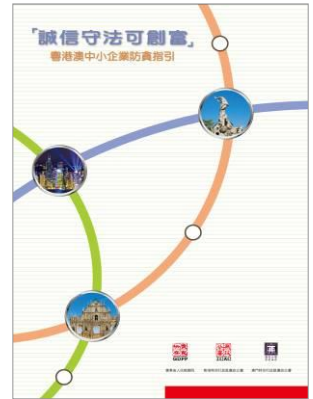


Legal guide series for cross-boundary business operators (3)

Proper preventive measures in place for remote management of cross-boundary business

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-based home appliances company had set up a branch office on the mainland. To open up the Southeast Asian Market, Henry, the proprietor, traveled overseas frequently to attend exhibitions and trade fairs or stayed in Hong Kong to maintain contact with customers. He relied heavily on his management personnel on the Mainland to handle the daily operations there..



Last year, a Malaysia-based distributor placed production orders for a range of new models of electrical appliances with Henry's company and asked the company to source microwavable tableware sets to be given as complimentary gifts. Henry assigned the job to Sam, the purchasing manager of the mainland office.

Not long after the products had been released in the market, the Malaysian distributor complained to Henry that the tableware in the gift sets was not microwavable and demanded both a refund and compensation. After internal investigation, Henry discovered that Sam had secretly awarded the procurement contract for these gift sets to his brother-in-law who ran a factory in Dongguan and was given a free package tour to Europe in return.

Is it a conflict of interest or a breach of the law?

This case involves a conflict of interest and bribery.

A conflict of interest situation arises when the private interests of an employee compete or conflict with the interests of his official duties. The fundamental rule in handling a conflict of interest is to avoid the situation as far as possible. Where such a situation is unavoidable, the employee should declare the conflict of interest and follow the company's decision to steer clear of suspicion.

By awarding the contract to his brother-in-law, Sam was involved in an actual conflict of interest situation. Sam's acceptance of a free package tour to Europe would also constitute an offence under the mainland Criminal Law. According to the mainland Criminal Law, it is an offence of non-state functionary accepting a bribe if any employee of any company or enterprise takes advantage of his position to accept or solicit a bribe. For the sake of preventing corruption, the company should provide adequate guidance to all employees on how to deal with conflicts of interest.

Best practice for company management: implementing system control

Running businesses in Guangdong, Hong Kong and Macao will unavoidably involve problems of managing at a distance. In this case, Henry only paid occasional visits to oversee the operations of the mainland branch office. His company had no clear guidelines on dealing with conflict of interest situations and acceptance of advantages. This lack of effective controls over corruption loopholes was exploited by Sam to his own advantage.

To prevent similar situations from occurring, Henry should introduce checks and balances into his company's daily operations, such as procurement, sales and marketing, administration and accounting so as to better prevent and detect improper and corrupt practices. Take the area of procurement as an example, the company should compile a list of approved suppliers to make sure that all goods or services were bought from trustworthy sources. The company should also draw up a clear policy prohibiting employees from accepting any advantages from suppliers to ensure fairness in business transactions. Besides, the duties to negotiate with suppliers, make purchase decisions and inspect goods and services delivered must be segregated to guard against malpractice.

For enquiries, please contact the Hong Kong Business Ethics Development Centre of the ICAC.

Telephone: 2826 3288

Website: www.hkbedc.icac.hk

E-mail: hkbedc@crd.icac.org.hk



香港商業道德發展中心
Hong Kong Business Ethics Development Centre

