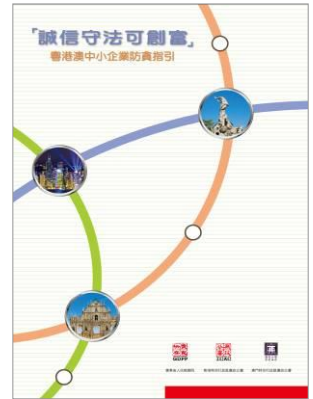


Hospitality or Corruption Traps?

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

Steve and his friends had opened a few chain karaoke lounges in Guangdong and invested heavily in audiovisual equipment. Due to the ambitious expansion plan, their business ran short of cash flow quickly and needed to apply for a hire purchase loan from a bank in Hong Kong. The bank sent Michael, an officer of the loans department, to inspect Steve's karaoke lounges in Guangdong. Steve took the chance and spared no expense in treating Michael. Claiming that it was a way to extend hospitality, Steve also offered expensive dried seafood and wine to Michael. After returning to Hong Kong, Steve treated Michael to a lavish meal again. Knowing that Michael had recently become a father, Steve gave Michael a red packet containing several thousand Hong Kong dollars and asked Michael to help him secure the loan. Michael declined the red packet at first but reluctantly accepted it upon Steve's insistence. Michael then immediately reported to the bank about Steve's offer of dried seafood, wine and red packet and his dubious request. The bank then referred the matter to the ICAC.



Is the provision of entertainment not governed by the laws?

According to the Prevention of Bribery Ordinance (PBO), “entertainment” is defined as the provision of food or drink for consumption on the occasion when it is provided, and “entertainment” is not an “advantage”. While the mere offer of entertainment does not constitute an offence, businessmen should refrain from using lavish or frequent entertainment as a means of doing business or in return for favours in business dealings. Otherwise, this will be perceived as bribery under the guise of providing entertainment. Moreover, since the gifts offered (like the dried seafood, wine and red packet in this case) on occasions of entertainment are advantages, any person who offers such advantages in exchange for work-related favours would commit a bribery offence. Hence, companies should formulate guidelines to govern the conduct of their employees when having dealings with their business partners (e.g. provision of entertainment, advantages, etc), and constantly remind their employees to abide by the guidelines.

Is it all right to offer gifts under the pretext of “trade customary practice”?

The offeror cannot excuse the bribery offence by saying that the offer was “an established custom in the trade” or “industry practice”. Under Section 19 of the PBO, the court will not accept such defence, but will only consider whether or not the acceptor has obtained permission of the principal.

Does it constitute an offence if the purpose of the bribe is not achieved?

Under Section 11 of the PBO, as long as the offeror intends to induce the acceptor to show him a favour, both parties would commit bribery even if the acceptor claims that he “did not actually have the power to do so”, “did not intend to do so” or “did not in fact do so”. Therefore, Steve had indeed committed the offence of offering bribes although the purpose of the bribes was not carried out. Similarly, if Michael accepted the advantage and agreed to help Steve secure the loan, he would have committed an offence even if he did not eventually help Steve. Fortunately, Michael and the bank reported to the ICAC immediately. By doing so, they could on one hand protect themselves from any suspicion of involvement in the corrupt dealing; and on the other hand, help bring the corrupt offenders to justice and stop corruption from spreading.

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