



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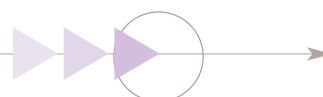
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**Please consult the local law enforcement agencies for the latest information on the respective anti-corruption laws, regulations and system outside Hong Kong. On specific situations, you should seek professional legal advice.**









## *Plugging Corruption Loopholes*

As a leader of the company, your prime concern definitely goes beyond the daily operations of your business. If bribery or corrupt practices have crept in as a result of lax supervision, it will eat into your company's hard-earned profits and reputation. The following three case scenarios will offer you appropriate preventive measures for effective detection and prevention of corrupt practices.

## ***Scenario One***

### **Lacking a clear company policy**

Mr. Chung had established a toy manufacturing enterprise in the Mainland in partnership with his friends. Holding 10% of the shares, he was mainly responsible for supervising the manufacturing process. Since Chung had the authority to purchase materials for the company, he hinted to a Mainland supplier that he expected a rebate equivalent to 5% of the transaction amount as a reward for placing purchase orders. When the incident was exposed, the ICAC found that none of the shareholders in the enterprise has any knowledge of Chung's acceptance of advantages. Besides, the company did not establish any clear policies on such acceptance of advantage either for its shareholders or staff. It was revealed that Chung had accepted a total of \$50,000 over a period of eight months. Consequently, he was sentenced to imprisonment for offences against the Prevention of Bribery Ordinance.







## Analysis

*In Hong Kong, according to the Prevention of Bribery Ordinance, it is an offence for any agent (generally the employee), without the permission of his principal (generally the employer) to accept an advantage as a reward for doing an act in relation to his principal's business. Although Chung is one of the shareholders of the enterprise, he is still an agent as defined by the law. He therefore must seek approval from the company before accepting any advantages.*

*Business organisations should take the initiative to govern the acceptance of advantages by all levels of staff (including directors) in relation to company businesses. The company should state clearly in writing the company policy, types and ceiling amounts of advantage that the staff are permitted to accept, and conditions of such acceptance. The policy should also list out the declaration procedures and enquiry channels for staff compliance.*

*Moreover, the company should establish detailed procurement procedures in order to ensure that the products purchased are of good quality, reasonably priced and value for money. Such procedures are necessary to prevent staff from abusing their authority or engaging in corrupt practices in the purchasing process. Staff should be reminded constantly of the importance of selecting suppliers in a fair and impartial manner.*

## Scenario Two

### Awarding subcontracting orders for monetary rewards

Mr. Chan was the proprietor of a mechanical engineering company which ran a factory in the Mainland. Production manager Mr. Wong was deployed to station in the Mainland factory to oversee the whole mechanical production process. Wong had been working for Chan for eight years and had won the praise and trust of his boss. Since some of the production procedures have to be subcontracted to other local manufacturers, Wong was also responsible for sourcing suitable factories and awarding the production orders. As such, Wong got acquainted with many other manufacturers, and was frequently invited to social activities after work. Two of them suggested offering him a kickback as a reward for placing more production orders and they would inflate the price of the orders to compensate the extra cost, i.e. the kickback to Wong. Succumbing to the temptations of monetary rewards, Wong accepted Rmb\$575,000 in bribes. He then deposited the bribe money into his bank account in Hong Kong. After an ICAC investigation, Wong was sentenced to ten months' imprisonment by the court.







## Analysis

*Entertainment is an acceptable form of business behaviour. However, many past cases have shown that small favours such as free meals and small gifts etc, always breed corruption. It is therefore important for business manager to remind their staff of the need to handle their relationships with suppliers or subcontractors with care, and to avoid accepting excessively frequent or lavish entertainment from them.*

*Business organisations should also establish clear policies on acceptance of advantage and declaration of conflict of interest situations, and inform their suppliers or subcontractors of such policies. In the event that staff have violated the law or company policies, prompt action should be taken to report the case immediately.*

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### **Corruption tactics which are ever-evolving**

- ◆ *Instead of dealing with suppliers directly, merchandisers may request suppliers to route through some “intermediaries”, thus creating loopholes for the merchandisers to solicit rebates from these well-connected “intermediaries”.*
- ◆ *After bargaining a lower purchase price, staff may ask suppliers to quote the original purchase price on the invoices while pocketing the price differences which would be secretly deposited into an off-the-book account in the name of “treasure chest” expenses.*
- ◆ *In awarding sub-contracts, staff may obtain private gains by requesting subcontractors to purchase materials from suppliers owned by the staff or their relatives.*



## 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.*



## 第 201 章

### 防止賄賂條例

本條例旨在為防止賄賂事宜以及因該事宜所需或為與該事宜有關的目的而訂定經修訂完備的條文。

[1971 年 5 月 14 日] 1971 年第 58 號法律公告

#### 第一部

##### 導言

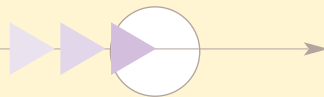
#### 1. 簡稱

本條例可引稱為《防止賄賂條例》。

#### 2. 釋義



### ***Anti-Corruption Laws***



**There are legislations in the Mainland and Hong Kong to govern corrupt or bribery behaviours. To avoid falling prey to corruption, businessmen should fully understand the relevant legislations and abide by them.**



## 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)*

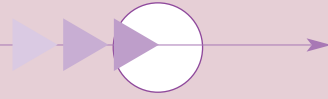
## Laws Against Corruption and Bribery in the Mainland

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. In 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)*







# ***Preventive Measures Against Corruption***

If everyone in the company is committed to upholding the law, maintaining high ethical standards, and following stringent work procedures, corruption and illegal practices will find no place to breed in the company. To guard against corruption, a company must tackle the problems on two fronts, namely, strengthening the system of controls and managing staff integrity.

### **(I) Formulating a Company Code of Conduct**

The management should formulate a company code of conduct according to the specific needs of the company for staff's compliance in conducting business.

#### **Contents of a Company Code of Conduct**

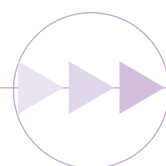
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| ◆ Prohibit illegal offer or acceptance of advantages           | ◆ Seek prior approval from company for outside employment    |
| ◆ Avoid offering or accepting excessively lavish entertainment | ◆ Use company information and communication systems properly |
| ◆ Remind staff to pay attention to conflicts of interests      | ◆ Specify enquiry or complaint channels                      |
| ◆ Prevent abuse of company propriety information or property   |  |

Moreover, the company should inform all suppliers or contractors about the company's stance and policies on acceptance of advantage by staff, and encourage them to report any illegal solicitation of bribe.

### **(II) Strengthening the System of Controls**

The management should regularly review work procedures so that managers are able to detect corruption loopholes or other unlawful conducts promptly. Meanwhile, the company should also take preventive measures to strengthen its control on the following corruption-prone work areas:

- ◆ Procurement
- ◆ Inventory Control
- ◆ Personnel and Staff Administration
- ◆ Accounting
- ◆ Information Security Management



## Ten principles for system of controls

- |   |  |
|---|--|
| <b>1</b> Comprehensible company policies                                  | <b>6</b> Strict implementation of monitoring measures          |
| <b>2</b> Clear work procedures  | <b>7</b> Independent and active audit function                 |
| <b>3</b> Clear job responsibilities                                       | <b>8</b> Channels for complaints and views                     |
| <b>4</b> Appropriate segregation of functions                             | <b>9</b> Continuous monitoring review                          |
| <b>5</b> Adequate safeguards against tampering with sensitive information | <b>10</b> Zero tolerance of malpractice and illegal behaviours |

### (III) Staff Training

The management should arrange staff training programmes to strengthen their knowledge of the laws and the Company Code of Conduct, and to raise their alertness to ethical issues and corruption prevention. The training should focus on the following areas:

- ◆ Anti-corruption legislations
- ◆ Common corruption loopholes and respective preventive measures
- ◆ Tips for managing staff integrity
- ◆ Skills in handling ethical dilemmas

The following supplementary training materials are also produced to help managers initiate their own training programmes.

- ◆ **DVD: “Unusual Conflict” - Training Package for Business Organisations**

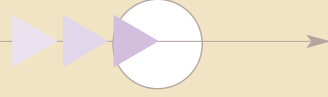
Through case studies, managers will gain a better understanding of the impacts of conflict of interest as well as the common problem in managing staff integrity.

- ◆ **Publicity posters (Chinese version only)**

Publicity posters should be put up at prominent places in the company to remind staff of the need to strictly follow company’s policies.

*(Please refer to the Guide for Managers for the sample Company Code of Conduct, common malpractice/corruption loopholes and preventive measures, and training materials.)*





# ***ICAC – Your Anti-Corruption Partner***



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To help cross-boundary business organisations adopt appropriate measures to guard against corruption and malpractice, the ICAC provides the following free and professional services:

### **Formulating Company Code of Conduct**

The ICAC's Community Relations Department will help individual companies formulate a code of conduct specific to their needs. The Department will also recommend ways to implement the code effectively.

### **Arranging Seminars for staff**

Professional staff from the ICAC's Regional Offices and Hong Kong Ethics Development Centre will organise seminars and staff training sessions for companies in Hong Kong.

### **Providing Consultancy Services on Corruption Prevention**

The Advisory Services Group of the Corruption Prevention Department provides free consultancy services to help companies identify corruption loopholes in their business operations and to advise on ways to tighten up controls on corruption-prone areas.

*Interested parties may contact any Regional Offices or the Hong Kong Ethics Development Centre of the Community Relations Department or the Advisory Services Group of the Corruption Prevention Department for assistance. Please refer to the correspondence on the following page.*

### **Investigating Corruption and Fraud Cases**

The Operations Department is responsible for receiving corruption complaints and conducting investigations in strictest confidence. Any party may lodge a complaint or make an enquiry with the ICAC through the following channels:

In person:

**ICAC Report Centre**

*Address:*

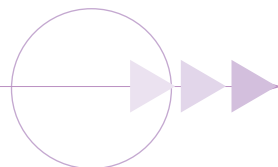
G/F, Murray Road Car Park Building,  
2 Murray Road, Central,  
Hong Kong  
or ICAC Regional Offices

By phone:

(852) 25 266 366 (24-hour service)

By mail:

G.P.O. Box 1000, Hong Kong



## ICAC Regional Offices

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### Regional Office (Hong Kong West/Islands)

Address : G/F, Harbour Commercial Building, 124 Connaught Road Central, Sheung Wan, Hong Kong  
Tel. : (852) 2543 0000

### Regional Office (Hong Kong East)

Address : G/F, Tung Wah Mansion, 201 Hennessy Road, Wan Chai, Hong Kong  
Tel. : (852) 2519 6555

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### Regional Office (Kowloon West)

Address : G/F, Nathan Commercial Building, 434-436 Nathan Road, Yau Ma Tei, Kowloon  
Tel. : (852) 2780 8080

### Regional Office (Kowloon Central)

Address : G/F, 21E Nga Tsin Wai Road, Kowloon City  
Tel. : (852) 2382 2922

### Regional Office (Kowloon East/Sai Kung)

Address : Shop No. 4, G/F, Kai Tin Building, 67 Kai Tin Road, Lam Tin, Kowloon  
Tel. : (852) 2756 3300

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### Regional Office (New Territories South West)

Address : G/F, Foo Yue Building, 271-275 Castle Peak Road, Tsuen Wan, New Territories  
Tel. : (852) 2493 7733

### Regional Office (New Territories North West)

Address : No. 4-5, G/F, North Wing Trend Plaza, 2 Tuen Shun Street, Tuen Mun, New Territories  
Tel. : (852) 2459 0459

### Regional Office (New Territories East)

Address : G06-G13, G/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories  
Tel. : (852) 2606 1144

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## Hong Kong Ethics Development Centre

Address : 1/F, Tung Wah Mansion, 199-203 Hennessy Road, Wan Chai, Hong Kong  
Tel. : (852) 2587 9812

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## Advisory Services Group

Address : 24/F, Fairmont House, 8 Cotton Tree Drive, Central, Hong Kong  
Tel. : (852) 2526 6363

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## ICAC Homepage

Website : [www.icac.org.hk](http://www.icac.org.hk)

*Any comments or enquires about this publication,  
please contact the ICAC Regional Office (Hong Kong West / Islands) at (852) 2543 0000.*

*Please visit the ICAC website ([www.icac.org.hk](http://www.icac.org.hk)).*

