Volume One

Ethical Management

Guide for Cross-Boundary Businessmen

**Has your company implemented adequate measures to guard against bribery and corrupt practices?**

**Have you ever felt helpless in managing staff integrity when not in the company or the factory?**

**Do you know that it is never costly to enhance staff integrity, and increase productivity at the same time?**

The Independent Commission Against Corruption (ICAC) of the Hong Kong Special Administrative Region has published this Corruption Prevention Kit on Cross-Boundary Business providing information on the Mainland and Hong Kong anti-corruption laws, as well as giving practical advice on corruption prevention. Training materials are also included to help establish an ethical corporate culture in the work place.

The kit consists of two guides:

**Volume One - Guide for Cross-Boundary Businessmen**

■ Target : Hong Kong businessmen investing in the Mainland

Content : ◆ Illustrative cases of cross-boundary corruption

◆ Anti-corruption laws of Hong Kong and the Mainland - an overview

◆ Principles in corruption prevention

◆ ICAC services

**Volume Two - Guide for Managers**

■ Target : Managers of Hong Kong companies stationed in the Mainland

Content : ◆ Gist of the anti-corruption laws of Hong Kong and the Mainland

◆ Practical tips on corruption prevention

◆ Training materials on corruption prevention

**Supplementary Training Materials**

■ DVD: “Unusual Conflicts” -Training Package for Business Organisations

■ Publicity posters for preventive education (Chinese version only)

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 the Ordinances are necessarily general and abbreviated and are not a substitute for the need to review the Ordinances in detail and where appropriate to obtain specific legal advice on any issue arising. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can therefore be accepted by the Independent Commission Against Corruption.

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Community Relations Department

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**Please consult the local law enforcement agencies for the latest information on the respective anti-corruption laws, regulations and system outside Hong Kong. On specific situations, you should seek professional legal advice.**

**Scenario Three**

**Bribing state functionaries in contravention of the Mainland laws**

Mr. Leung was the Hong Kong representative of a private joint venture enterprise and held 60% of its shares. The Mainland factory manager reminded Leung three times that the fire safety facilities in the factory were inadequate, and its exceptionally tight security measures had increased the fire hazard in the building. The result could be an investigation by the local fire prevention authority. Insisting that his primary concern was to guard against theft, Leung instructed the factory manager to take charge of the matter and deal with the fire prevention authority, adding that he would back up the factory manager as long as he could persuade the local authority that everything was all right. Unfortunately, a fire broke out in the factory causing 12 casualties. The procuratorate later received a corruption report that the factory manager had bribed two fire prevention officials. In the residences of the officials, the investigation authority uncovered a substantial amount of cash worth over Rmb$300,000. Subsequent investigation revealed that the two officials had taken advantage of their position to accept over Rmb$200,000 in bribes. In addition, neither of them was able to explain the source of the remaining Rmb$100,000 which was obviously in excess of their lawful income. The two fire safety officials were both sentenced to fixed-term imprisonment for the offences of accepting bribes and for failing to explain the significant excess of property or expenditure over lawful income. The factory manager and Leung were both sentenced to fixed-term imprisonment for offering bribes.

Analysis

Being the principal responsible person of a joint venture company, Leung had clearly authorised the factory manager to handle the fire protection matters of the factory on three occasions acknowledging that he was prepared to bear any consequences. Although Leung did not paid bribes to the State functionaries directly, he had nevertheless authorised the manager to handle the matter and that the manager offered bribes not for himself but for the factory meant that Leung had to bear the legal liability of the manager’s acts. On the other hand, corruption would only add unnecessary costs and bring disrepute to the company thus adversely affecting the long-term development of the company.

**Anti-corruption Laws of Hong Kong**

The business sector in Hong Kong is subject to the Prevention of Bribery Ordinance (PBO), which provides a clear definition on bribery. However, there is no specific offence called “corruption” in the laws of Hong Kong, since it is only a general term used to describe the act of soliciting and accepting bribes. Accepting a bribe means that an agent or entrusted party (generally an employee) accepts an advantage in relation to the business of his principal or entrusting party (generally an employer) without his principal’s permission. Offering a bribe takes place when an individual offers an advantage to an agent for the latter’s showing favours in his official capacity.

*(For extracts of relevant sections of the PBO, please refer to Appendix 1 of the Guide for Managers)*

**Laws Against Corruption and Bribery on the Mainland**

According to the Criminal Law of the People’s Republic of China, “corruption” and “bribery” are different offences. “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. “Bribery”, with a similar meaning of that in Hong Kong, broadly refers to both the offering and acceptance of bribes. On the Mainland, “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.

*(For extracts of relevant laws, please refer to Appendix 2 of the Guide for Managers)*