交易；或

(f) 任何人知道或有合理理由相信另一人正意圖提出收購該法團的要約，或已打消該意圖，並直接或間接從該另一人收到該另一人的上述意圖或打消該意圖的消息，而在知道該消息是關於該法團的有關消息的情況下——

(i) 進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易；或

(ii) 慫使或促致他人進行該等證券或工具的交易。

(2) 明知而在第(1)款描述的情況下掌握關於某上市法團的有關消息的人，如作出以下作為，則與該法團有關的內幕交易亦告發生——

(a) 知道或有合理理由相信另一人會於香港以外地方在認可證券市場以外的證券市場進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易，而慫使或促致該另一人進行該等交易；或

(b) 知道或有合理理由相信另一人或其他人會利用該有關消息，於香港以外地方在認可證券市場以外的證券市場進行或慫使或促致別人如此進行該法團（或該法團的有連繫法團）的上市證券或其衍生工具的交易，而將該有關消息披露予該另一人。

《銀行業條例》（香港法例第155章）摘錄

第123條：董事、行政總裁、經理、受託人、僱員及代理人的罪行

任何認可機構的董事、行政總裁、經理、受託人、僱員或代理人意圖欺騙而

- (a) 在該機構的業務、事務、交易、狀況、資產或帳目的任何報告、便條、文件或報表內或任何紀錄簿冊內，故意作出或安排作出虛假記項；
- (b) 在該機構的業務、事務、交易、狀況、資產或帳目的任何報告、便條、文件或報表內或任何紀錄簿冊內，故意遺漏作出記項或故意安排遺漏作出記項；或
- (c) 將該機構的業務、事務、交易、狀況、資產或帳目的任何報告、便條、文件或報表內或任何紀錄簿冊內的記項，故意更改、摘錄、隱藏或銷毀，或故意安排將該等記項更改、摘錄、隱藏或銷毀，

即屬犯罪——

- (i) 一經循公訴程序定罪，可處第8級罰款及監禁5年；或
- (ii) 一經循簡易程序定罪，可處第5級罰款及監禁2年。

第124條：禁止職員收取佣金

任何認可機構的任何董事或僱員，為自己或他的任何親屬的個人利益或益處而索取或收取、同意或協議收取任何禮物、佣金、薪酬、服務、酬金、金錢、財產或有價值的東西，以促致或盡力促致任何人獲得該機構的任何放款、貸款、財務擔保或信貸融通，或獲得該機構購買或貼現任何銀票、票據、支票、匯票或其他義務，或以容許任何人在該機構的任何帳戶作透支，即屬犯罪——

- (a) 一經循公訴程序定罪，可處第6級罰款及監禁5年；或
- (b) 一經循簡易程序定罪，可處第5級罰款及監禁2年。

香港金融管理局發出的《監管政策手冊 —— 行為守則》摘錄

2. 行為守則的最低標準

2.1 概論

- 2.1.1 每家認可機構均應制定一套與其本身的結構、規模及業務運作相稱的行為守則。因此，不同機構的守則不單格式不同，內容亦會有分別。
- 2.1.2 認可機構可制定全面的行為守則，內容涵蓋所有法律、監管及道德事項，亦可針對不同課題制定不同的守則。例如，認可機構可分別就防止清洗黑錢活動、《銀行營運守則》¹、關連貸款、平等機會、保護知識產權及環境保護等課題制定不同的守則或政策聲明。為方便參考，認可機構亦可將條例的有關條文(如《防止賄賂條例》第9條及《銀行業條例》第124條)併入守則內，作為守則的一部分。
- 2.1.3 每家認可機構均須遵守某些最低操守規定，並應將之列入其主要行為守則內。這些規定（雖然並非詳盡無遺）列載於下文第2.2至2.13段內。

2.2. 責任問題

- 2.2.1 行為守則應註明負責以下職責的職員²（行為守則主任）的姓名或職銜：
- ◆ 處理員工對守則內容及任何有關事項的查詢；
 - ◆ 批核員工就接受超出守則所定限額或在可接受限額之外的個人利益作出的要求（見下文第2.8段）；及
 - ◆ 採取適當行動，跟進員工匯報的個案（見下文第2.12段）。

認可機構可將上述職能分配給同一位職員負責，亦可分別交由不同職員負責。獲委任人士須具備充分的能力、經驗，以及廉正的品格，並屬適當職級，以便能有效地執行有關職務。認可機構如決定委任超過一名職員負責上述職務，則應委任其中一人作為集中聯絡點，以方便對外聯絡。

¹ 香港銀行公會及存款公司公會已聯合發出《銀行營運守則》，作為其會員在日常業務運作上與客戶接觸的指引。

² 有關人士可以是守則遵行主任、內部法律顧問或一些其他人士(如人力資源部主管)。

2.2.2 在一般情況下，負責批核接受個人利益的職員應有權：

- ◆ 無條件或在符合該職員所列條件的情況下准許員工接受個人利益；
- ◆ 要求員工拒絕接受他人提供的個人利益，或將之退回送贈人；
- ◆ 要求員工將收到的個人利益交由員工選擇、並獲該職員接納的慈善機構；或
- ◆ 要求員工把收到的個人利益按照該職員指示的方法處理。

2.2.3 在適當情況下，認可機構可委任委員會，以監察守則的實施及遵行情況。

2.3 道德價值

2.3.1 行為守則應包括一套認可機構預期其員工於經營業務時會遵循的道德價值。主要的道德價值一般包括誠實、持正、勤勉、公正、盡公民責任以及問責。

2.3.2 認可機構應貫徹奉行這些道德價值，以免員工混淆不清。

2.4 利益衝突

2.4.1 所有員工均應避免可能會導致或涉及實際或潛在利益衝突的情況。如有疑问，員工應向行為守則主任徵詢意見。

2.5 批出信貸

2.5.1 認可機構應按其信貸政策所訂、為所有具貸款權限的員工設定與其職級或職能相稱的特定貸款限額。任何員工均不得向其本人、親屬³或其本人或親屬有個人利益的公司批出信貸。

³ 認可機構可按與《銀行業條例》第79(1)條相同的方法界定「親屬」的定義。

2.6 接受信貸

2.6.1 除非事先已按行為守則的規定獲得批准，否則員工或其親屬不得以優惠或非按公平原則協議的條款向第三者借款或接受第三者提供的信貸。

2.7 爭取業務時的操守

2.7.1 員工不得為替認可機構爭取業務而向任何人士或公司行賄或提供類似的報酬。

2.8 個人利益

2.8.1 認可機構的員工不應利用職權謀取個人或間接利益(例如使其親屬或其他關連人士得益)，或影響其他員工採取任何行動，以圖獲取個人或間接利益。

2.8.2 所有員工必須遵守《防止賄賂條例》第9條及《銀行業條例》第124條的法例規定，而該兩項法例規定載有在指定情況下接受利益會受到的刑事懲處。

2.8.3 員工應主動勸阻客戶別提供任何形式的個人利益，包括任何類型的饋贈、優惠、服務、貸款、費用或任何有金錢價值的物品。

2.8.4 員工不得要求認可機構的任何客戶或任何與或擬與認可機構有業務往來的人士或機構給予個人利益，亦不得接受和保留上述個人利益。惟在下列情況下，員工可容許接受並保留符合行為守則所載認可機構的接受準則⁴的個人利益：

- ◆ 符合有關法律規定；及
- ◆ 不會影響員工正當地履行職責。

2.8.5 員工如欲接受行為守則所列準則以外的個人利益，便須徵得行為守則主任的批准，並以書面形式向行為守則主任提供相關資料，如：

- ◆ 送贈人姓名；
- ◆ 有關該項利益的說明，以及在可能範圍內對其價值所作的評估；
- ◆ 送贈人與認可機構之間的任何業務關係；及
- ◆ 員工與送贈人之間的任何個人關係。

2.8.6 該名員工繼而會接獲通知，得悉可否接受該項饋贈，或應將之退回送贈人或以其他方式處理。

2.9 資料的使用

2.9.1 所有員工應按有關的法例規定（如《個人資料(私隱)條例》及普通法下的客戶保密規定），小心處理與客戶有關的資料。

⁴ 舉例來說，這些準則可能包括：

- 任何正常的業務酬酢(例如普通的飲宴)。但認可機構應要求員工避免參與在性質或次數上屬過度的飲宴或消遣活動，以免在經營業務時引起尷尬或不能保持客觀態度。若不宜拒絕邀請，員工應取得管理層許可，並在他們可向有關客戶給予同樣的回報的條件下，才接受邀請；
- 在節日場合因傳統習俗贈送的任何禮包(包括「利是」)，但應定有不屬於過度的限額，而且認可機構的管理層認為接受該等禮物不會令有關員工可能對送贈人負有義務；
- 因親屬或婚姻關係而獲得的任何個人利益;或
- 由親密朋友贈送價值不超出適當限額的任何個人利益，而該友好關係與認可機構的業務完全無關。

2.9.2 在未得到客戶書面同意之前，員工不得向第三者透露客戶資料，除非披露其資料符合《個人資料(私隱)條例》的規定，或法律准許或規定其須披露有關的資料。

2.9.3 除了在正常執行職務時或得到認可機構的書面同意，員工於在職期間或在離職以後，均不應洩漏或利用任何有關該機構或其客戶的任何機密資料、書信、帳目、關係或交易，或其於在職期間所得悉有關上述各項的資料。

2.9.4 員工不應以任何方法利用上述資料謀取金錢利益。

2.10 個人投資

2.10.1 員工如因工作關係取得任何上市公司的保密或會影響股價的消息，而有關消息是公眾人士和該公司的股東通常得不到的，則員工不得買賣該上市公司的股票或其他證券，亦不應向第三者披露這些資料。

2.10.2 若員工因工作關係取得任何上市公司的保密或會影響股價的消息，並可能已無意中參與了該公司的股票或其他證券的交易，員工應立即將交易詳情以書面通知認可機構。如員工未能確定某項交易是否構成內幕交易⁵，應在進行該項交易之前諮詢有關人員。

⁵ 基本上說，若一位與上市公司有關連的人士掌握一些披露後會影響該公司股價的保密消息，並在有關消息未能為公眾知悉之前買賣或促使他人買賣該公司的證券或衍生工具以圖獲利或避免虧損，即構成一項內幕交易。另外，如一位人士透過另一位據其了解為與上市公司有關連的人士(即內幕人士)取得消息，並買賣或促使他人買賣該公司的證券或衍生工具，亦構成一項內幕交易。

附錄五

2.11 外間職務

2.11.1 除非已按行為守則的規定事先獲得書面批准，否則員工不得在認可機構以外接受任何董事職務、受僱或兼任任何商業性職務，且不論該等職務為受薪與否。

2.11.2 認可機構應只在無損機構利益的情況下才給予批准。

2.12 匯報機制

2.12.1 認可機構的全體員工均有責任維持機構的良好聲譽，對會引致欺詐、詐騙、盜竊、偽造、貪污或其他非法活動的事項應提高警覺。如員工按合理原則行事時，懷疑有非法活動在醞釀中，便應按行為守則的規定，立即向有關人員匯報，以便作出適當的跟進。

2.12.2 認可機構應警告員工，若員工沒有即時就上述活動作出匯報，可能會受到紀律處分。

2.13 紀律處分

2.13.1 行為守則應註明認可機構的所有員工均須受守則規定限制，任何違反守則的情況均會引致紀律處分(例如口頭警告、書面警告、降職或解僱)及刑事檢控(如適用)。

附錄六

香港銀行公會與存款公司公會聯合發布的 《銀行營運守則》摘錄

8. 客戶資料的收集、使用及保存

- 8.1 機構應將其客戶（及前客戶）的銀行事務作為私隱及機密資料處理。
- 8.2 機構在收集、使用及保存客戶資料方面，無論在任何時候均須遵守《個人資料（私隱）條例》。機構亦須遵守個人資料私隱專員為了就遵守《個人資料（私隱）條例》作出實際指引而發布或批准的任何相關實務守則。
- 8.3 機構須盡可能具體列明可能向其披露客戶資料的人士類別及披露的目的。須具體通知客戶的人士類別包括：
- (a) 收數公司；
 - (b) 會或可能會承辦個人資料處理工作的電腦公司；
 - (c) 信貸調查機構；及
 - (d) 機構會為了促銷目的而向其提供客戶的姓名及地址的同集團關連公司。
- 8.4 沒有客戶的訂明同意，機構不應：
- (a) 提供關於客戶的銀行證明書；或
 - (b) 為促銷目的，而向並非同集團關連公司的公司披露客戶姓名及地址。
- 8.5 如客戶反對機構披露上文第8.3(d)條所述的資料，或反對給予上文第8.4(b)條所述的同意，有關機構也不應拒絕向該客戶提供基本銀行服務。
- 8.6 如機構首次將客戶的個人資料用作其本身的促銷用途，則該機構應通知客戶，如客戶提出要求，該機構會停止把資料作為此等用途，而毋須收取任何費用。

附錄六

- 8.7 機構應至少每三年一次，或在其宣傳資料中附上標準通知，提醒客戶有關上文第8.6條提及的作出有關要求的權利。
- 8.8 如機構根據外判安排等其他協定而把客戶的個人資料交予第三方服務供應商，機構必須確定該等服務供應商會將有關資料視為機密資料，並會充分保障該等資料。機構須對客戶就服務供應商處理客戶資料的手法而提出的投訴負責，並不可就服務供應商的任何違反客戶資料保密規定的行為而試圖推卸責任。

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• Preface

Asia is set to stand in the world's economic spotlight. With China's accession to the World Trade Organization (WTO), the Mainland has been gradually lowering its tariffs and opening up banking, insurance and various industries to the world. Nowadays, many international enterprises have set up their Asia-Pacific headquarters in Hong Kong and other major cities in China, aiming to explore further business opportunities with the support of the advanced investment environment of the two places.

The financial services industry is no exception. Hong Kong is one of the world's most important financial markets alive with vibrant investment activities and banking services. In recent years, its financial services industry has also started expanding to the north as business interactions between the Mainland and Hong Kong have become more frequent.

The rule of law, business ethics and fair competition are the essential elements which appeal to investors. An economic entity emphasizing fairness and the rule of law has the edge in maintaining its competitiveness, whilst an enterprise respecting the rule of law can open up more business opportunities with a reputation of integrity.

Hong Kong and the Mainland adopt the "one country two systems" principle. Financial services practitioners in cross-boundary business are obliged to abide by the laws and economic policies of the two places in their business operations. As the Mainland Government tightens up its law enforcement measures, financial services practitioners must refrain from carrying out their duties in a customary manner to avoid unnecessary disputes, litigation and even contravention of the anti-corruption legislation.

The Independent Commission Against Corruption (ICAC) of the Hong Kong Special Administrative Region (HKSAR) therefore publishes this guide book to provide financial services practitioners involved in cross-boundary business with practical reference to help them observe the law and protect their own interests while performing their duties. Most of the case studies are adapted from actual corruption cases. However, the names of the characters, corporations, etc. mentioned are all fictitious and any similarities are purely coincidental. Referring to economic activities conducted in the banking, securities, futures and investment sectors, these cases serve to highlight the relevant legal issues and the possible loopholes in management.

We sincerely hope that this publication can be of practical use to the practitioners in the financial services sector.

Community Relations Department
Independent Commission Against Corruption
Hong Kong Special Administrative Region
2007

Chapter 1

Gist of the Anti-corruption Laws of Hong Kong and the Mainland



Gist of the Anti-corruption Laws of Hong Kong and the Mainland

Anti-corruption Laws in Hong Kong

The objective of the *Prevention of Bribery Ordinance* (PBO) (Laws of Hong Kong Chapter 201) is to keep our society fair and corruption-free, safeguarding the legitimate interests of both employers and employees. Malpractices in organizations may incur unnecessary loss and colluding staff members may also be liable to prosecution.

Section 9 of the PBO deals with corruption crimes in the private sector. In essence, it is an offence for an agent (generally refers to an employee) to solicit or accept an advantage, without the permission of his principal (generally refers to an employer), as an inducement to, or reward for, his doing or forbearing to do any act in relation to his principal's affairs. Any person who offers an advantage to an agent in such circumstances is also guilty of an offence.

Relevant provisions of the PBO	Summary of the law	Key points
Private sector employees accepting bribes Section 9(1)	<ul style="list-style-type: none"> ◆ Any agent ◆ without the permission of his principal ◆ soliciting or accepting any advantage ◆ so as to affect his doing or forbearing to do any act in relation to his principal's affairs 	<ul style="list-style-type: none"> ◆ An employee should not solicit or accept an advantage in relation to his work without the permission of his employer
Offering bribes to private sector employees Section 9(2)	<ul style="list-style-type: none"> ◆ Any person ◆ without the permission of the agent's principal ◆ offering any advantage to any agent ◆ as an inducement to or reward for the agent's doing or forbearing to do any act in relation to his 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 consent of his employer to receive such an advantage
Employees using false documents to deceive an employer Section 9(3)	<ul style="list-style-type: none"> ◆ Any agent ◆ using any false, erroneous or defective receipt, account or other document in respect of which his principal is interested ◆ with intent to deceive his principal 	<ul style="list-style-type: none"> ◆ It is also an offence under the PBO for an employee to use any false or erroneous document to deceive his employer even without accepting an advantage

Maximum penalty for committing PBO Section 9 offences

The maximum penalty for committing an offence of Section 9 of the PBO is imprisonment for seven years and a fine of HK\$500,000. Persons convicted of accepting a bribe may also be ordered by the court to compensate their principals. In some cases, relevant ordinances will be applied in ordering the confiscation of suspected illegal proceeds if other serious crimes are involved.

(For the original text of the relevant provisions of the PBO, please refer to [Appendix 1](#).)

Terms and definitions

Principal

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

Agent

Generally a person employed or entrusted by the principal. In the private sector, it includes individual directors or employees of a company.

Principal's permission

The permission or agreement given by a principal for an agent to accept any advantage in the course of his duties. Normally, such permission should be obtained before the agent solicits or accepts it. If an advantage has been offered or accepted without prior permission, the agent should seek retrospective permission from his principal as soon as reasonably possible.

Advantage

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

Entertainment

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

Custom constitutes no defence

It shall not be a defence to claim that any advantage accepted or offered is customary in any profession, trade, vocation or calling. The court shall make the judgement based on whether permission has been given by the recipient's principal.

Verbal agreement counts

The offeror and the recipient of a bribe are liable to prosecution if a verbal agreement of corruption is reached notwithstanding the purpose of bribery has not been carried out.

Laws Against Corruption and Bribery on the Mainland

The provisions of the *Criminal Law of the PRC* against corruption and bribery seek to protect social and economic order. They urge State functionaries to uphold integrity, be self-disciplined and fair when discharging their duties, and they punish illegal acts such as corruption and bribery, abuse of authority or position for private gains and the exchange of official power for money.

People doing business on the Mainland will inevitably have to deal with State functionaries. Therefore, it is important for financial practitioners to have a thorough understanding of the Mainland's anti-corruption and anti-bribery laws to protect their own legal interests against potentially illegal activities, and to guard against any involvement and participation in corruption and bribery.

On the Mainland, "corruption" refers to any act whereby a person takes advantage of his office to appropriate, steal, swindle or use other illegal means to acquire public money or property. The subjects of corruption offences are State functionaries who are referred to as "special subjects". Any individuals or units conspiring with State functionaries to commit a corruption offence are considered accomplices, i.e. "general subjects".

"Bribery" broadly refers to both the offering and acceptance of bribes. Accepting bribes is the act of taking advantage of one's office to solicit or accept money or property from others illegally so as to seek benefits for others. State functionaries or personnel of companies, enterprises, etc. who take advantage of their offices for personal gains may also commit other offences.

Corruption, Embezzlement and Misappropriation Offences

Relevant provisions of the Criminal Law of the PRC	Summary of the law	Key points
<p>Embezzlement by State functionaries</p> <p>Articles 382, 383, 183(2), 271(2), 394</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his office ◆ by illegal means ◆ to appropriate public money or property 	<ul style="list-style-type: none"> ◆ Non-State functionaries taking part in activities of appropriating public money or property will become accomplices to a corruption offence, even if they have not gained any direct benefits
	<ul style="list-style-type: none"> ◆ Any State functionary assigned to non-State-owned units for official duties ◆ taking advantage of his office ◆ to take possession of State-owned money or property illegally 	
	<ul style="list-style-type: none"> ◆ Any non-State functionary entrusted by State organs or State-owned institutions to manage or run State property ◆ taking advantage of his office ◆ to take possession of State-owned money or property illegally 	
	<ul style="list-style-type: none"> ◆ Any non-State functionary who conspires with the functionaries mentioned above to engage in embezzlement shall be regarded as accomplices and punished accordingly 	
	<ul style="list-style-type: none"> ◆ Any State functionary ◆ accepting gifts (amount involved is relatively large) in activities of public service ◆ failing to hand over the gifts to the State as required by State regulations 	

<p>Embezzlement through dereliction of duty by employees of enterprises Article 271(1)</p>	<ul style="list-style-type: none"> ◆ Any employee of a company, enterprise or any other unit ◆ taking advantage of his position ◆ to take possession of the money or property of his own unit unlawfully 	<ul style="list-style-type: none"> ◆ Any employee, whether posted from Hong Kong or employed in the Mainland, can be the subject of the offence
<p>Illicit division of State-owned assets Article 396(1)</p>	<ul style="list-style-type: none"> ◆ In violation of State regulations ◆ in the name of a unit ◆ dividing up State-owned assets among all the individuals of the unit in secret 	
<p>Misappropriation of public funds Article 384, 185(2), 272(2)</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his position ◆ to misappropriate public funds for his own use and fails to return the funds after the lapse of three months ◆ or for conducting illegal or profit-making activities 	
<p>Misappropriation of a unit's funds Article 272(1)</p>	<ul style="list-style-type: none"> ◆ Any employee of a company, enterprise or any other unit ◆ taking advantage of his position ◆ to misappropriate funds of his own unit for personal use or for loaning them to another person and the funds are not repaid before the expiration of three months ◆ or for conducting illegal or profit-making activities 	<ul style="list-style-type: none"> ◆ Any employee, whether posted from Hong Kong or employed in the Mainland, can be the subject of the offence

Bribery Offences

(I) Offences of accepting, offering and introducing bribes relating to a State functionary or unit

Relevant provisions of the Criminal Law of the PRC	Summary of the law	Key points
<p>Acceptance of bribes by State functionaries</p> <p>Articles 385, 163(3), 184(2), 388</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his position ◆ to extort money or property from another person ◆ or to accept money or property illegally from another person for securing benefits for the person 	<ul style="list-style-type: none"> ◆ The request for bribes should be explicitly refused and the incident reported to the proper authorities immediately
	<ul style="list-style-type: none"> ◆ Any State functionary ◆ in violation of State regulations ◆ accepting rebates or service charges of various descriptions and taking them into his own possession 	
	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his own functions and powers or position ◆ through the performance of another State functionary during the discharge of his duties ◆ to extort or accept money or property from an entrusting person for securing illegitimate benefits 	

<p>Acceptance of bribes by a unit Article 387</p>	<ul style="list-style-type: none"> ◆ A State organ and State-owned enterprise, etc. ◆ extorting or illegally accepting money or property from another person for securing benefits for the person ◆ or secretly accepting off-the-book rebates or service charges of various descriptions 				
<p>Members of intermediary organizations deliberately providing false testifying papers Article 229(2)</p>	<ul style="list-style-type: none"> ◆ A member of an intermediary organization who provides legal, accounting or verification services, etc. ◆ demanding or illegally accepting money or property from other people ◆ deliberately providing false testifying papers 	<ul style="list-style-type: none"> ◆ Business people should not follow the illegitimate advice of intermediaries 			
<p>Offering bribes to State functionaries Article 389</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="534 1034 897 1246"> <ul style="list-style-type: none"> ◆ Any person ◆ for the purpose of securing illegitimate benefits ◆ offering money or property to State functionaries </td> <td data-bbox="897 1034 1247 1628" rowspan="2"> <ul style="list-style-type: none"> ◆ The perpetrators of an offence to offer bribes to State functionaries can include foreign investors and cross-boundary businessmen </td> </tr> <tr> <td data-bbox="534 1246 897 1628"> <ul style="list-style-type: none"> ◆ Any person ◆ in violation of State regulations ◆ offering money or property / rebates or service charges of various descriptions to State functionaries # <p># Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefits would not be regarded as having offered a bribe.</p> </td> </tr> </table>	<ul style="list-style-type: none"> ◆ Any person ◆ for the purpose of securing illegitimate benefits ◆ offering money or property to State functionaries 	<ul style="list-style-type: none"> ◆ The perpetrators of an offence to offer bribes to State functionaries can include foreign investors and cross-boundary businessmen 	<ul style="list-style-type: none"> ◆ Any person ◆ in violation of State regulations ◆ offering money or property / rebates or service charges of various descriptions to State functionaries # <p># Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefits would not be regarded as having offered a bribe.</p>	
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<p>Unit offering bribes Article 393</p>	<ul style="list-style-type: none"> ◆ Any unit ◆ for the purpose of securing illegitimate benefits ◆ or in violation of State regulations ◆ offering rebates or service charges to State functionaries 	<ul style="list-style-type: none"> ◆ A bribe offered in the name of a company or an enterprise remains an offence
<p>Offering bribes to a unit Article 391</p>	<ul style="list-style-type: none"> ◆ Any person ◆ for the purpose of securing illegitimate benefits ◆ or in violation of State regulations ◆ offering money or property / rebates or service charges of various descriptions to State organs or State-owned enterprises 	<ul style="list-style-type: none"> ◆ Even if the bribe is offered to a State organ, State-owned enterprise or unit, it remains a bribery offence
<p>Introducing a bribe Article 392</p>	<ul style="list-style-type: none"> ◆ Any person ◆ introducing a bribe to State functionaries 	<ul style="list-style-type: none"> ◆ Anyone who lines up any bribery racket commits a criminal offence

Bribery Offences

(II) Offences of offering and accepting bribes in the course of commercial dealings

Relevant provisions of the Criminal Law of the PRC	Summary of the law	Key points
<p>Acceptance of bribes by employees of companies and enterprises</p> <p>Article 163</p>	<ul style="list-style-type: none"> ◆ Any employee of a company and enterprise ◆ taking advantage of his position ◆ demanding money or property from another person ◆ or illegally accepting another person's money or property in return for the benefits he seeks for such person 	<ul style="list-style-type: none"> ◆ The Mainland has specific laws and regulations in this area. Employees posted to the Mainland should pay particular attention to the laws so as not to inadvertently commit an offence
	<ul style="list-style-type: none"> ◆ Any employee of a company and enterprise ◆ in violation of State regulations ◆ accepting rebates or service charges of various descriptions and taking them into his own possession 	
<p>Offering bribes to employees of companies and enterprises</p> <p>Article 164</p>	<ul style="list-style-type: none"> ◆ Any person or unit ◆ for the purpose of seeking illegitimate benefits ◆ offering money or property to any employee of a company or enterprise 	

Others

Relevant provisions of the Criminal Law of the PRC	Summary of the law
<p>Failing to explain a significant excess of property or expenditure over lawful income</p> <p>Article 395(1)</p>	<ul style="list-style-type: none"> ◆ Any State functionary whose property or expenditure obviously exceeds his lawful income ◆ the difference is enormous ◆ failing to prove that the sources are legitimate
<p>Concealing savings outside the territory of China</p> <p>Article 395(2)</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ deliberately concealing bank savings outside the territory of China

Maximum Penalties for Committing Corruption and Bribery Offences

Corruption and bribery offences	Maximum penalties
<p>Embezzlement by State functionaries</p> <p>Acceptance of bribes by State functionaries</p>	Capital punishment
<p>Misappropriation of public funds</p> <p>Offering bribes to State functionaries</p>	Imprisonment for life
<p>Embezzlement through dereliction of duty by employees of enterprises</p> <p>Acceptance of bribes by employees of companies and enterprises</p>	Imprisonment for fifteen years
<p>Misappropriation of a unit's funds</p> <p>Offering bribes to employees of companies and enterprises</p> <p>Members of intermediary organizations deliberately providing false testifying papers</p>	Imprisonment for ten years
<p>Illicit division of State-owned assets</p>	Imprisonment for seven years
<p>Unit offering bribes</p> <p>Unit accepting bribes</p> <p>Failing to explain significant excess of property or expenditure over lawful income</p>	Imprisonment for five years
<p>Offering bribes to a unit</p> <p>Introducing a bribe</p>	Imprisonment for three years
<p>Concealing savings outside the territory of China</p>	Imprisonment for two years

In addition to criminal penalties, the funds or property constituting the advantage in a corruption or bribery case may be traced and recovered. Criminals may also be fined and their property confiscated as prescribed by law. Where a unit commits a crime, the unit may be held criminally liable while the persons concerned may also be given criminal punishment.

(The information above is only a summary of the provisions of the Criminal Law of the PRC relating to corruption and bribery offences. For the English translation of these articles, please refer to [Appendix 2](#).)

Apart from understanding the provisions of the *Criminal Law of the PRC* on corruption and bribery offences, financial practitioners should also acquaint themselves with other related regulations of the Mainland. Due to the Mainland's sheer size, financial practitioners should not only comply with the national laws, but also understand and adhere to the local laws, regulations and policies. These include:

- ◆ Local laws and regulations - The people's congresses of different provinces, autonomous regions, municipalities and larger cities make district laws and regulations, whereas their respective local governments formulate rules. Financial practitioners conducting business duties in a particular area must first familiarize themselves with all the relevant laws and regulations of that area, and check the content, applicability and impact on the business duties concerned.
- ◆ Regional policies - Some of the provisions governing the trade and economy of provinces, cities and autonomous regions may be couched in the form of policies rather than laws. Such policies may affect the kinds of investment, the amount that can be invested, conditions of approval, and even the length of time required for approval relating to projects open to foreign investors.

Terms and Definitions

State functionaries

Persons who perform public service in State organs; persons who perform public service in State-owned companies, enterprises, institutions or people's organizations; persons who are assigned by State organs, State-owned companies, enterprises or institutions to companies, enterprises or institutions that are not owned by the State or people's organizations to perform public service and the other persons who perform public service according to law all be regarded as State functionaries.

Taking advantage of office

The act of taking advantage of a position of authority or of the convenience afforded by that position when appropriating, managing or handling money or property.

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

The act of taking advantage of one's own position or authority to direct and influence State functionaries of any rank in the same department, in neighbouring departments or in units with close ties.

Violation of State regulations

Violation of the laws enacted or decisions made by the National People's Congress and its Standing Committee, and the administrative rules and regulations formulated, the administrative measures adopted and the decisions or orders promulgated by the State Council.

Money or property

Money and materials, e.g. currency, gold, silver and other materials that can be measured in terms of value and amount.

Benefits or gain

Property and various labour services that cannot be measured in terms of value and amount, e.g. job redeployment, allocation of population register, arrangement of employment, etc.

Profit-making activities

Activities such as trading, establishing an enterprise, investing in stocks, money-lending, etc.

Secret off-the-book acceptance

Inability to truthfully report matters according to the money and property accounting system in the legally established financial account.

Public property

(a) State-owned property; (b) property collectively owned by working people; and (c) public donations or special funds used for elimination of poverty for other public welfare undertakings. Private property that is being managed, used or transported by State organs, State-owned companies, enterprises, or enterprises owned by collectives, or people's organizations.

Misappropriation of public funds for personal use

The use of embezzled public funds by the embezzlers themselves or by other individuals; also the offer of embezzled public funds to enterprises, units, bodies or organizations in the name of an individual for the purpose of securing personal gain.

Company, enterprise or other unit

"Company" - a non-State-owned limited liability company and holding company limited set up in accordance with the *Company Law of the PRC*; "enterprise" - any non-State-owned economic organization (other than a "company") engaging in lawful economic transactions; "other unit(s)" - any non-State-owned social or economic organization(s) other than a "company" or an "enterprise" as defined.

Administrative law enforcing organs

State-organs which are empowered to exercise administrative punishment on citizens and units according to administrative and economic law, such as government departments responsible for trade and industry, taxation, customs, environmental protection, forestry, transport etc.

Judicial organs

The people's courts, the people's procuratorates and public security organs.

Chapter 2

Case Studies for the Financial Services Sector



Case Studies for the Financial Services Sector

The financial services sector offers a wide range of businesses. With trading volume involving millions of money, the sector is vested with a higher risk of corruption temptations. Thus, managerial staff must stay extra vigilant to guard against any corrupt attempts. To prevent corruption effectively, managers in the financial services industry, whether in Hong Kong or elsewhere, should always be on the alert for possible corruption loopholes in various operational areas.

The following 33 case studies¹ cover a total of ten different operational areas in the financial services sector. Apart from examining the potential corruption problems, the analysis will also include the relevant provisions in the *Prevention of Bribery Ordinance* (PBO). The case studies are mostly set in Hong Kong to highlight the scope of applications of the PBO. In cases set on the Mainland, the relevant Mainland legal provisions will also be discussed.

Case Studies

Areas	Focus of Case Studies
Definition of corruption	Case 1 Offering or accepting a bribe are both offences in law Case 2 Even if a bribe is not honoured, an offence is still committed Case 3 Offering an advantage to obtain business Case 4 Excessive entertainment and gifts Case 5 Custom not to be a defence
Banking loans	Case 6 False valuation of collateral in exchange for approval of a higher credit limit Case 7 Offering and accepting an advantage both constitute an offence Case 8 Granting of loans without complete documents Case 9 An offence committed notwithstanding an incomplete corrupt deal
Letters of credit	Case 10 Letters of credit (L/Cs) kiting Case 11 Setting up a private "treasure chest" Case 12 Unauthorized commission in custody of another person
Leaking of information	Case 13 Handling customers' data Case 14 Circulation of inside information within the institution without personal financial gains
Insider dealing	Case 15 Insider dealing Case 16 Using inside information to trade company stocks

Conflict of interest	Case 17	Receipt of credit on an abnormally favoured basis
	Case 18	Connected lending
	Case 19	Outside employment without authorization
	Case 20	Personal relationships taking a higher priority
	Case 21	Exercising discretion over ethical dilemmas
Front running	Case 22	Front running
	Case 23	Taking advantage of official position for personal dealing
Misappropriation of funds	Case 24	Making use of a client's funds is a misappropriation offence
	Case 25	Misappropriation of funds for foreign exchange trades in order to make a profit on price differentials
	Case 26	Misappropriation of public funds through a computer accounting system
Market listing/ manipulation	Case 27	Exaggerating a company's financial position to facilitate raising of capital and listing on the market
	Case 28	Falsifying documents to obtain a stock market listing
	Case 29	Market manipulation and disseminating false information
	Case 30	Breach of 《The Codes of Takeovers and Mergers and Share Repurchases》 issued by the Hong Kong Securities and Futures Commission
	Case 31	Irregular raising of capital in order to repurchase shares
Money laundering	Case 32	Making use of another person's company for deception and money laundering
	Case 33	Confidential advice of value

¹ The case studies in this chapter are extracted from the following three Practical Guides published by the Community Relations Department of ICAC, HKSAR. Interested readers can download the complete contents from the ICAC Website (www.icac.org.hk) :

Ethics in Practice — A Guide for Businessmen in Shanghai and Hong Kong

Ethics in Practice — A Practical Guide for Bank Managers

Ethics in Practice — A Practical Guide for Financial Practitioners

Definition of corruption

Case 1

Offering or accepting a bribe are both offences in law

In Hong Kong, a director of a finance company and the credit manager of a bank became good friends due to their frequent business contacts. They both enjoyed playing mahjong and drinking fine wine, so they often spent free time together. But every time they went out, it was almost always the director of the finance company who paid the bill.

The demand for loans grew sharply after the Asian financial crisis of 1997-1998. In order to secure more business, the director of the finance company asked his bank manager friend to increase his credit limit. Knowing full well that he could not provide sufficient collateral, the director privately agreed to offer a rebate of HK\$50,000 to the bank manager for every one million dollar increase in his credit line.

In a short period of 18 months, the finance company was granted credits totalling nine million dollars on separate occasions, even though there was insufficient collateral to cover the credit granted. The case was eventually detected by the compliance department of the bank and referred to the ICAC for investigation. The pair was sentenced to imprisonment upon conviction.

Case Analysis and Major Legal Points

In the above case, the bank manager was an employee of the bank, i.e. an agent under Section 9 of the PBO while the bank was the principal or the employer.

The bank certainly would not allow the manager to accept advantages related to his official position, thus the rebate was an illegal advantage and the acceptance of which constituted an offence of accepting a bribe. The one who offered illegal advantages (the finance company director) committed bribery. Both the offer and acceptance of bribes constitute an offence.

Under the PBO, food or drink for consumption on the occasion when it is provided is considered as "entertainment", which is not defined as an advantage. Yet, the bank manager might compromise his impartiality when he dined frequently with the finance company director. Since lavish entertainment would pave the way for bribery and corruption to occur, the *Supervisory Policy Manual on Code of Conduct* issued in 2002 by the Hong Kong Monetary Authority stipulates that if a bank permits its staff in accepting normal business entertainment (e.g. a meal involving no more than ordinary amenities), such entertainment should not be excessive in nature or frequency (*please refer to [Appendix 5](#)*).

Case 2

Even if a bribe is not honoured, an offence is still committed

In Hong Kong, a businessman, Mr LEE, applied through a consultant firm, for a HK\$27 million fixed-term loan from a bank. He applied in the name of his company, putting up his own property as collateral. Mr CHAN, the director of the consultant firm, told LEE that the bank manager privately asked for a commission equivalent to three percent of the secured loan as a reward for approving his application, and that he could help transfer the money to the bank manager. So LEE issued a post-dated cheque for HK\$810,000 made payable to a company set up by CHAN. They also drew up and signed a bogus purchase contract for HK\$810,000 as a way of covering up the real intent of the money.

Because of the poor economic climate following the Asian financial crisis, LEE was unable to repay the loan. The value of the property LEE had put up as collateral had fallen sharply, and the bank pressed LEE hard to repay the loan. LEE then contacted the bank manager directly to assure him that the post-dated cheque for HK\$810,000 would be honoured. Not knowing what LEE meant at first, the manager was quick to realize that someone might have used his name to accept advantages. He assured LEE that everything would be fine, but then immediately checked through all the relevant documents and reported the matter to the ICAC.

After receiving the corruption complaint, the ICAC launched an investigation and discovered that CHAN had deliberately deceived LEE by falsely claiming the bank manager had asked for a commission. CHAN was sentenced on deception charges, while LEE was imprisoned for offering a bribe.

Case Analysis and Major Legal Points

LEE had followed CHAN's advice and issued a post-dated cheque for HK\$810,000 for the specific purpose of offering a bribe. So long as the offeror believes that the advantage is a reward for favours done in relation to one's duties, he has already committed an offence of offering a bribe. This is true, regardless of whether the target of the bribe receives the advantage or not.

Since CHAN was not the person responsible for approving the loan application, he was not actually accepting a bribe directly, but was guilty of deceiving the businessman of HK\$810,000. He contravened the law, even though the post-dated cheque was never honoured.

Case 3

Offering an advantage to obtain business

KEN worked as a branch manager who was always keen for promotion. Unfortunately, he had been stuck in the same position in the bank for nearly ten years while his peers had all been promoted to senior positions. Recently, a nearby private residential development was opened for sale and had prompted the branch to initiate a marketing plan to attract new buyers. KEN's brother-in-law, PHILIP, was a property agent who was also trying to find business opportunities here.

During a family gathering, KEN told PHILIP that his boss was now considering his promotion and added that it would be a great boost to his prospects if he was able to secure a substantial market share of the mortgage loans on the estate. KEN also emphasized how difficult such a task was in the face of intense competition with other banks. On hearing this, PHILIP agreed to help KEN by encouraging his potential clients to apply for mortgage loans in KEN's branch. As a token of thanks, KEN proposed to offer PHILIP commission out of his own pocket.

Case Analysis and Major Legal Points

PHILIP must obtain the consent from his principal to accept the commission, otherwise both PHILIP and KEN were in breach of Section 9 of the PBO. KEN committed an offence of offering a bribe while PHILIP committed an offence of accepting.

Although at the end of the day PHILIP might not be able to complete the task and KEN might not reward him, the offeror and the recipient of a bribe are still liable to prosecution if a verbal agreement of corruption has been reached.

KEN also violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority, which clearly states that no bank employee should offer any bribe or similar consideration to any person in order to obtain business.

Case 4

Excessive entertainment and gifts

MARGARET, an account manager of a brokerage company in Hong Kong, had maintained close relationships with her clients and always shared her investment views with them. One afternoon, a client, DANIEL, called MARGARET. He was in a jovial mood and explained to MARGARET that he had just earned a considerable sum of money from the recent rise in the stock market. He then invited MARGARET and her subordinates for dinner in a very luxurious restaurant. After a sumptuous feast, DANIEL also presented MARGARET with an antique watch.

Case Analysis and Major Legal Points

If the advantage offered, i.e. the antique watch, was not a reward for MARGARET in doing or forbearing to do any act in relation to her employer's business, MARGARET might not have contravened the *Code of Conduct for Persons Licensed by or Registered with the Hong Kong Securities and Futures Commission (Code of Conduct)* and the PBO. However, she should be mindful of situations which might lead to the violation of the *Code of Conduct* and the law. MARGARET should, in fact, decline the gift if she felt that the acceptance would put herself in a position of obligation to the offeror. In case of doubt, it would be prudent of her to consult her employer on whether she could accept the gift.

Although entertainment is common in business practice, MARGARET should avoid accepting excessive levels of entertainment which might affect her objectivity in dealing with clients.

Case 5

Custom not to be a defence

TOMMY was a dealing manager of a small commodity trading company in Hong Kong. JACK was TOMMY's old friend who currently had an account in his company to trade futures contracts. Due to the improving economic conditions in the Asian region, JACK anticipated a boost to the Hang Sang Index and thus placed a purchase order with TOMMY for 10 lots of contracts. He also asked TOMMY for the best obtainable price for his contracts.

On the close of market, TOMMY received from the floor all the lots of contracts traded on the day. Without considering the timing of orders placed and the interests of other clients, TOMMY allocated the best priced futures contracts to JACK's account. As a token of thanks, JACK invited TOMMY and his family to spend the Christmas holidays in the Caribbean at his expense. TOMMY accepted.

Case Analysis and Major Legal Points

TOMMY had breached Section 9 of the PBO by accepting an advantage, i.e. free travel from JACK as a reward for allocating the best priced futures contracts to him. Although the free vacation was accepted during Christmas, TOMMY could not excuse himself by explaining that the acceptance was due to the common practice because customs would not be accepted as a reason for defence under the PBO. Even if TOMMY did not accept the free travel, he still violated the *Code of Conduct for Persons Licensed by or Registered with the Hong Kong Securities and Futures Commission* because he failed to confirm promptly with the clients after effecting each transaction and subsequently allocated the futures contracts unfairly to the clients' accounts.

Banking loans

Case 6

False valuation of collateral in exchange for approval of a higher credit limit

WILLIAM was the owner of a factory on the Mainland. Recently he needed to apply for HK\$8 million in credit to help finance his rapidly-expanding business. He contacted his friend ANDREW, the Loans Department Manager of a bank in Hong Kong, who advised WILLIAM to take out a mortgage using the new production machinery he had recently purchased as collateral.

The bank assigned ANDREW and his supervisor to visit the Mainland factory in order to verify the application information and inspect the machines. After the inspection, ANDREW's supervisor expressed doubts that the machines had been in use for a while and were not new as stated in the application. He asked WILLIAM to produce more documentary proof to the age of the equipment. WILLIAM asked his staff to fax more invoices from Hong Kong and promised to submit the original papers to the bank on their return to Hong Kong. He expressed his wish that the bank could process his application quickly.

ANDREW decided to take advantage of WILLIAM's predicament by saying that his supervisor could exercise his discretion and slightly over-value the machinery in order to meet the mortgage requirement. ANDREW asked for a "red packet" of HK\$200,000 from WILLIAM which, he claimed, would be passed on to his supervisor.

Case Analysis and Major Legal Points

Bank employees in general know full well the urgency of a client's financial needs. Certain unscrupulous employees may take the opportunity to profit from such situations. ANDREW knew that WILLIAM wanted the loan urgently, he took the opportunity to solicit money from WILLIAM. Since the bank strictly prohibited staff from accepting any advantage under such circumstances, WILLIAM should not submit to ANDREW's demand, or offer any advantage to him or his supervisor. To do so would be to commit an offence under the PBO. As for ANDREW, even if he was only soliciting a bribe on behalf of his supervisor and not benefiting personally, he would still be in violation of the PBO.

Case 7

Offering and accepting an advantage both constitute an offence

DANIEL, as a senior credit officer of a bank in Hong Kong, had the responsibility of verifying information submitted by customers regarding the application for credit facilities. One of his customers, CALVIN, was the owner of a factory located in Dongguan, Guangdong.

When CALVIN applied for hire purchase facilities of HK\$4.3 million to secure a set of new machines, DANIEL and his supervisor, MICHAEL, were assigned to conduct a site visit in Dongguan to verify the application information and inspect the new machines.

Upon the inspection, however, they found that the machines seemed to have already been in use for several years. Suspecting a potentially bogus transaction, DANIEL raised his concerns with CALVIN, who, in the hope of encouraging them to turn a blind eye, presented both DANIEL and MICHAEL each with an expensive watch. To help smooth DANIEL's feathers, CALVIN also pointed out that, technically speaking, they would not breach the anti-corruption laws in Hong Kong as the transaction was conducted outside the region.

DANIEL still hesitated over CALVIN's offer but was surprised to find MICHAEL accepting the watch graciously. MICHAEL sensed DANIEL's discomfort at the situation and whispered to him that refusing such a token gift would merely cause embarrassment to all concerned. Hearing such assurances from his supervisor, DANIEL finally accepted the watch.

Case Analysis and Major Legal Points

If DANIEL and MICHAEL did not obtain their principal's permission to accept the advantage, both of them and CALVIN were in breach of Section 9 of the PBO. In this case, DANIEL should clarify with his bank as his principal rather than follow his supervisor's advice. A breach of Section 124 of the *Banking Ordinance* (Laws of Hong Kong Chapter 155) (please refer to [Appendix 4](#)) had already been committed whether or not permission was obtained.

Although they executed the corrupt transaction outside Hong Kong, both of them still committed a corruption offence since the application of credit facilities was processed in Hong Kong. The location where the acceptance of offering of an advantage takes place is only one of the factors to be considered for prosecution.

They also violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority by accepting personal benefits from a customer. They should have actively discouraged their customer from offering them personal benefits of any kind.

Case 8

Granting of loans without complete documents

RONALD, the director of an investment company in Hong Kong, applied for a US\$30 million loan from a local bank to finance a shopping mall development on the Mainland. He approached CHRIS, the Assistant General Manager in charge of the bank's business development. After discussing the matter internally, it was decided that CHRIS's department would draft a financing application proposal to ensure that the application was in line with the bank's vetting guidelines. CHRIS in particular was ordered to follow up on the application and to seek more information from RONALD. CHRIS later told RONALD that the bank had approved the estimated valuation and the asset mortgage clause of the financing plan in the initial vetting stage.

After the bank had approved the financing arrangement, RONALD's investment company sought to withdraw the loan in instalments from a Mainland branch of the bank, but problems were encountered as the investment company was unable to submit sufficient supporting documents. RONALD rang CHRIS in Hong Kong and asked him to contact the Mainland branch office.

Subsequently, the branch office released part of the loan, even though they did not have the necessary supporting documents.

To show his appreciation, RONALD arranged the sale of some company shares to CHRIS. He later bought back the shares from CHRIS at a much higher price through a broker he knew well. Eventually, CHRIS made a profit of more than HK\$1 million through share trading without the need to contribute any funds at all.

Case Analysis and Major Legal Points

Bank employees are duty bound to provide quality services to customers in a helpful manner. Under certain circumstances, there may be different procedures for special financing arrangements, especially if substantial amounts are involved, but such procedures still have to be in line with the bank's internal guidelines. Bank employees need to provide customers with professional advice on drafting the financing application proposals so as to ensure that the conditions stated in the application comply with the vetting guidelines of the bank. During that process, there is no need for the customer to offer any advantage or reward.

Moreover, according to the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority, the value of such advantages and gifts should be subject to an approved limit that should not be excessive. If the reward is accepted in relation to the bank's business and if the bank employee has not obtained permission from the bank, the reward would be regarded as an illegal advantage. Both the offeror and recipient commit an offence under Section 9 of the PBO, no matter whether the offer and acceptance of the bribe is dressed up as trading in stocks or accompanied by any other pretext.

Case 9

An offence committed notwithstanding an incomplete corrupt deal

TERRY had been a senior manager of a bank in Hong Kong for five years. Unfortunately he bought a flat at its peak value just before the Asian economic crisis and the value of the flat had dropped by nearly HK\$3 million. He had to pay exceptionally high monthly instalments on the mortgage loan.

MARK was TERRY's customer and planned to apply for overdraft facilities of HK\$1 million from TERRY's bank. According to the bank's policy, a branch manager was authorized to approve unsecured overdraft facilities of up to HK\$1.2 million to a customer. While TERRY was dealing with the overdraft application, MARK requested him to expedite the process and favourably recommend his application.

Taking into consideration the upcoming mortgage repayment, TERRY agreed and suggested that if MARK placed HK\$50,000 into TERRY's bank account in three days' time, he would approve the application the next day. Prior to the approval of the application, the abnormal payment into TERRY's bank account was brought to light by the internal audit department and the case was reported to the ICAC. TERRY's authority to deal with all banking matters including MARK's application was suspended pending investigation.

Case Analysis and Major Legal Points

TERRY violated Section 9 of the PBO as he abused his official position as bank manager by expeditiously approving an application of overdraft facilities and accepted an advantage in return without permission from his employer. Likewise, MARK breached the PBO by offering an unlawful advantage to TERRY. In this case, TERRY also violated Section 124 of the *Banking Ordinance* in Hong Kong.

Although the "under-the-table" deal had not been completed, TERRY and MARK still committed an offence. Under the PBO, a person will be found guilty even though the purpose of bribery has not been carried out. TERRY also violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority by accepting personal benefits from a customer.

Letters of credit

Case 10

Letters of credit (L/Cs) kiting

FRED owned an import-export company in Hong Kong which mainly dealt with trade between the Mainland and Hong Kong. Because of frequent trips to the Mainland, FRED left the daily operation of the company to LUKE.

Recently, FRED discovered a number of questionable letters of credit (L/Cs) in the company. Although the delivery points of the goods were all on the Mainland, the documents showed that several overseas financial intermediaries were involved and the payment period of some transactions was 90 days or more. FRED sensed that something was wrong, so he asked LUKE to check on these deals. A week later, LUKE took leave on the pretence of visiting family overseas, but he never returned.

It was later discovered that LUKE had conspired with others to falsely represent the purchase of products from other parties. LUKE then applied for an L/C from the bank, falsely claiming that it was the payment for the transaction. The other party then discounted the L/C at another bank, and deposited the proceeds into yet another bank account as a cash pledge. By repeating this process, they were able to accumulate cash in the time period between discounting the L/C and the repayment deadline. Since LUKE had bribed a senior staff member of the L/C issuing bank, his illegal racket was able to continue for over a year without being discovered. The "snowball" effect of this process became bigger and bigger, with a total of seven banks becoming involved and leaving FRED's company on the verge of insolvency. The total amount of accumulated bad debts amounted to over HK\$60 million.

Case Analysis and Major Legal Points

Quite simply, LUKE had bribed an employee of the L/C issuing bank. Both of them were therefore in breach of Section 9 of the PBO. They would also be charged with conspiring to defraud the bank.

This is also an example of serious mismanagement. The integrity of both parties is fundamental to bank transactions of this nature. It is the company operator's responsibility to oversee each and every transaction and to look for any signs of bribery or fraud in daily business dealings.

The original purpose of payments by L/C is to minimize operational risks and to help with cash flow. However, since L/Cs allow a grace period for a buyer to settle the payment after receipt of goods, dishonest individuals may take advantage of this period to defraud money from the bank.

Case 11

Setting up a private "treasure chest"

Mr WEN was sent to Hong Kong from the Mainland recently as the Deputy Financial Controller of a State-owned enterprise. Shortly after his arrival, he discovered that certain L/C documents had been used to secure discounts from the bank despite failing to meet the required standards of the audit department. WEN's colleagues said the bank had confidence in the State-owned enterprise, as it was a major long-term client, and was able to handle their business flexibly.

Three months later, Mr WEN learned that certain staff had taken advantage of their positions to discount fraudulent L/Cs at certain banks in order to secure funds. They had set up their own private "treasure chest" to speculate on Hong Kong and US stocks. Information revealed that two senior staff of the enterprise, two import-export firms, as well as eight banks and finance companies were involved. The money involved amounted to HK\$200 million. It was also possible that some bank employees might have been bribed, or might have taken part in the speculation activities.

Mr WEN immediately referred the case to the ICAC for investigation. Subsequently, the two senior staff of the State enterprise, a number of bank officers who had taken bribes, and several finance company directors and the import-export firm managers were convicted. A total of 18 persons were involved in the scam that had lasted almost two years.

Case Analysis and Major Legal Points

Once again, the bank employees who knew there were problems with the L/Cs but still approved the discount in return for an advantage had committed an offence under Section 9 of the PBO. The two senior State enterprise staff as well as other persons involved were charged with offering bribes and conspiracy to defraud the bank.

Bank employees supervise and assess the risks faced by the bank in each and every transaction. However, if staff of the enterprise had bribed bank employees, or if they had conspired to participate in speculative activities, the banks involved could become vulnerable.

The bank's intent of adopting a flexible financing policy is to encourage and support the business development of clients. But if there were problems in the enterprise, such as improper supervision and lack of regular contact between senior managers of the enterprise and the bank, incidents similar to this could easily arise.

After this case came to light, the banks and the finance companies involved became major creditors of the State enterprise. They were within their rights to try and recover the losses suffered as a result of the incident. The State enterprise was still responsible for the debt.

Case 12

Unauthorized commission in custody of another person

NELSON was a branch manager of an overseas bank in Hong Kong and was responsible for the day-to-day management including the granting of credit facilities to individual and corporate customers. LEO, a client of NELSON, was a director of a trading company. They maintained close ties and LEO always spent considerable sums of money entertaining NELSON by way of lunches, dinners and visits to ballrooms. On top of that, NELSON and his family were enjoying free accommodation in a flat owned by LEO's company.

In recent years, LEO's company had been facing difficulties in obtaining credit facilities due to the economic downturn. One day, LEO called NELSON for dinner and disclosed that he was now applying for some letters of credit (L/Cs) at NELSON's bank. Hoping to secure his applications, LEO said that NELSON's assistance would be of great help. In return, LEO agreed to offer NELSON a commission and deposit it into the account of NELSON's wife. LEO also invited NELSON and his family to spend the Chinese New Year holidays on a golf trip to Malaysia at his expense. NELSON thanked LEO and accepted it.

Case Analysis and Major Legal Points

NELSON and LEO breached Section 9 of the PBO as NELSON accepted advantages from LEO in the form of commission and free travel for providing assistance in approving LEO's L/C applications without the permission of the bank. It is also a violation of Section 124 of the *Banking Ordinance* in Hong Kong for NELSON to accept the advantages. NELSON committed a corruption offence despite LEO placing the commission into the account of NELSON's wife. Under the PBO, a person is considered to have accepted an advantage, even though another person acting on his behalf receives the advantage.

NELSON also could not excuse himself by explaining that the acceptance of the Chinese New Year trip was a customary practice as custom is not a defence according to the PBO. NELSON further contravened the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority as it clearly stipulates that no bank employee should accept personal benefits from any customer doing or seeking to do business with the bank.

Although entertainment is common in business practice; and that LEO had not required NELSON to do something in return for providing the free accommodation, NELSON should nevertheless avoid accepting excessive levels of entertainment or advantages from LEO as these might affect his objectivity in dealing with him.

Leaking of information

Case 13

Handling customers' data

CINDY worked in a bank's credit card centre in Hong Kong and was responsible for verifying the personal particulars of credit card applicants. Recently she became engaged to her long-term boyfriend and, as part of their wedding plan, wished to arrange a banquet befitting the grand occasion. With this in mind, CINDY and her fiancé borrowed HK\$100,000 from a finance company but soon ran into difficulties in the loan repayments.

One day, CINDY's good friend, FRED called her and invited her to lunch. FRED happened to work for a debt collecting company and upon learning of her financial predicament offered her a "part-time job". "It's a fairly undemanding job," he explained. He intended to provide her with a list of debtors' names every month and all CINDY needed to do was to check the names on the list with the personal information of the cardholders and sent the results to him. FRED offered CINDY a payment of HK\$300 for every verified set of information she could provide for him. As CINDY needed extra money, she readily accepted the offer.

Case Analysis and Major Legal Points

CINDY breached Section 9 of the PBO by accepting an advantage, i.e. HK\$300, for a set of data as a reward for releasing information to FRED. FRED in turn committed an offence of offering a bribe.

She also violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority because she released her customers' information to a third party without their consent. Such a disclosure is also strictly prohibited in accordance with the *Code of Banking Practice (please refer to Appendix 6)* as well as the *Personal Data (Privacy) Ordinance*. She might also break her bank's policy on the protection of customers' information, which requires employees to treat their customers' banking affairs as private and confidential.

Case 14

Circulation of inside information within the institution without personal financial gains

As a senior credit officer of a bank in Hong Kong, KIM was handling a loan application from an overseas investment company which planned to buy a substantial amount of shares in a local telecommunications company. She knew that the bank was likely to support this project and was also aware that such a bulk purchase would boost the share price of the target company when the deal was announced. To make a mark for herself in the bank, she phoned ANGELA, her former supervisor, who was now a trader in the bank's stock broking section.

She told ANGELA about the proposed acquisition and her opinion that the bank would make a lot of money by buying the stock before the bid was made public. Subsequently, ANGELA bought a major block of shares for the bank. When the deal was announced, ANGELA was questioned by her compliance officer about why she had purchased shares in the target company. It became clear that the purchase followed a "tip-off" and inside information.

Case Analysis and Major Legal Points

KIM and ANGELA might have breached the *Securities and Futures Ordinance* (Laws of Hong Kong Chapter 571) (please refer to [Appendix 3](#)) for disclosing and acting on unpublished price-sensitive information. They might have also exposed the bank to legal liability since the bank had bought the shares as a result of inside information.

KIM might further violate the internal codes of conduct of her bank as she leaked customer's information to a third party, even though in this case the third party was also a staff member of her bank.

Insider dealing

Case 15

Insider dealing

ALEX, the Hong Kong-based financial director of a Mainland red chip company was on good terms with HENRY, the sales manager of a large securities company. After dining together one night, the duo went to a night-club to plan their strategy to make some money. ALEX told HENRY that his company was scheduled to restructure and might receive investments from a well-known international corporation. The two companies had even signed several agreements.

They decided this was a golden opportunity. But ALEX felt it would be awkward to mobilize his available capital for fear of arousing suspicion, so they came to an understanding. ALEX would inform HENRY to speculate jointly on the stocks of the red chip company at the right time. HENRY gathered together his savings and took out additional loans from banks and finance companies. HENRY made a large purchase of the red chip company's stocks in his son's name, using accounts at several different brokers to cover his tracks.

Two weeks later after the red chip company had announced its restructuring plan and the takeover of a profit-making communications company at a low price by the issue of shares, its share price surged immediately and brought in huge notional profit for HENRY. Six weeks later, the red chip company further announced that it had been in negotiation with a multinational corporation which would be interested to inject money into the company to form joint ventures on the Mainland. Share price surged further. However, negotiations between the red chip company and the multinational communications company subsequently failed. ALEX immediately informed HENRY to sell their shares at a high price and avoided losses in the fall in share price after the announcement. As a reward for his giving prior notice for their money-making plan, HENRY then deposited HK\$750,000 into ALEX's personal account.

Case Analysis and Major Legal Points

Under the *Securities and Futures Ordinance* in Hong Kong, ALEX was regarded as an "insider" because he was the financial director who had access to the confidential information relating to the company. HENRY violated the codes of conduct of his profession and committed an insider dealing offence for using non-public information (i.e. information not made public at the time the stocks were purchased) provided by ALEX in order to make an initial notional gain and avoid subsequent losses by selling ahead of the announcement. (Please refer to Appendix 3 for detailed text of the Ordinance.)

An insider dealing offender could be prosecuted in the criminal court and be liable upon conviction to a maximum imprisonment of 10 years and a fine for HK\$10 million. Alternatively, his case could be heard by the Market Misconduct Tribunal which could order him to disgorge the profit made, or loss avoided arising from his insider dealing. He could also be

banned from taking part in the management of a listed company or any other specified company for a period up to five years.

ALEX had also committed a bribery offence, as he had leaked confidential information about his company to HENRY in return for the latter's financial reward. HENRY committed the offence of offering a bribe. Both were in breach of Section 9 of the PBO.

Case 16

Using inside information to trade company stocks

Mr QIN was the Finance Director of a State-owned mechanical and electrical corporation. He had direct access to important documents and information relating to the company's business strategy. During the course of a casual conversation, he picked up some inside information relating to a joint-stock electrical company in which his corporation was a major shareholder. The information concerned the possible realignment of this electrical company with a well-known high-tech enterprise. So Mr QIN purchased 10,000 shares in the joint-stock electrical company on two separate occasions.

Mr QIN was the close associate of a Hong Kong businessman named VICTOR. During a banquet one evening, VICTOR asked QIN about the trend of stock markets on the Mainland. VICTOR too was looking for inside information, and had promised QIN a reward if he found out anything worthwhile. QIN told VICTOR about the possible realignment of the electrical joint-stock company, and that he had already bought 10,000 shares in the company. VICTOR then purchased 50,000 shares through another company in the name of a legal representative.

The price of the stock rose sharply a week later, and both QIN and VICTOR sold their holdings, making a tidy profit of RMB 50,000 Yuan and RMB 230,000 Yuan respectively. VICTOR also gave QIN another RMB 30,000 Yuan as a token of his appreciation.

Case Analysis and Major Legal Points

Mr QIN clearly used inside information to trade the stock of the company and disclosed the information to another person, and recommended the shares to that person. Mr QIN contravened Clause 73 and Clause 76 of *Securities Law of the People's Republic of China*. Being a State functionary, Mr QIN also contravened Article 385 of the *Criminal Law of the PRC* and committed an offence of accepting bribes by taking advantage of his position to extort money or property from another person to secure benefits for the latter. VICTOR on the other hand committed the offence of offering bribes under Article 389 of the *Criminal Law of the PRC*.

Conflict of interest

Case 17

Receipt of credit on an abnormally favoured basis

BRYAN was the manager of the insurance department of a bank in Hong Kong. His old classmate, ALAN, operated a car rental company and had insured all his company's vehicles with BRYAN's department. Since they both liked motor racing, they became good friends and often spent their holidays driving in the countryside.

ALAN invited BRYAN to dinner and asked him if he was interested in buying his "old" sports car that was bought only six months ago. BRYAN was interested but unfortunately was short of cash. ALAN suggested that BRYAN might pay for it by monthly interest-free instalments at a special price. BRYAN felt uneasy about accepting the offer. However, he changed his mind as he thought the offer did not create any obligation to ALAN.

Case Analysis and Major Legal Points

BRYAN broke the *Supervisory Policy Manual on Code of conduct* issued by the Hong Kong Monetary Authority by accepting an advantage from ALAN, i.e. the abnormally low price and the favourable repayment terms. BRYAN should decline such an offer or seek approval from the bank's management.

Although the advantage did not seem connected to BRYAN's official duties at the time of the offer, it might put him in a position of obligation to reciprocate in future and place him in a compromising situation when he was asked to return a favour.

Case 18

Connected lending

DONALD was the branch manager of a bank in Hong Kong and became acquainted with a client who was working in an investment company. DONALD learnt from the client that a large oil company was to be listed on the stock exchange next month and its initial public offering would become the market's focus. It was anticipated that the share price would at least double on the issuing date.

In order to purchase a larger block of shares, DONALD had to obtain more cash for the speculative transaction. He asked his wife to apply for a personal loan from his bank and subsequently approved the application to its maximum amount according to his wife's salary without disclosing the conflict of interest.

Case Analysis and Major Legal Points

DONALD might breach Section 83 of the *Banking Ordinance* in Hong Kong for approving loan to his wife. He also violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority that clearly stipulates that no member of staff can grant credit to himself, his relatives or companies in which he or his relatives have a personal interest. Before processing the loan application submitted by his wife, DONALD should observe the provisions of specific guidelines which his bank adopts in relation to transactions with connected parties and declare to his bank his relationship with the applicant.

Case 19

Outside employment without authorization

Both LAURA and her husband worked in the same bank based in Hong Kong. She was also a director of a small sanitary ware company that was owned by her secret boyfriend, RICKY. RICKY was her client, but she had never disclosed the directorship to her bank, reasoning that the company's business did not conflict with her work in the bank and she was rarely involved in the day-to-day operations of the company. More importantly, she wanted to keep the issue of her extramarital affair away from the bank and, of course, her husband.

RICKY's company unfortunately faced financial difficulties and, because of this, he applied to LAURA's bank for a local documentary credit to import a large quantity of leather shoes that seemed irrelevant to his major business. LAURA processed the application and approved it without declaring their relationship to her boss. After a month, the bank's internal auditor discovered that the supporting documents submitted by RICKY were false and the transaction was bogus. As a result, LAURA was queried and investigated by the management.

Case Analysis and Major Legal Points

LAURA violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority by taking up a directorship outside the bank without her employer's prior permission. On this issue, her directorship in RICKY's company gave rise to conflict of interest with her official duties, so she breached the *Supervisory Policy Manual on Code of Conduct* for approving facilities to the company in which she was interested. Moreover, she might commit an offence of conspiracy to defraud if she was aware of the fraud committed by RICKY and assisted him in the approval process.

Case 20

Personal relationships taking a higher priority

NANCY was an administration manager of a bank in Hong Kong. Her brother, GORDON, was the owner of an interior decoration company. NANCY's bank decided to renovate the conference room on the directors' floor and NANCY was assigned to appoint a contractor for this project. Due to the urgency of the project and that the amount involved was small, she placed the order with GORDON without observing her company's policy on the selection of contractors. She never disclosed their relationship to the bank.

Case Analysis and Major Legal Points

Under the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority, a bank employee should avoid situations that may lead to or involve conflict of interest, actual or potential and, in case of doubt, should seek the bank's advice. NANCY broke the *Supervisory Policy Manual on Code of Conduct* as she awarded the contract to her brother's company without disclosing their relationship to her employer. Even when NANCY was confident that the service provided by GORDON's company was as good as those of other firms, she should declare the interest to her employer.

Case 21

Exercising discretion over ethical dilemmas

SAM was a branch manager of a bank in Hong Kong and had known GEORGE for over twenty years. GEORGE was a director of a karaoke lounge and, through SAM's recommendation, borrowed a loan of HK\$20 million from SAM's bank several years ago. SAM gave his application the green light, even though his business was rated a little risky according to the bank's loan policy.

GEORGE handled the repayments but when the economy worsened he found it impossible to honour even the interest of the last three instalments. Afterwards, SAM was instructed by the credit control department to examine GEORGE's financial position and make a recommendation to the bank. SAM found that GEORGE's situation was really bad and the bank should call back the loan immediately. GEORGE begged SAM not to do so or he would face bankruptcy. SAM felt uneasy but agreed to help in the end.

Case Analysis and Major Legal Points

SAM might breach his bank's internal policy on credit control by abusing his authority to make a favourable recommendation disregarding the real state of GEORGE's business. SAM should not allow his personal relationship with GEORGE to affect his judgement. Rather, he should declare the relationship to the senior management before making a recommendation. To safeguard his own interests, he should keep the management well informed of the matter and abide by their subsequent decisions.

Front running

Case 22

Front running

FRANK was the general manager of the Hong Kong office of an H-share company. Since taking up his post in Hong Kong, he had been working hard, actively establishing good relationship with business counterparts in the hope of proving his own abilities.

The Hong Kong office was mainly responsible for handling a certain amount of the export trade and investment projects of the H-share company. However, the company's stringent accountability system required FRANK to seek the approval of the CEO or head-office before his investment decisions could be implemented. FRANK was annoyed with this policy, feeling that such decisions should be decentralized and put in his hands.

FRANK came to know RAY, a dealing manager at a large securities trading house. RAY's clients were mainly fund managers and large investors whose trading volumes could sometimes significantly affect the market. RAY's trading house also executed trades for FRANK's employer — the H-share company.

FRANK secretly came to an arrangement with RAY in which FRANK withdrew money from the "treasure chest" he had privately set up in the Hong Kong office. Whenever RAY received large "buy" orders from the H-share company, he would first ask FRANK to buy the same share in his own name through another securities trader. RAY then executed the H-share company's order which was usually significantly large to drive up the share price. Taking this opportunity, FRANK sold on strength, making a good return on the price difference.

Conversely, when RAY received large "sell" orders from the H-share company, he would ask FRANK to short sell the same share and buy back the shares for settlement after FRANK had executed the order placed by the H-share company and thereby caused the price to fall.

For his trouble, FRANK would offer RAY 30 percent of the profit gained in every transaction and keep the rest in the local Hong Kong office account, claiming that he was making money for his company instead of for himself.

Case Analysis and Major Legal Points

Short selling is an offence contrary to the *Securities and Futures Ordinance* (Laws of Hong Kong Chapter 571)(please refer to [Appendix 3](#)). Upon conviction, FRANK could be liable to a maximum imprisonment for 2 years and a fine for HK\$100,000. RAY could also be prosecuted and penalized for aiding and abetting FRANK to commit the offence.

RAY clearly knew that the orders of his clients might have a significant effect on the price of certain stocks. He was also aware that such orders were confidential, and not normal public information. However, he deliberately delayed effecting transactions for these clients and conspired with FRANK to make use of this market-sensitive information for personal gain.

This was a typical example of front running. It undermined the interests of clients and violated the *Fit and Proper Criteria of the Securities and Futures Commission (SFC)* as well as the *Code of Conduct for Persons Licensed or Registered with the Securities and Futures Commission* which required them to uphold the principle of conducting business in the best interests of their clients.

Both RAY and FRANK had committed the offence of accepting and offering bribes under Section 9 of the PBO, as RAY had provided information about his clients' transaction orders in exchange for FRANK's reward.

It was also against the law for FRANK to set up a "treasure chest" for stock market speculation. Such activities are governed by different rules and regulations in Hong Kong and the Mainland. In Hong Kong, FRANK's act would constitute a crime of theft. Any decision by the authorities to institute investigations and legal proceedings would not be influenced by the amount of company funds embezzled, nor any restitution that had been made (or when the restitution was made).

Case 23

Taking advantage of official position for personal dealing

ROBERT was a fund manager of an international asset management company, who managed the provident funds for certain large corporations. One day, he received a research report from an analyst stating that the profit margin of Hydroplane was expected to be high in the forthcoming three years.

ROBERT therefore planned to buy a substantial amount of Hydroplane's shares for his provident funds portfolios. Knowing that such a bulk purchase would likely boost its share price, he decided to place an order for himself through an external broker before sending out the purchase instruction to the dealing room for his provident funds portfolios.

Case Analysis and Major Legal Points

By knowingly dealing in the same securities for himself before he executed transactions for the portfolios under his management, ROBERT contravened the *Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission*. Moreover, he was also in breach of the *Fund Manager Code of Conduct* as it prohibits a fund manager from buying or selling any stocks on a day in which he or other fund manager in his company has a pending "buy" or "sell" order in the same stocks until such order is executed or withdrawn. ROBERT's action actually amounted to front running.

Misappropriation of funds

Case 24

Making use of a client's funds is a misappropriation offence

SANDY was a senior manager in a well-known investment company in Hong Kong. More than a year ago, she started to operate a fashion business in Shanghai with a friend, but business was poor. Recently, an investment firm in Shanghai persuaded her to take up the post of manager of the futures department. She resigned from the Hong Kong company and took the position with the Shanghai investment firm.

In order to get more money to finance her fashion business, SANDY took advantage of her position in the investment firm and misappropriated over RMB 50 million Yuan of her clients' money by trading in futures using different accounts. Eventually the case came to light, and it was later found in an audit check that the company suffered a loss of over RMB 4 million Yuan.

SANDY was sentenced to fixed-term imprisonment for misappropriation of funds.

Case Analysis and Major Legal Points

SANDY was not a State functionary but she took advantage of her position to make use of company funds to trade in futures. This violated the provision regarding misappropriation of company funds "for personal use in profit-making activities" in the *Criminal Law of the PRC*. Although it was not proved that she had obtained personal benefits and the misappropriation lasted less than three months, her act was sufficient to constitute an offence of misappropriation of a unit's funds.

Whether or not SANDY eventually returned the money did not affect the nature of the offence of misappropriation of a unit's funds. Since it was not proved that she had the intention to take the money into her personal possession, the offence of embezzlement through dereliction of duty by employees of enterprises could not be established.

SANDY was not a State functionary, so she had not misappropriated public funds but a unit's funds. These two different offences carry different punishments. The subject of this offence could be an employee of a joint venture or private enterprise, including someone recruited from outside the Mainland.

Case 25

Misappropriation of funds for foreign exchange trades in order to make a profit on price differentials

A Hong Kong businessman named PAUL had invested in a joint-venture enterprise on the Mainland specializing in the production of fax machines and domestic cordless telephones. Thirty percent of its products were supplied to the Mainland market.

In order to pay his workers' salaries in RMB, PAUL kept part of the proceeds from sales on the Mainland for this purpose, and gave the rest of the proceeds to the Deputy Factory Manager, WEI, for the purchase of raw materials and manufacturing equipment. On average, the money saved for these purpose amounted to several hundred thousand dollars each month.

WEI had been assisting PAUL for over 20 years and had gained his trust. Recently, WEI was having problems with his personal investments, so he told a good friend, HO, about his plight. HO happened to be the leader of the Foreign Exchange Management Team of a bank in Shanghai. Trying to help out a friend, HO suggested WEI leave the RMB with him and he would deposit it into several false bank accounts that he would set up.

HO would then illegally convert the RMB into various foreign currencies, transfer the money as deposits and then make use of falsified documents to "make up" the figures. Since everything was to be controlled by HO personally, the two could then take possession of the price difference between cash exchange and remittance currencies. WEI accepted HO's proposal. In the next 18 months, the two misappropriated a total of RMB 480,000 Yuan and shared the proceeds between them.

Case Analysis and Major Legal Points

WEI misappropriated funds from his company for personal gain, so he committed the offence of misappropriation of a unit's funds by a functionary of a company or an enterprise.

HO was also a State functionary. He pocketed the price difference of RMB 240,000 Yuan between the cash exchange and remittance currencies made by WEI. His account therefore amounted to acceptance of an advantage to secure an illegal benefit for others, which constituted an offence of accepting bribes by State functionaries. As for WEI, he offered an advantage to HO, asking him to secure a personal benefit within HO's scope of duties. His conduct constituted an offence of bribing a State functionary.

It is important to handle business proceeds on the Mainland with care. The RMB is currently not freely exchangeable, and there are laws regulating foreign exchange trading on the Mainland. Businessmen need to be aware of the laws and operate accordingly.

Case 26

Misappropriation of public funds through a computer accounting system

ZHANG was the team leader of the Accounts Section, part of the Accounting Division of a State-owned bank. He was also assigned to handle the computer programme on editing and revising the bank's accounting system. When the bank carried out its quarterly auditing and interest settlement procedure, ZHANG altered a certain trading company's accounts data in the computer system without authorization. He fabricated two entries of RMB 400,000 Yuan and RMB 300,000 Yuan in the company's transaction records by entering the same amounts into the corresponding credit record. Then, right before the computer started its auditing programme, ZHANG deleted the two entries, which were still kept in the computer records of a branch of the bank.

It was not possible for other auditors to see that the two entries were in fact fabricated because the falsified records had already been deleted from the company's computer transaction records at the head office before the auditing exercise. Counter staff at the branch were then operating with a system that contained incorrect data. The consequence of this was that the account records of the trading company at the end of March and June showed two additional items of RMB 400,000 Yuan and RMB 300,000 Yuan respectively on balance, but without any proper reference.

Shortly after, ZHANG told RICHARD, a Hong Kong businessman who worked for the trading company, that the computer had made a mistake. After verification by the company's Accounts Department, the funds were directly withdrawn in cash from the relevant accounts to refund the bank.

RICHARD was later shown a bank document that had been fabricated by ZHANG, and a member of the accounting staff. All the receipts and payments were checked and confirmed. In reality, ZHANG had conspired with the accounting employee, and promised to give him RMB 150,000 Yuan for his services. As a result of this conspiracy, the bank had to pay out an extra sum of RMB 700,000 Yuan which was not properly accounted for.

Two months later, ZHANG misappropriated RMB 350,000 Yuan from the accounts of another industrial corporation using the same method. But this time the bank detected the irregularity through an improved automated computer monitoring system, and the incident was referred directly to the bank's Director of Audit for investigation. It was then discovered that ZHANG had twice before pulled off this scam.

Case Analysis and Major Legal Points

ZHANG was a State functionary who had taken advantage of his office to appropriate public funds and was in violation of Article 382 of the *Criminal Law of the PRC*, thereby committing an offence of embezzlement by State functionaries.

The accounting employee who conspired with ZHANG was not a State functionary, but his secret collaboration with ZHANG made their embezzlement possible, plus he pocketed RMB 150,000 Yuan as a reward. According to the *Criminal Law of the PRC*, any person who conspires with State functionaries to commit a crime of embezzlement is liable to punishment as an accomplice. The act of the accounting employee would also constitute an offence of embezzlement.

RICHARD would need to be more careful when managing and auditing the accounts. It is vitally important to keep accurate and relevant data so that there is clear evidence should the need for an investigation arise.

Market listing / manipulation

Case 27

Exaggerating a company's financial position to facilitate raising of capital and listing on the market

With the recent boom in export trade on the Mainland, an amalgamation of several large-scale enterprises of a province had formed a corporation. In order to prepare to raise investment capital and an eventual listing in Hong Kong, two of the corporation's directors were sent to Hong Kong to set up a "window" company. Their plan had the initial consent of the China Securities Regulatory Commission and the Ministry of Foreign Trade and Economic Cooperation.

The "window" company in Hong Kong appointed an experienced accounting firm as its consultant to advise on listing arrangements, procedures and requirements. After reviewing the structure of the new corporation, the accounting firm considered that competition existed among the corporation's subsidiaries, and that the corporation had to restructure its business so as to provide HK\$50 million or 25 percent of floating stock to meet the basic listing criteria. This would involve the take-over of one or more Mainland or Hong Kong companies.

CHARLES was a member of the listing project team at the accounting firm. In his market analyses he suggested the acquisition of several companies that he had researched and shortlisted. His recommendations were supported by his colleague WALTER. The acquisition plan eventually went ahead, but not without problems.

CHARLES and WALTER both resigned from the accounting firm soon after the listing of the corporation. The senior director of the accounting firm later found problems in the financial information of some of the corporation's subsidiaries which it appeared involved fraudulent letters of credit. He suspected that there might have been payment and acceptance of bribes during the listing process, so he reported the case to the ICAC.

Investigations revealed that CHARLES, WALTER and an employee of the corporation's "window" company were suspected of having accepted bribes for concealing the deficit situation of local companies acquired in the deal, and that they had conspired with others to exaggerate the financial status of those companies. This allowed the restructured corporation to meet the Hong Kong listing requirements.

Case Analysis and Major Legal Points

Under Section 9 of the PBO, it was an offence for CHARLES, WALTER and the employee at the "window" company to accept advantages without the approval of their employers. The directors posted to the "window" company in Hong Kong were also liable for signing documents related to the listing. It is stipulated in the law that the asset value of any company has to be accurately disclosed in the prospectus and listing documents. Any misrepresentation of the company's performance will breach *HKEx's Listing Rules* and the *Securities and Futures Ordinance* (Laws of Hong Kong Chapter 571)(please refer to Appendix 3.) The corporation's

directors who were deceived or unaware of the corrupt actions below them might not face any charges. But if the case were made public, the share price of the corporation would be significantly affected. It could have resulted in the suspension of trading during investigations and severely damaging the corporation's reputation. Clearly, companies should exercise great care when seeking to raise investment capital and a stock market listing in Hong Kong.

Case 28

Falsifying documents to obtain a stock market listing

A Mainland joint-stock company was set up in the form of collective economy, although a certain amount of foreign capital was involved. Due to certain constraints and regulations on the Mainland, the company could not be listed on one of the Mainland stock exchanges. To try and obtain a listing, a number of directors of the company, including two from Hong Kong, decided to seek help from a man named HUANG who was in charge of the Mainland companies / enterprises registration department. They assigned TOM, an employee from Hong Kong to make contact with HUANG.

The pair reached an agreement to falsify documents for the purpose of seeking a listing for the joint-stock company. HUANG would direct a subordinate of his to alter the application documents by advancing the registration date, and the time at which the company became an experimental enterprise. TOM asked company staff to falsify the resolutions of a shareholders' general meeting as well as profit-sharing proposals. They succeeded in cheating the relevant departments of the Mainland, and eventually acquired the listing qualification. Once the company was listed on the market, TOM gave HUANG a reward of RMB 200,000 Yuan for his help.

Case Analysis and Major Legal Points

TOM and HUANG contravened Clause 69 of *Securities Law of the People's Republic of China* in conspiring to falsify documents and obtain a stock market listing for the company by deception. HUANG also committed an offence of accepting bribes under Article 385 of the *Criminal Law of the PRC* when he took advantage of his position as a State functionary to accept money or property from another person in exchange for securing benefits for that person. At the same time, TOM and the other directors committed the offence of offering bribes under Article 389 of the *Criminal Law of the PRC*.

Case 29

Market manipulation and disseminating false information

The price of the shares of a small public listed company in Hong Kong suddenly rose within two weeks from HK\$1 to HK\$3. During this period, ALBERT, one of its substantial shareholders conspired with 3 stockbrokers to make arrangement for 12 inactive client accounts to be used by ALBERT to buy and sell the shares continuously at the same price and at the same time. Although the quantities of those trades were very small, the price had been rigged up continuously. At the same time, ALBERT requested the 3 stockbrokers to disseminate false information to mislead the investing public into belief that negotiation had been going on for the take over of the company at a high price.

When investors started to become interested in buying the shares of the company, ALBERT took the opportunity to sell his shares at a high price to make huge profits. He also rewarded the 3 stockbrokers heavily.

Case Analysis and Major Legal Points

ALBERT conspired with 3 stockbrokers to use 12 accounts to buy and sell the shares to each other at the same price. These trades were false trades which did not involve in any change in beneficial owner of the shares. They could also create a false or misleading appearance of active trading in the shares and had rigged up the share price. These acts could be contrary to the *Securities and Futures Ordinance* in Hong Kong. The request of ALBERT to the 3 stockbrokers for false information about the company to be disseminated for the purpose of inducing investors to buy the shares could also contravene the same ordinance. Upon conviction, they could be liable to a maximum of imprisonment for 10 years and a fine for HK\$10 million. The case could also be referred to the Market Misconduct Tribunal for hearing as an alternative regime.

The 3 stockbrokers were rewarded by ALBERT for aiding and abetting his activities in market manipulation and dissemination of false information to the public. In this regard, they could have violated Section 9 of the PBO.

Case 30

Breach of 《The Codes of Takeovers and Mergers and Share Repurchases》 issued by the Hong Kong Securities and Futures Commission

A publicly listed electrical engineering company had made provisions for huge bad debt losses in its annual report. The market reacted and the company's share price fell, languishing near the bottom of its price range for some time. Four months later, the share price suddenly rocketed from HK\$4 to HK\$6.2 within a few weeks. During this period, an independent third party, a person named LARRY, bought and held 28 percent of the shares. He also conspired with a stockbroker MARK to find an inactive client account to buy another 4 percent of the shares and warehoused the shares. The purpose of this was to avoid triggering of a general offer that LARRY would have to make under the 《Codes of Takeovers and Mergers and Share Repurchases》 which stipulates that an acquirer holding 30 percent or more of the voting rights of the shares should make a general offer. By so doing, LARRY did not need to raise money for the general offer. After the event, he paid MARK a handsome reward.

Case Analysis and Major Legal Points

If it was proved that LARRY had conspired with MARK to use a nominee account to buy another 4 percent of the shares so as to hide the fact that he had a total holding over 30 percent, LARRY would breach the 《Codes of Takeovers and Mergers and Share Repurchases》 (the Codes). The Securities and Futures Commission (SFC) could order him to make a general offer. MARK could also be considered a concert party in the action.

It is stipulated in the Codes that the quotation of the offer an acquirer makes for a full company acquisition must not be lower than the highest price of the shares over the last six months, and that the offer price is usually the same as the allotment price in the transfer of shareholdings. These Codes aim to ensure that all shareholders are equally and fairly treated and they should have sufficient market information to make an informed decision. It is clearly unfair to other shareholders if somebody intentionally manipulates the market.

MARK might have committed an offence under Section 9 of the PBO for receiving rewards for aiding and abetting LARRY to breach the Codes.

Case 31

Irregular raising of capital in order to repurchase shares

STANLEY enjoyed great renown and was well respected in the stock-market community in Hong Kong. Being highly thought of by his company, STANLEY was posted to the China Business Department of a Mainland subsidiary company. He was the number two man in the department and had the authority to process any single transaction up to RMB 15 million Yuan in value.

HANK, STANLEY's cousin-in-law, had been operating on the Mainland for over ten years, and had become the CEO of a science and technology joint-stock company.

In an attempt to speculate on its own stock price, the joint-stock company spent RMB 39.7 million Yuan buying 1,980,000 shares of the parent company through six different accounts operated by branch offices of the company. However, as the financial situation of the company was quite tight, HANK borrowed RMB 13 million Yuan from STANLEY's securities company. All the arrangements were made by STANLEY.

A week later, the science and technology company announced a resolution of the Board of Directors to issue bonus shares to shareholders. This caused the price of the shares to rise sharply. The company sold the holdings of its own shares making a tidy profit of RMB 9.2 million Yuan. HANK also made a lucrative return for himself. Apart from repaying the securities company the capital and interest of the short-term loan, HANK paid RMB 420,000 Yuan to STANLEY for his help and support.

Case Analysis and Major Legal Points

The science and technology company contravened Article 149 of the *Company Law of the PRC* in using a large amount of its own money to trade stocks right before the release of the sensitive information. This kind of insider dealing also breached Clause 73 and Clause 76 of *Securities Law of the People's Republic of China*. The securities company raised capital for the science and technology company contravened Clause 142 of *Securities Law of the People's Republic of China* which prohibited financial institutions from raising capital without obtaining prior permission from the securities supervision and administration institution under the State Council. STANLEY was guilty of the offence of accepting bribes from employees of companies and enterprises under Article 163 of the *Criminal Law of the PRC* by taking advantage of his position to accept money or property from another person in return for seeking benefits for that person. HANK, who worked for the science and technology joint-stock company, committed an offence by offering bribes to employees of companies and enterprise under Article 164 of the *Criminal Law of the PRC*.

Money laundering²

Case 32

Making use of another person's company for deception and money laundering

JOHN was very busy running a rapidly-expanding manufacturing business on the Mainland. His original import-export company in Hong Kong was only partly operating and doing very little business.

JOHN had a friend in Hong Kong, LEO, who was an employee at the Credit Department of a large bank. LEO was aware of the different situations with JOHN's companies in Hong Kong and the Mainland. LEO asked JOHN if he could use the import-export company to conduct some private export business, taking advantage of the credit limit the bank had already granted to the company. Apart from pledging that he would pay for any customs duty, LEO also offered to pay JOHN a service fee of three percent on all transactions. As LEO was a long-time friend, JOHN agreed to his proposal. During the early stages, JOHN was very careful. He checked and signed each and every invoice himself, and examined the documents LEO used when applying for letters of credit (L/Cs). But as time went by, JOHN became too busy, and even gave LEO the company chop.

LEO suddenly disappeared, and it was only then that JOHN discovered that the company was heavily indebted to the bank. Alarmed by this, he called the police. It was found that LEO was not really making use of JOHN's company to conduct a normal business. Instead, he had conspired with others to create bogus transactions using the name of the company to apply for L/Cs and deceive the bank.

LEO also took advantage of his position in the bank to collect information on loan applicants. Soon after the bank had successfully granted a loan, he would call the client concerned and tell them the confirmation letter had been issued wrongly by the bank and to disregard it. LEO had also bribed two other employees of the Credit Department to ensure the loan money was transferred smoothly into JOHN's company account via other accounts. In addition, JOHN was also suspected by the police of having embezzled a loan of HK\$87 million from the bank through 25 bogus loan transactions.

Meanwhile, the bank also discovered that both deposits and withdrawals in JOHN's account were highly suspicious. Frequently, large sums of money would be deposited into the company's account right before public holidays or weekends, coming in from several accounts. Then this money would be transferred out to various accounts on the following Monday. It seemed highly probable that money laundering was going on.

Case Analysis and Major Legal Points

In this case scenario, LEO made use of JOHN's company name and credit limit to conduct three illegal activities :

- (1) using bogus transactions to deceive the bank into issuing L/Cs;

- (2) using a company account to appropriate loans the bank had granted to its clients; and
- (3) using a company account for money laundering.

Businessmen sometimes consider "lending" their credit to others in order to keep the existing credit line active or to get extra income. However, doing so is extremely risky. This is because in order to cheat the bank into financing a business transaction, and to ensure an invoice tallies with that of the L/C, the perpetrator might have to falsify title documents of the goods in question, in order to lead the L/C issuing bank into issuing a L/C with a much relaxed line of credit. Also, a company which applies for the L/C on behalf of another company cannot in any way monitor the transaction, or provide more information of the bank to track the details. Therefore it has to shoulder the liability for any debt.

LEO abused his office for personal gain and bribed his colleagues, and would be charged with fraud and bribery. He would also be charged with theft for embezzling loans approved by the bank for other clients. If LEO was proved to have assisted others in laundering ill-gotten gains and deliberately concealed such activities from the bank, he would contravene the *Organized and Serious Crimes Ordinance* (Laws of Hong Kong Chapter 455) and the *Drug Trafficking (Recovery of Proceeds) Ordinance* (Laws of Hong Kong Chapter 405). Furthermore, the bank's failure to have adequate internal control systems to guard against any money laundering activity may constitute non-compliance with the anti-money laundering guidelines issued by the Hong Kong Monetary Authority.

² If a sum of money is the proceeds from drug trafficking and serious crimes, then any forms of depositing and withdrawal of such intending to conceal the true origin of the money would be regarded as money-laundering activities.

Case 33

Confidential advice of value

PETER was a branch manager of a bank in Hong Kong and a regular customer of a famous nightclub, but because of his extravagant lifestyle he soon found himself running into financial difficulty. PETER became acquainted with ANDY, the nightclub supervisor, who, one day, invited PETER to join him for a drink.

Whilst enjoying their drinks, ANDY introduced PETER to another friend, JOE. It transpired that JOE was a money launderer from Eastern Europe planning to set up his operations in Hong Kong. As JOE was unfamiliar with the local controls over money laundering activities, he asked if PETER could provide him with information relating to his bank's money laundering deterrent measures and update him on new procedures from time to time.

PETER, who was in a difficult financial situation at the moment, asked JOE for HK\$100,000 as a reward for his assistance. To avoid detection from the bank, JOE laundered his dirty money through numerous asset management accounts in PETER's branch and PETER helped by turning a blind eye to these activities.

Case Analysis and Major Legal Points

PETER breached the *Organized and Serious Crimes Ordinance* or the *Drug Trafficking (Recovery of Proceeds) Ordinance* and the *Guideline on Prevention of Money Laundering* issued by the Hong Kong Monetary Authority because of his assistance and intended failure to make a disclosure of the money laundering activities in his bank.

PETER also committed a corruption offence under Section 9 of the PBO because he solicited from JOE an advantage as a reward for leaking confidential information from his bank. He also violated the *Supervisory Policy Manual on Code of Conduct* issued by the Hong Kong Monetary Authority as he failed to preserve the confidentiality of the bank's internal information.

Chapter 3

Knowing the Official Anti-corruption Organizations in Hong Kong and the Mainland



Knowing the Official Anti-corruption Organizations in Hong Kong and the Mainland

Anti-corruption Organizations

Financial practitioners engaged in cross boundary business in Hong Kong and the Mainland should report any suspected corruption and bribery activities to their local anti-corruption authorities. Below is a brief description of the work of the anti-corruption authorities in each jurisdiction.

In Hong Kong

The Independent Commission Against Corruption

Pursuant to Article 57 of the *Basic Law of the Hong Kong Special Administrative Region of the PRC*, a Commission Against Corruption has been established in the Hong Kong SAR. It functions independently and is accountable to the Chief Executive. The ICAC has three departments : the Operations Department, the Corruption Prevention Department and the Community Relations Department to fight graft on the investigation, prevention and education fronts.

1. Operations Department

The Operations Department is responsible for receiving, examining and investigating complaints that allege corruption. Most of the complaints handled by the Commission come from members of the public. The public can lodge complaints through a telephone hotline, by mail or by personal visit to the 24-hour Report Centre or to any ICAC regional office.

The primary aim of the Commission is to fight corruption in Government departments. In recent years, however, there has been an upsurge of corruption reports relating to the private sector, representing more than half of the total annual corruption complaints received. These cases are often geographically dispersed and the methods used by criminals have become more and more sophisticated. The Operations Department has therefore set up different task forces to deal with these different situations. In some cases, investigators have to travel overseas to collect evidence.

When an allegation of bribery is substantiated after investigation by the Operations Department, the case is forwarded to the Secretary for Justice for prosecution. Where there is insufficient evidence, the Advisory Services Group of the Corruption Prevention Department will normally approach the units concerned and provide them with corruption prevention services.

2. Corruption Prevention Department

The work of the Corruption Prevention Department is mainly to examine the systems and procedures of Government departments and public bodies, identify possible corruption loopholes and advise on ways to minimize opportunities for corruption.

Since its establishment in 1985, the Advisory Services Group of the Corruption Prevention Department has provided free and confidential advisory services to business organizations in different functional areas such as purchasing, sales and marketing, inventory and stock control, accounting and personnel administration. The Group can be reached at the hotline 2526 6363 or via email: asg@cpd.icac.org.hk.

3. Community Relations Department

The Community Relations Department is responsible for educating the public against the consequences of corruption, and enlisting public support in combating corruption.

Commercial organizations have long been the major target of ICAC's educational initiatives in corruption prevention. Since the level of corruption reports involving the business sector has remained high in recent years, the Community Relations Department has maintained close contacts with the business sector. It explains the anti-corruption legislation as well as the consequences of corruption, and urges businessmen to take the problem of corruption seriously. In addition to offering the necessary assistance in drawing up codes of conduct for staff and formulating corruption prevention measures, the Community Relations Department also provides staff training for business organizations. These training courses familiarize staff in the organizations with anti-corruption laws and company codes of conduct so that they will be fully aware of the importance of observing the law when working in Hong Kong or the Mainland. Business organizations are encouraged to contact any regional office of the ICAC to make arrangements for such services. Contact details of ICAC Regional Offices and the Hong Kong Ethics Development Centre are as follows:

<p>Regional Office (Hong Kong West / Islands) (Central & Western District, Southern District, Islands)</p>	<p>G/F, Harbour Commercial Building, 124 Connaught Road Central, Sheung Wan, Hong Kong (852) 2543 0000 hkw@crd.icac.org.hk</p>
<p>Regional Office (Hong Kong East) (Wan Chai, Eastern District)</p>	<p>G/F, Tung Wah Mansion, 201 Hennessy Road, Wan Chai, Hong Kong (852) 2519 6555 hke@crd.icac.org.hk</p>
<p>Regional Office (Kowloon East / Sai Kung) (Kwun Tong, Wong Tai Sin, Sai Kung)</p>	<p>Shop No. 4, G/F, Kai Tin Building, 67 Kai Tin Road, Lam Tin, Kowloon (852) 2756 3300 kesk@crd.icac.org.hk</p>
<p>Regional Office (Kowloon West) (Kowloon City, Yau Tsim Mong, Sham Shui Po)</p>	<p>G/F, Nathan Commercial Building, 434-436 Nathan Road, Yau Ma Tei, Kowloon (852) 2780 8080 kw@crd.icac.org.hk</p>

Regional Office (New Territories East) (Shatin, Tai Po, North District)	G06-G13, G/F Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories (852) 2606 1144 nte@crd.icac.org.hk
Regional Office (New Territories South West) (Tsuen Wan, Kwai Tsing)	G/F, Foo Yue Building, 271-275 Castle Peak Road, Tsuen Wan, New Territories (852) 2493 7733 ntsw@crd.icac.org.hk
Regional Office (New Territories North West) (Yuen Long, Tuen Mun)	G/F, Fu Hing Building, 230 Castle Peak Road, Yuen Long, New Territories (852) 2459 0459 ntnw@crd.icac.org.hk
Hong Kong Ethics Development Centre (HKEDC)	1/F, Tung Wah Mansion, 199-203 Hennessy Road, Wan Chai, Hong Kong (852) 2587 9812 hkedc@crd.icac.org.hk

ICAC Website

You may also visit the ICAC Website at www.icac.org.hk for the latest information or email HKEDC at hkedc@crd.icac.org.hk. For security reasons, it is not advisable to report corruption through electronic means.

On the Mainland

Commissions for discipline inspection

Commissions for discipline inspection, which are organizations under the Communist Party of China, are responsible for enforcing party discipline. In addition to the Central Commission for Discipline Inspection, similar commissions have been set up within the party at committee and organization level. The duties and prerogatives of these commissions include :

- ◆ Inspecting conduct that amounts to infringement of party discipline by party cadres and party members at various ministries under the State Council or at different levels of party organizations; and
- ◆ Receiving complaints, carrying out investigations and determining sanctions against party cadres and party members infringing party discipline at various ministries under the State Council or at different levels of party organizations.

These commissions only deal with infringements of party discipline (including corruption and bribery) by party members.

Supervisory bodies

Under the State Council, there is a Ministry of Supervision and at each level of local Government, similar organizations exist called supervision bureaux or supervision offices. Their functions are :

- ◆ Inspecting the implementation of State policies, laws and regulations, and national economic and social development by State administrative bodies, functionaries and leading cadres posted to enterprises and other units;
- ◆ Investigating and dealing with infringements of law and discipline in order to safeguard the integrity of the Government; and
- ◆ Preventing corruption and bribery as well as improving and strengthening administrative controls in order to enhance efficiency.

Such supervisory bodies are primarily responsible for administrative sanctions against State functionaries who have misbehaved but not committed any criminal offence. Should they be found to have committed an offence in the course of investigation, they would be referred to public security organs or procuratorates and dealt with according to the law.

People's procuratorates

Accountable to the National People's Congress and the Supreme People's Procuratorate, the people's procuratorates at different levels monitor the administration of the laws. Among their major functions, the people's procuratorates are responsible for investigating corruption and bribery offences and for deciding if a suspect should be arrested and if legal proceedings should be instituted against him.

1. Anti-corruption and bribery office

The Supreme People's Procuratorate and the lower level people's procuratorates have established anti-corruption and bribery offices which are responsible for :

- ◆ Handling cases involving economic crimes referred by report centres;
- ◆ Investigating major economic crimes such as corruption and bribery, etc.;
- ◆ Analyzing the circumstances, characteristics, patterns and trends of major economic crimes such as corruption and bribery, etc;
- ◆ Researching into investigation procedures and methods for economic crimes such as corruption and bribery, etc; and
- ◆ Formulating provisions and regulations in respect of investigation.

2. Corruption-related crime prevention agencies

The corruption-related crime prevention agencies under the procuratorial organs handle offences relating to dereliction of duty in addition to those concerning corruption and bribery. A Corruption-related Crime Prevention Department has been set up in the Supreme People's Procuratorate and a similar department is also founded in the Shanghai Municipal People's Procuratorate and other procuratorial organs under it. The functions of the Corruption-related Crime Prevention Department are :

- ◆ Investigating offences relating to dereliction of duty; analysing the circumstances, techniques, characteristics, patterns and causes of such offences so as to help units concerned to learn the lessons of the cases, plug loopholes in the systems and tighten controls; formulating essential and specific measures to prevent offences relating to dereliction of duty according to the actual circumstances; and providing units in question with timely and practical procuratorial recommendations;
- ◆ Publicizing and explaining the work and strategy of the procuratorial organs in relation to the prevention of dereliction of duty and enlisting public support; and
- ◆ Strengthening liaison and collaboration with relevant departments and establishing a mechanism which integrates preventive measures for specific areas, systems, procuratorial organs and the community so as to effectively eradicate and minimize offences relating to dereliction of duty.

Appendices



**Extracts of the *Prevention of Bribery Ordinance*
(Laws of Hong Kong Chapter 201)**

Section 9 Corrupt transaction with agents

- (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 11 Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

- (1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do or having done or forborne to do, any act referred to in that section, it shall be no defence that
- (a) he did not actually have the power, right or opportunity so to do or forbear;
 - (b) he accepted the advantage without intending so to do or forbear; or
 - (c) he did not in fact so do or forbear.
- (2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Section 19 Custom not to be a defence

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.

Section 2 Interpretation

"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

Appendix 1

(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.

Appendix 2

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 authorized by State organs, State-owned companies, enterprises, institutions or people's organizations 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 but 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 Article 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 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. taking advantage of his position, unlawfully takes possession of the money or property of his own unit), 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 the 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

Article 396(1)

Where a State organ, State-owned company, enterprise, institution or people's organization, 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.

(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 any other State-owned financial institution and any person who is assigned by a State-owned commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other State-owned financial institution to the mentioned institutions in the preceding paragraph (i.e. a commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other financial institution) that are not owned by the State to engage in public service commits the act mentioned in the preceding paragraph (i.e. taking advantage of his position, misappropriates money belonging to the said units or any client), he shall be convicted and punished according to 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.

(6) Acceptance of bribes by State functionaries

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 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 enterprise 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. taking advantage of his position, demands money or property from other person or illegally accepts another person's money or property in return for the benefits he seeks for such person; or 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 extracts 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.

(7) Acceptance of bribes by a unit

Article 387

Where a State organ, State-owned company, enterprise, institution or people's organization 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) Members of intermediary organizations deliberately providing false testifying papers

Article 229(2)

Any member mentioned in the preceding paragraph (i.e. a member of an intermediary organization, whose duty is to make capital assessment, verification or validation, to do accounting or auditing, or to provide legal service, etc.), who commits the crime prescribed in the preceding paragraph (i.e. deliberately provides false testifying papers), 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.

(9) 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.

(10) 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.

(11) 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 organization 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.

(12) 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.

(13) Acceptance of bribes by employees of companies and enterprises

Article 163(1) and (2)

Where an employee of a company or enterprise who, taking advantage of his position, demands money or property from other 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.

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 punished in accordance with the provisions in the preceding paragraph.

(14) Offering bribes to employees of companies and enterprises

Article 164

Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company or enterprise, 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 huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Where a unit commits the crime as 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 crime shall be punished according to the provisions in the preceding paragraph.

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

(15) Failing to explain significant excess of property or expenditure over lawful income

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 territory of China

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.

Extracts of the *Securities and Futures Ordinance* (Laws of Hong Kong Chapter 571)

Dealing Schedule 1

"dealing" (交易) -

- (a) in relation to securities, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement-
 - (i) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or
 - (ii) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (b) in relation to futures contracts, means, whether as principal or agent-
 - (i) making or offering to make an agreement with another person to enter into, or to acquire or dispose of, a futures contract;
 - (ii) inducing or attempting to induce another person to enter into, or to offer to enter into, a futures contract; or
 - (iii) inducing or attempting to induce another person to acquire or dispose of a futures contract.

Take-over offer Schedule 1

"take-over offer" (收購要約), in relation to a corporation, means an offer made to all the holders (or all the holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them, or to all the holders (or all the holders other than the person making the offer and his nominees) of a particular class of the shares to acquire the shares of the class or a specified proportion of them.

Relevant Information Section 245

"relevant information" (有關消息), in relation to a corporation, means specific information about-

- (a) the corporation;
- (b) a shareholder or officer of the corporation; or
- (c) the listed securities of the corporation or their derivatives,

which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities.

Insider dealing Section 270

- (1) Insider dealing in relation to a listed corporation takes place-
- (a) when a person connected with the corporation and having information which he knows is relevant information in relation to the corporation-
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them;
 - (b) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation-
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, otherwise than for the purpose of the take-over; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives, otherwise than for the purpose of the take-over;
 - (c) when a person connected with the corporation and knowing that any information is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
 - (d) when a person who is contemplating or has contemplated making, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the corporation, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives;
 - (e) when a person who has information which he knows is relevant information in relation to the corporation and which he received, directly or indirectly, from a person whom he knows is connected with the corporation and whom he knows or has reasonable cause to believe held the information as a result of being connected with the corporation-

- (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives; or
 - (f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or is no longer contemplating making a take-over offer for the corporation, information to that effect which he knows is relevant information in relation to the corporation-
 - (i) deals in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives; or
 - (ii) counsels or procures another person to deal in such listed securities or derivatives.
- (2) Insider dealing in relation to a listed corporation also takes place when a person who knowingly has relevant information in relation to the corporation in any of the circumstances described in subsection (1) -
- (a) counsels or procures another person to deal in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on a stock market other than a recognized stock market; or
 - (b) discloses the relevant information to another person knowing or having reasonable cause to believe that the other person or some other person will make use of the relevant information for the purpose of dealing, or of counselling or procuring any other person to deal, in the listed securities of the corporation or their derivatives, or in the listed securities of a related corporation of the corporation or their derivatives, outside Hong Kong on a stock market other than a recognized stock market.

Appendix 4

Extracts of the *Banking Ordinance* (Laws of Hong Kong Chapter 155)

Section 123 Offences by directors, chief executives, managers, trustees, employees and agents

Any director, chief executive, manager, trustee, employee or agent of any authorized institution who, with intent to deceive -

- (a) wilfully makes, or causes to be made, a false entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution;
- (b) wilfully omits to make an entry in any book of record or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution, or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book of record, or in any report, slip, document or statement of the business, affairs, transactions, condition, assets or accounts of the institution, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,
- (d) commits an offence and is liable-
 - (i) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or
 - (ii) on summary conviction to a fine at tier 5 and to imprisonment for 2 years.

Section 124 Prohibition on receipt of commission by staff

Any director or employee of an authorized institution, who asks for or receives, consents or agrees to receive any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relatives, for procuring or endeavouring to procure for any person any advance, loan, financial guarantee or credit facility from that institution or the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by that institution, or for permitting any person to overdraw any account with that institution, commits an offence and is liable -

- (a) on conviction upon indictment to a fine at tier 6 and to imprisonment for 5 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 2 years.

Extracts of the "Supervisory Policy Manual on Code of Conduct" issued by the Hong Kong Monetary Authority

2. Minimum standards in Code of Conduct

2.1 General

- 2.1.1 Each AI should develop its own Code of Conduct, commensurate with its structure, size and business operations. It is reasonable to expect Codes to differ from one another not only in format but also in content.
- 2.1.2 The Code may be comprehensive, covering all legal, regulatory and ethical issues. Alternatively, different codes may be used to cover different topics. For example, an AI may formulate separate codes or policy statements in relation to the prevention of money laundering, the Code of Banking Practice¹, connected lending, equal opportunities, protection of intellectual property rights, environmental protection issues, etc. AIs may also incorporate extracts from the relevant sections of Ordinances (e.g. §9 of the Prevention of Bribery Ordinance and §124 of the Banking Ordinance) as part of their Code for ease of reference.
- 2.1.3 There are certain minimum conduct requirements which are applicable to every AI and should be included in their main Code. These requirements although not exhaustive, are set out in the subsections that follow.

2.2 Responsibility

- 2.2.1 Codes of Conduct should specify the name or title of the officer² ("Code of Conduct officer") who is responsible for:
- ◆ handling queries from staff regarding the contents of the Code and any related matters;
 - ◆ approving requests by staff to accept personal benefits exceeding limits imposed, or otherwise outside acceptable limits, in the Code (see subsection 2.8 below); and
 - ◆ taking appropriate actions to follow up cases reported by staff (see subsection 2.12 below).

These functions may be assigned to the same or separate officers. The person(s) appointed should be of sufficient competence, experience, integrity and seniority to discharge them effectively. If an AI decides to appoint more than one person to be responsible for the above functions, the AI should appoint one of them as a central reference point for external liaison.

¹ The Hong Kong Association of Banks and The DTC Association have jointly issued the Code of Banking Practice for the guidance of their members in their daily operations with customers.

² The person may be an AI's compliance officer, an internal legal counsel or some other party (e.g. head of human resources).

2.2.2 Normally, the officer responsible for approving the acceptance of personal benefits should have authority to:

- ◆ permit a staff member to accept a personal benefit unconditionally or subject to such conditions as the officer may specify;
- ◆ require a staff member to refuse the offer of a personal benefit or to return a personal benefit to its donor;
- ◆ require a staff member to give a personal benefit which he has received to a charitable organization nominated by the staff member and acceptable to the officer; or
- ◆ require a staff member to dispose of a personal benefit which he has received in such manner as the officer may direct.

2.2.3 Where appropriate, AIs may appoint a committee to oversee the implementation of and adherence to the Code.

2.3 Ethical values

2.3.1 Codes of Conduct should contain a set of ethical values that AIs expect their staff to follow in conducting business. Core ethical values would normally include honesty, integrity, diligence, fairness, responsible citizenship and accountability.

2.3.2 Such values should be consistently applied to avoid confusion to staff.

2.4 Conflicts of interest

2.4.1 All staff should avoid situations that may lead to or involve a conflict of interest, actual or potential and, in case of doubt, should seek the advice of the Code of Conduct officer.

2.5 Granting credit

2.5.1 All staff with lending authority should have specified limits that are commensurate with their rank or function as laid down in the AI's credit policy. No member of staff should grant credit to himself, his relatives³ or companies in which he or his relatives have a personal interest.

2.6 Receiving credit

2.6.1 No member of staff, or his relatives, should borrow or receive credit from third parties on a favoured basis or on terms other than at arm's length unless previously approved in accordance with the Code of Conduct.

³ AIs may define the term of "relatives" in the same way as in §79(1) of the Banking Ordinance.

2.7 Conduct when obtaining business

- 2.7.1 No member of staff should offer any bribe or similar consideration to any person or company in order to obtain business for the AI.

2.8 Personal benefits

- 2.8.1 Members of staff should not use the power or authority deriving from their position to gain, or to influence other staff to take any action in order to gain, a personal benefit or an indirect benefit (e.g. for their relatives or other related parties).
- 2.8.2 All staff should observe the statutory provisions of §9 of the Prevention of Bribery Ordinance and §124 of the Banking Ordinance, which contain criminal penalties for accepting advantages in prescribed circumstances.
- 2.8.3 Members of staff should actively discourage customers from offering personal benefits of any kind, including any type of gift, favour, service, loan, fee or anything of monetary value.
- 2.8.4 No member of staff should solicit, accept and retain personal benefits from any customer of the AI or any individual or organisation doing or seeking to do business with it. Members of staff may, however, be permitted to accept and retain a personal benefit within the AI's acceptance criteria⁴ set out in the Code of Conduct provided that:
- ◆ this complies with relevant legal requirements; and
 - ◆ there is no reasonable likelihood of improper influence or prejudice on the performance of duties by the staff member on behalf of the AI.
- 2.8.5 Where a staff member wishes to accept a personal benefit which is not within the criteria set out in the Code, he should be required to seek the approval of the Code of Conduct officer, providing him with relevant information in writing such as:
- ◆ the name of the donor;
 - ◆ a description and, to the extent possible, an assessment of the value of the benefit;

⁴ For illustration, these may include:

- any normal business entertainment (e.g. a meal involving no more than ordinary amenities). AIs should, however, require their staff to avoid meals or entertainment that are excessive in nature or frequency, so as not to cause embarrassment or loss of objectivity when conducting business. If it is not appropriate to decline an invitation, staff should only accept the invitation with management's permission on the understanding that they are able to reciprocate;
- any gift (including a lai see) given on festive occasions under customary practice, subject to a limit that should not be excessive and, in the judgement of AIs' management, the acceptance of such gifts would unlikely place their staff in a potential position of obligation to the donor;
- any personal benefit arising from kinship or marriage; or
- any personal benefit received from a close personal friend, where such friendship is entirely unrelated to the business of the AI, subject to an appropriate limit.

- ◆ any business connection between the donor and the AI; and
 - ◆ any personal relationship between the staff member and the donor.
- 2.8.6 The staff member will then be advised whether the gift may be accepted, or should be returned to the donor or disposed of in some other way.

2.9 Use of information

- 2.9.1 All staff should handle carefully information relating to customers in compliance with relevant statutory requirements, e.g. the Personal Data (Privacy) Ordinance ("PDPO"), and common law customer confidentiality.
- 2.9.2 No member of staff should release customer information to a third party without written consent from the relevant customer, unless the release complies with the PDPO or he is required or permitted to do so by law.
- 2.9.3 No member of staff should, during or after termination of his employment with the AI, except in the proper course of his duties or with the written consent of the AI, divulge or make use of any secrets or of any correspondence, accounts, connections or dealings of the AI or its customers or of any knowledge gained in relation thereto during his employment.
- 2.9.4 No member of staff should use information so obtained for financial gain in any way.

2.10 Personal investments

- 2.10.1 No member of staff should deal in the shares or other securities of any listed company when possessing privileged or price-sensitive information that is not generally known to the shareholders of that company and to the public. Staff should not disclose such information to any third party.
- 2.10.2 Staff should immediately notify the AI in writing of the details of any dealings in which they may have inadvertently been concerned in the shares or other securities of any listed companies of which they possess privileged or price-sensitive information. If members of staff are unsure whether a deal would constitute insider dealing⁵ they should consult the appropriate officer in advance of such dealing.

⁵ Basically, insider dealing takes place when a person connected with a listed company possesses privileged information which could affect the share price when disclosed, and trades, or procures other persons to trade, in the securities or derivatives of the company so as to make profits or avoid losses before the public are aware of the piece of information. It also takes place when a person obtains information through another person whom he knows is connected with a listed company (i.e. an insider), trades or procures other persons to trade in the securities or derivatives of the company.

2.11 Outside employment

- 2.11.1 No member of staff should take up any directorship, employment or part-time commercial duties, whether paid or unpaid, outside the AI except with prior written approval as required by the Code of Conduct.
- 2.11.2 Approval should only be given where the interests of the AI would not be prejudiced.

2.12 Reporting responsibility

- 2.12.1 It is the responsibility of all staff to contribute to the good reputation of an AI. All staff should be alert to matters which could give rise to fraud, deception, theft, forgery, corruption or other illegal activities. If a staff member, acting reasonably, suspects that an illegal activity is being perpetuated, he should immediately report it to an appropriate officer as required in the Code of Conduct for appropriate follow up.
- 2.12.2 Staff should be warned that failure to report such activity immediately may result in disciplinary action.

2.13 Disciplinary action

- 2.13.1 Codes of Conduct should specify that all staff of the AI are subject to their provisions and that any breach will give rise to disciplinary action (e.g. verbal warning, issue of a warning letter, demotion or dismissal) and, where applicable, to criminal prosecution.

Extracts of the "*Code of Banking Practice*" jointly issued by The Hong Kong Association of Banks (HKAB) and The DTC Association (DTCA)

8. Collection, Use and Holding of Customer Information

- 8.1. Institutions should treat their customers' (and former customers') banking affairs as private and confidential.
- 8.2. Institutions should at all times comply with the Personal Data (Privacy) Ordinance (PDPO) in the collection, use and holding of customer information. They should also comply with any relevant codes of practice issued or approved by the Privacy Commissioner for Personal Data giving practical guidance on compliance with the PDPO.
- 8.3. Institutions should be as specific as possible about the classes of person to whom they may wish to make disclosure of customer information and the purpose of such disclosure. Classes of person about which customers should be specifically notified include among others -
 - (a) debt collection agencies;
 - (b) computer firms to which the processing of personal information is to be, or may be, outsourced;
 - (c) credit reference agencies; and
 - (d) related companies within the same group to whom customers' names and addresses may be disclosed for marketing purposes.
- 8.4. Institutions should not, without the prescribed consent of their customers -
 - (a) provide bankers' references in respect of a customer; or
 - (b) disclose customers' names and addresses to companies which are not related companies within the same group for marketing purposes.
- 8.5. When a customer objects to the disclosure of the information referred to in section 8.3(d) above or refuses to give the consent referred to in section 8.4(b) above, the institution concerned should not refuse to provide that customer with basic banking services.
- 8.6. Where personal information is used by an institution for its own marketing purposes for the first time, the institution should inform the customer that the institution will, without charge to the customer, cease to so use the personal information if the customer so requests.
- 8.7. Institutions should remind customers at least once every three years or by including a standard notice in their marketing materials of the right to make the request referred to in section 8.6 above.
- 8.8. Where personal information is transferred to a third party service provider, for example, as part of an outsourcing arrangement, institutions should satisfy themselves that such information will be treated as confidential and adequately safeguarded by that service provider. Institutions should remain accountable to customers for any complaints arising out of the handling of customer information by service providers and should not attempt to disclaim responsibility for any breach of customer confidentiality by service providers.