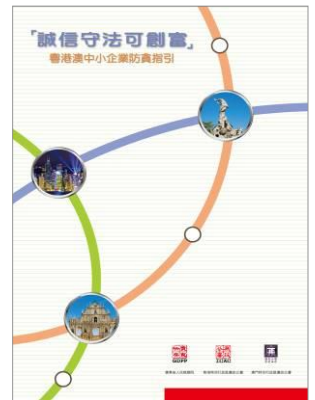


Challenges for cross-boundary operators – how to handle employees soliciting bribes from cross-border suppliers?

Given the ever increasing economic interaction and integration among Guangdong, Hong Kong and Macao, both opportunities and challenges (including corruption risks) may arise.

The Independent Commission Against Corruption of Hong Kong, the Guangdong Provincial People's Procuratorate and the Commission Against Corruption of Macao have collaborated to produce the "Business Success: Integrity & Legal Compliance Corruption Prevention Guide for SMEs in Guangdong, Hong Kong and Macao" ("The Guide"). This article draws on a case study in the Guide to introduce to cross-boundary business operators the common corruption risks as well as the corresponding safeguards in order to enhance their corruption prevention capabilities.



Case

A Hong Kong herbal tea manufacturing company sourced herbs and other ingredients from various suppliers on the mainland. Bernard, a senior merchandiser of the company, was responsible for procuring herbal materials.

Recently, Bernard was having a financial problem. As he was in desperate need of money, he sent a number of telephone text messages to a mainland herbal supplier asking for a loan of RMB10,000 to be deposited into his wife's bank account in Hong Kong.



However, the supplier made no response to his request despite his promise to give him more business. Soon Bernard sent another text message to the supplier for a RMB20,000 loan and threatened to cut the purchase orders if his request was not met.

In the end, the supplier did not accede to his bribery request and reported the matter to the management of the herbal tea manufacturer. In view of the severity of the matter and its zero tolerance of corruption, the management reported the case to the Independent Commission Against Corruption (ICAC)

Question 1: Is solicitation of bribes from a cross-border company governed by the law of Hong Kong?

Bernard, who sent text messages to a company requesting for loans to be deposited into his wife's bank account in Hong Kong in return for placing more orders, has already committed an offence of soliciting advantages under Section 9 of the Prevention of Bribery Ordinance (PBO) though the company was outside Hong Kong. Business operators should be aware that any act of bribery (including promising / agreeing on a bribery act, and soliciting, offering or accepting a bribe) taken place in Hong Kong can be pursued under the PBO.

Question 2: Is accepting bribes through another person against the law?

Acceptance of bribes is a crime regardless of whether it is accepted directly or through a third party. In this case, if the mainland herbal supplier agreed to deposit the loans into the bank account of Bernard's wife in Hong Kong, Bernard would be considered as having accepted the advantage if her account was controlled by Bernard or he was the ultimate beneficiary.

Best practice for company management: zero tolerance for corruption

Company management should implement preventive measures proactively and take prompt actions against suspected acts of corruption. The company's strong stance against corruption should always be clearly made known to the employees.

The connivance or indecisive move of company management in employees' corrupt acts would likely make them believe that the management was tolerant for corruption. Fortunately, the herbal tea manufacturing company, realising the severity of the matter, made a report to the ICAC without hesitation. Such an act not only safeguarded the company's interests and reputation but also hammered home the company's zero tolerance for corruption.

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