



Ethical Management Guide for Managers



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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Independent Commission Against Corruption
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Targetting at managers stationed in the Mainland, this Guide aims to explain the anti-bribery legislations in both Hong Kong and the Mainland with relevant corruption prevention recommendations. It also provides training materials for the implementation of ethical management programmes to enhance staff's probity awareness and ethical standards.

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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.

Chapter One *Gist of the Anti-Corruption Laws of Hong Kong and the Mainland*

Anti-Corruption Laws in Hong Kong

The objective of the Prevention of Bribery Ordinance (PBO) (Laws of Hong Kong, Chapter 201) is to keep our society fair and corruption-free, safeguarding the legitimate interests of both employers and employees. Malpractices in organisations may incur unnecessary loss and colluding staff members may also be liable to prosecution.

Section 9 of the PBO deals with corruption crimes in the private sector. In essence, it is an offence for an agent (generally refers to an employee) to solicit or accept an advantage, without the permission of his principal (generally refers to an employer), as an inducement to, or reward for, his doing or forbearing to do any act in relation to his principal's affairs. Any person who offers an advantage to an agent in this circumstance is also guilty of an offence.

Relevant provisions of the PBO	Summary of the law	Key points for managers
Private sector employees accepting bribes Section 9(1)	<ul style="list-style-type: none">◆ Any agent◆ without the permission of his principal◆ soliciting or accepting any advantage◆ so as to affect his doing or forbearing to do any act in relation to his principal's affairs	<ul style="list-style-type: none">◆ An employee should not solicit or accept an advantage in relation to his work without the permission of his employer

<p>Offering bribes to private sector employees Section 9(2)</p>	<ul style="list-style-type: none"> ◆ Any person ◆ without the permission of the agent's principal ◆ offering any advantage to any agent ◆ as an inducement to or reward for doing or forbearing to do any act in relation to his principal's affairs 	<ul style="list-style-type: none"> ◆ Before offering any advantage to a private sector employee, make sure the employee has the prior consent of his employer to receive such an advantage
<p>Employee using false documents to deceive an employer Section 9(3)</p>	<ul style="list-style-type: none"> ◆ Any agent ◆ using any false, erroneous or defective receipt, account or other document in respect of which his principal is interested ◆ with intent to deceive his principal 	<ul style="list-style-type: none"> ◆ It is also an offence under the PBO for an employee to use any false or erroneous document to deceive his employer even without accepting an advantage

Maximum penalty for committing PBO offences

The maximum penalty for committing an offence of Section 9 of the PBO is imprisonment for seven years and a fine of HK\$500,000. Persons convicted of accepting a bribe may also be ordered by the court to compensate their employers. In some cases, relevant ordinances will be applied in ordering the confiscation of suspected illegal proceeds if other serious crimes are involved.

For the original text of the relevant provisions of the PBO, please refer to Appendix 1.

Terms and definitions

Principal

Generally an employer. In the private sector, “employer” often means the owner or the board of directors of a company.

Agent

Generally a person employed or entrusted by the principal. In the private sector, it includes individual directors or employees of a company.

Principal's permission

The permission or agreement given by a principal for an agent to accept any advantage in the course of his duties. Normally, such permission should be obtained before the agent solicits or accepts it. If an advantage has been offered or accepted without prior permission, the agent should seek retrospective permission from his principal as soon as reasonably possible.

Advantage

Includes money, gifts, loans, rewards, commissions, employment, contracts, service, favours and discharge of liability whether in whole or in part, but excludes entertainment.

Entertainment

Food or drink for consumption on the occasion when it is provided and any other entertainment, for example, singing and dancing, provided at the same time. Although the PBO does not prohibit the acceptance of entertainment, many companies nevertheless set out guidelines on the circumstances under which employees may accept entertainment.

Custom constitutes no defence

It shall not be a defence to claim that any advantage accepted or offered is customary in any profession, trade, vocation or calling. The court shall make the judgment based on whether permission has been given by the recipient's principal.

Verbal agreement counts

The offeror and the recipient of a bribe are liable to prosecution if a verbal agreement of corruption is reached notwithstanding the purpose of bribery has not been carried out.



Laws Against Corruption and Bribery in the Mainland

The provisions of the *Criminal Law of the PRC* against corruption and bribery seek to protect social and economic order. They urge State functionaries to uphold integrity, be self-disciplined and fair when discharging their duties, and they punish illegal acts such as corruption and bribery, abuse of authority or position for private gains and the exchange of official power for money.

People doing business in the Mainland will inevitably have to deal with State functionaries. Therefore, it is important for investors and business people to have a thorough understanding of the Mainland's anti-corruption and anti-bribery laws to protect their own legal interests against potentially illegal activities, and to guard against any involvement and participation in corruption and bribery.

In the Mainland, “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. The subjects of corruption offences are State functionaries who are referred to as “special subjects”. Any individuals or units conspiring with State functionaries to commit a corruption offence are considered accomplices, i.e. “general subjects”.

“Bribery” broadly refers to both the offering and acceptance of bribes. 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. State functionaries or personnel of companies, enterprises, etc. who take advantage of their offices for personal gains may also commit other offences.

Corruption, Embezzlement and Misappropriation Offences

Relevant provisions of the <i>Criminal Law of the PRC</i>	Summary of the law	Key points for managers
<p>Embezzlement by State functionaries Articles 382, 383, 183(2), 271(2), 394</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his office ◆ by illegal means ◆ to appropriate public money or property <hr/> <ul style="list-style-type: none"> ◆ Any State functionary assigned to non-State-owned units for official duties ◆ taking advantage of his office ◆ to take possession of State-owned money or property illegally <hr/> <ul style="list-style-type: none"> ◆ Any non-State functionary entrusted by State organs or State-owned institutions to manage or run State property ◆ taking advantage of his office ◆ to take possession of State-owned money or property illegally <hr/> <ul style="list-style-type: none"> ◆ Any non-State functionary who conspires with the functionaries mentioned above to engage in embezzlement shall be regarded as accomplices and punished accordingly <hr/> <ul style="list-style-type: none"> ◆ Any State functionary ◆ accepting gifts (amount involved is relatively large) in activities of public service ◆ failing to hand over the gifts to the State as required by State regulations 	<ul style="list-style-type: none"> ◆ Non-State functionaries taking part in activities of appropriating public money or property will become accomplices to a corruption offence, even if they have not gained any direct benefits

<p>Embezzlement through dereliction of duty by employees of enterprises Article 271(1)</p>	<ul style="list-style-type: none"> ◆ Any employee of a company, enterprise or any other unit ◆ taking advantage of his position ◆ to take possession of the money or property of his own unit unlawfully 	<ul style="list-style-type: none"> ◆ Any employee, whether posted from Hong Kong or employed in the Mainland, can be the subject of the offence
<p>Illicit division of State-owned assets Article 396(1)</p>	<ul style="list-style-type: none"> ◆ In violation of State regulations ◆ in the name of a unit ◆ dividing up State-owned assets among all the individuals of the unit in secret 	
<p>Misappropriation of public funds Article 384, 185(2), 272(2)</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his position ◆ to misappropriate public funds for his own use and fails to return the funds after the lapse of three months ◆ or for conducting illegal or profit-making activities 	
<p>Misappropriation of a unit's funds Article 272(1)</p>	<ul style="list-style-type: none"> ◆ Any employee of a company, enterprise or any other unit ◆ taking advantage of his position ◆ to misappropriate funds of his own unit for personal use or for loaning them to another person and the funds are not repaid before the expiration of three months ◆ or for conducting illegal or profit-making activities 	<ul style="list-style-type: none"> ◆ Any employee, whether posted from Hong Kong or employed in the Mainland, can be the subject of the offence

Bribery Offences (I) Offences of accepting, offering and introducing bribes relating to a State functionary or unit

Relevant provisions of the <i>Criminal Law of the PRC</i>	Summary of the law	Key points for managers
<p style="color: blue;">Acceptance of bribes by State functionaries</p> <p>Articles 385, 163(3), 184(2), 388</p>	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his position ◆ to extort money or property from another person ◆ or to accept money or property illegally from another person for securing benefits for the person 	<ul style="list-style-type: none"> ◆ The request for bribes should be explicitly refused and the incident reported to the proper authorities immediately
	<ul style="list-style-type: none"> ◆ Any State functionary ◆ in violation of State regulations ◆ accepting rebates or service charges of various descriptions and taking them into his own possession 	
	<ul style="list-style-type: none"> ◆ Any State functionary ◆ taking advantage of his own functions and powers or position ◆ through the performance of another State functionary during the discharge of his duties ◆ to extort or accept money or property from an entrusting person for securing illegitimate benefits 	
<p style="color: blue;">Acceptance of bribes by a unit</p> <p>Article 387</p>	<ul style="list-style-type: none"> ◆ A State organ and State-owned enterprise, etc. ◆ extorting or illegally accepting money or property from another person for securing benefits for the person ◆ or secretly accepting off-the-book rebates or service charges of various descriptions 	

<p>Members of intermediary organisations deliberately providing false testifying papers Article 229(2)</p>	<ul style="list-style-type: none"> ◆ A member of an intermediary organisation who provides legal, accounting or verification services, etc. ◆ demanding or illegally accepting money or property from other people ◆ deliberately providing false testifying papers 	<ul style="list-style-type: none"> ◆ Business people should not follow the illegitimate advice of intermediaries
<p>Offering bribes to State functionaries Article 389</p>	<ul style="list-style-type: none"> ◆ Any person ◆ for the purpose of securing illegitimate benefits ◆ offering money or property to State functionaries <hr/> <ul style="list-style-type: none"> ◆ Any person ◆ in violation of State regulations ◆ offering money or property / rebates or service charges of various descriptions to State functionaries (<i>Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefits would not be regarded as having offered a bribe.</i>) 	<ul style="list-style-type: none"> ◆ The perpetrators of an offence to offer bribes to State functionaries can include foreign investors and cross-boundary businessmen
<p>Unit offering bribes Article 393</p>	<ul style="list-style-type: none"> ◆ Any unit ◆ for the purpose of securing illegitimate benefits ◆ or in violation of State regulations ◆ offering rebates or service charges to State functionaries 	<ul style="list-style-type: none"> ◆ A bribe offered in the name of a company or an enterprise remains an offence

<p>Offering bribes to a unit Article 391</p>	<ul style="list-style-type: none"> ◆ Any person ◆ for the purpose of securing illegitimate benefits ◆ or in violation of State regulations ◆ offering money or property / rebates or service charges of various descriptions to State organs or State-owned enterprises 	<ul style="list-style-type: none"> ◆ Even if the bribe is offered to a State organ, State-owned enterprise or unit, it remains a bribery offence
<p>Introducing a bribe Article 392</p>	<ul style="list-style-type: none"> ◆ Any person ◆ introducing a bribe to State functionaries 	<ul style="list-style-type: none"> ◆ Anyone who lines up any bribery racket commits a criminal offence

Bribery Offences (II) Offences of offering and accepting bribes in the course of commercial dealings

Relevant provisions of the <i>Criminal Law of the PRC</i>	Summary of the law	Key points for managers
<p>Acceptance of bribes by employees of companies and enterprises Article 163</p>	<ul style="list-style-type: none"> ◆ Any employee of a company and enterprise ◆ taking advantage of his position ◆ demanding money or property from another person ◆ or illegally accepting another person's money or property in return for the benefits he seeks for such person <hr/> <ul style="list-style-type: none"> ◆ Any employee of a company and enterprise ◆ in violation of State regulations ◆ accepting rebates or service charges of various descriptions and taking them into his own possession 	<ul style="list-style-type: none"> ◆ The Mainland has specific laws and regulations in this area. Employees posted to the Mainland should pay particular attention to the laws so as not to inadvertently commit an offence
<p>Offering bribes to employees of companies and enterprises Article 164</p>	<ul style="list-style-type: none"> ◆ Any person or unit ◆ for the purpose of seeking illegitimate benefits ◆ offering money or property to any employee of a company or enterprise 	

Others

Relevant provisions of the <i>Criminal Law of the PRC</i>	Summary of the law
Failing to explain a significant excess of property or expenditure over lawful income Article 395(1)	<ul style="list-style-type: none"> ◆ Any State functionary whose property or expenditure obviously exceeds his lawful income ◆ the difference is enormous ◆ failing to prove that the sources are legitimate
Concealing savings outside the territory of China Article 395(2)	<ul style="list-style-type: none"> ◆ Any State functionary ◆ deliberately concealing bank savings outside the territory of China

Maximum Penalties for Committing Corruption and Bribery Offences

Corruption and bribery offences	Maximum penalties
Embezzlement by State functionaries Acceptance of bribes by State functionaries	Capital punishment
Misappropriation of public funds Offering bribes to State functionaries	Imprisonment for life
Embezzlement through dereliction of duty by employees of enterprises Acceptance of bribes by employees of companies and enterprises	Imprisonment for 15 years
Misappropriation of a unit's funds Offering bribes to employees of companies and enterprises Members of intermediary organisations deliberately providing false testifying papers	Imprisonment for ten years
Illicit division of State-owned assets	Imprisonment for seven years
Unit offering bribes Unit accepting bribes Failing to explain significant excess of property or expenditure over lawful income	Imprisonment for five years
Offering bribes to a unit Introducing a bribe	Imprisonment for three years
Concealing savings outside the territory of China	Imprisonment for two years

In addition to criminal penalties, the funds or property constituting the advantage in a corruption or bribery case may be traced and recovered. Criminals may also be fined and their property confiscated as prescribed by law. Where a unit commits a crime, the unit may be held criminally liable while the persons concerned may also be given criminal punishment.

The information above is only a summary of the provisions of the *Criminal Law of the PRC* relating to corruption and bribery offences. Please refer to Appendix 2 for an English translation of these articles.

Apart from understanding the provisions of the *Criminal Law of the PRC* on corruption and bribery offences, businessmen should also acquaint themselves with other related regulations in the Mainland. Due to the Mainland's sheer size, businessmen should not only comply with the national laws, but also understand and adhere to the local laws, regulations and policies. These include:

- ◆ **Local laws and regulations** — The people's congresses of different provinces, autonomous regions, municipalities and larger cities make district laws and regulations, whereas their respective local governments formulate rules. Businessmen planning an investment in a particular area must first familiarise themselves with all the relevant laws and regulations of that area, and check the content, applicability and impact on the business projects concerned.
- ◆ **Regional policies** — Some of the provisions governing the trade and economy of provinces, cities and autonomous regions may be couched in the form of policies rather than laws. Such policies may affect the kinds of investment, the amount that can be invested, conditions of approval, and even the length of time required for approval relating to projects open to foreign investors.



Terms and Definitions

State functionaries

Persons who perform public service in State organs; persons who perform public service in State-owned companies, enterprises, institutions or people's organisations; persons who are assigned by State organs, State-owned companies, enterprises or institutions to companies, enterprises or institutions that are not owned by the State or people's organisations to perform public service and the other persons who perform public service according to law all be regarded as State functionaries.

Taking advantage of office

The act of taking advantage of a position of authority or of the convenience afforded by that position when appropriating, managing or handling money or property.

Taking advantage of the convenience arising from one's own official position or authority.

The act of taking advantage of one's own position or authority to direct and influence State functionaries of any rank in the same department, in neighbouring departments or in units with close ties.

Violation of State regulations

Violation of the laws enacted or decisions made by the National People's Congress and its Standing Committee, and the administrative rules and regulations formulated, the administrative measures adopted and the decisions or orders promulgated by the State Council.

Money or property

Money and materials, e.g. currency, gold, silver and other materials that can be measured in terms of value and amount.

Benefits or gain

Property and various labour services that cannot be measured in terms of value and amount, e.g. job redeployment, allocation of population register, arrangement of employment, etc.

Profit-making activities

Activities such as trading, establishing an enterprise, investing in stocks, money-lending, etc.

Secret off-the-book acceptance

Inability to truthfully report matters according to the money and property accounting system in the legally established financial account.

Public property

(a) State-owned property; (b) property collectively owned by working people; and (c) public donations or special funds used for elimination of poverty for other public welfare undertakings. Private property that is being managed, used or transported by State organs, State-owned companies, enterprises, or enterprises owned by collectives, or people's organisations.

Misappropriation of public funds for personal use

The use of embezzled public funds by the embezzlers themselves or by other individuals; also the offer of embezzled public funds to enterprises, units, bodies or organisations in the name of an individual for the purpose of securing personal gain.

Company, enterprise or other unit

"Company" - a non-State-owned limited liability company and holding company limited set up in accordance with the Company Law of the PRC; "enterprise" - any non-State-owned economic organisation (other than a "company") engaging in lawful economic transactions; "other unit(s)" - any non-State-owned social or economic organisation(s) other than a "company" or an "enterprise" as defined.

Administrative law enforcing organs

State-organs which are empowered to exercise administrative punishment on citizens and units according to administrative and economic law, such as government departments responsible for trade and industry, taxation, customs, environmental protection, forestry, transport etc.

Judicial organs

The people's courts, the people's procuratorates and public security organs.

Chapter Two *Practical Tips on Corruption Prevention*

Various systems for areas such as procurement, inventory control, staff administration, accounting and information management forms the daily business of most companies. Prudent system controls in these functional areas would certainly help the management detect and deter irregularities. Listed below are some common malpractices and the corresponding preventive measures:

Procurement	
Malpractices/Loopholes	Measures
<p>1. Selection of Suppliers & Contractors</p> <ul style="list-style-type: none"> ◆ Appointing a supplier or contractor, the company of which is wholly or partially owned by staff themselves or their close relatives ◆ Setting up bogus firms to divert purchase orders or contracts from the employers or as a vehicle to inflate prices ◆ Requesting supplier to route through a so-called “intermediary company” to promote its business and soliciting rebate from the acquainted “intermediary company” 	<ul style="list-style-type: none"> ◆ Draw up a list of approved suppliers and conduct random checks on addition and deletion ◆ Use open tenders wherever appropriate ◆ Conduct random checks on quotations from successful and unsuccessful suppliers to compare prices ◆ Be alert to any sudden disappearance of regular suppliers as well as to any suppliers constantly being granted contracts ◆ Check Business and Companies Registration records for details of owners and shareholders of suppliers to ensure they are not owned or operated by staff ◆ Use term contractors for the supply of goods and services which are required regularly ◆ Inform suppliers and business associates of the company’s policy on acceptance of advantage and encourage them to blow the whistle on any solicitation of bribes (refer to Appendix 4 for the sample notification)

2. Negotiations with Suppliers & Contractors

- ◆ Showing favour in placing orders, making excessive purchases, tolerating overcharging and accepting substandard goods and services
- ◆ Leaking information of value, e.g. tender prices, to competing suppliers and contractors
- ◆ Set up counter-checking mechanisms, e.g. more than one officer to be involved in the negotiation process and in authorising acceptance of goods on delivery; conducting spot checks to detect irregularities, such as overbuying
- ◆ Keep records of quotations (verbal or written) for random verification by senior staff
- ◆ Record every receipt of goods and check whether there is any discrepancy with purchase orders
- ◆ Keep performance records to ensure suppliers consistently meet standards
- ◆ Record and, where appropriate, investigate complaints from suppliers
- ◆ Set up procedures to ensure confidentiality of documents to prevent leakage of tender prices and quotations

3. Abuse of Procurement Procedures

- ◆ Splitting orders to avoid exceeding the financial limits set by the company, or being discovered overbuying goods or services
- ◆ Acquiring goods from suppliers in the name of their employer company for use by their own private company
- ◆ Failing to observe normal procedures when making purchases and always carrying out urgent purchases to circumvent normal procedures
- ◆ Set procurement authorisation levels and corresponding financial limits for different types and amounts of goods
- ◆ Specify conditions for urgent or special purchases to minimise their being used as a pretext to circumvent normal procedures
- ◆ Cross check vouchers and records from the purchasing department and the accounts department

Inventory and Stock Control

Malpractices/Loopholes	Measures
<p>1. Receiving Goods</p> <ul style="list-style-type: none">◆ Covering up non-deliveries or accepting substandard goods◆ Overstating loss or damage caused during delivery to cover up pilferage	<ul style="list-style-type: none">◆ Appoint different officers to handle the duties of purchasing and accepting goods upon delivery◆ Random checks of the damage claims
<p>2. Writing-off Stock</p> <ul style="list-style-type: none">◆ Stealing goods by fraudulently writing-off stock	<ul style="list-style-type: none">◆ Keep a master record of all stocks◆ Use a standard form to record all requisitions and write-offs◆ Involve more than one officer in authorising write-offs◆ Keep a register of staff allowed access to warehouse keys◆ Review regularly, with spot checks, the quantity and quality of goods

Personnel and Staff Administration

Malpractices/Loopholes	Measures
<p>1. Staff Welfare Benefits</p> <ul style="list-style-type: none"> ◆ Accept advantages for the appointment of service agents (e.g. insurance and medical) to provide staff with welfare benefits 	<ul style="list-style-type: none"> ◆ Set clear criteria and procedures for use of outside services
<p>2. Daily Administration</p> <ul style="list-style-type: none"> ◆ Accepting bribes from colleagues for processing fraudulent claims such as fake overtime, etc. 	<ul style="list-style-type: none"> ◆ Claims for allowances should be recommended by the supervisor and approved by a senior officer ◆ Department heads should certify overtime records ◆ Conduct random checks to verify claims ◆ Encourage staff rotation to prevent collusion ◆ Examine in detail any significant increase in claims
<p>3. Recruitment, Promotions and Postings</p> <ul style="list-style-type: none"> ◆ Accepting bribes for favouritism in appointments, promotions or postings 	<ul style="list-style-type: none"> ◆ Set out specific recruitment criteria and set up a properly constituted recruitment board; the same should, if possible, apply to in-house promotions ◆ Keep separate the duties of screening and interviewing applicants ◆ Issue a policy statement to all staff regarding postings and promotions ◆ Require a second and independent officer to vet recommendations for promotions ◆ Interviewing staff leaving the company may shed light on irregularities in the company's operation

Accounting

Malpractices/Loopholes	Measures
<p>1. Making Payments and Collecting Debts</p> <ul style="list-style-type: none"> ◆ Accepting bribes for speeding up payments or delaying the collection of debts ◆ Arranging double payments ◆ Falsifying invoices or other documents to embezzle company funds ◆ Stealing cheques 	<ul style="list-style-type: none"> ◆ Set clear procedures for making payments and collecting debts ◆ Record date and make cross-reference of all invoices, vouchers and receipt records to ensure they match payments ◆ Stamp “paid” chops on all invoices and relevant documents after payment ◆ Constantly conduct independent and random checks of debtor records and bank statements to detect irregularities ◆ Securely lock all cheques away
<p>2. Granting Credit Facilities and Writing-off Bad Debts</p> <ul style="list-style-type: none"> ◆ Granting prolonged credit limits that are not supported by adequate justification ◆ Prematurely writing-off debts 	<ul style="list-style-type: none"> ◆ clear credit policies; escalate to higher authority in exceptional cases ◆ Involve more than one officer in authorising credit and writing-off bad debts ◆ Record reasons for writing-off bad debts ◆ Set clear procedures for issuing reminders on doubtful debts and keep management fully informed ◆ Conduct random checks
<p>3. Processing Claims</p> <ul style="list-style-type: none"> ◆ Conspiring to overstate claims ◆ Claiming reimbursements for fictitious expenses 	<ul style="list-style-type: none"> ◆ Set clear procedures for making claims for expenses; involve more than one officer in authorisation ◆ Require department heads to verify records of expenses ◆ Use company credit cards to purchase miscellaneous items

Information Security Management

Malpractices/Loopholes	Measures
<ul style="list-style-type: none">◆ Accept bribes in return for disclosure of information of value, such as tender prices, product design and client lists etc.	<ul style="list-style-type: none">◆ Classify the security levels of information (including electronic information)◆ Limit staff access to confidential information on a “need-to-know” basis and require their strict compliance◆ Require staff to undertake, by signing an agreement, not to disclose or misuse the company’s confidential information during his service and within a specific period of time after leaving the company◆ Remind all staff members of the serious consequences of disclosing or misusing confidential information◆ Place photocopiers or fax machines at prominent locations to minimize the risk of unauthorised photocopying of documents and shred any excess photocopies of confidential documents promptly◆ Establish clear guidelines on processing applications for access to information◆ Establish monitoring procedures to facilitate audit trail◆ Devise comprehensive security measures to safeguard electronic data. System security should be managed by qualified and experienced staff

Insisting on Written Contracts and the Written Listing of All Terms and Conditions

No matter in Hong Kong or the Mainland, businessmen should insist that all terms and conditions of a cross-boundary investment form part of a written contract in order to ensure the legal binding effects of the agreements and to safeguard their own interests.

Should it ever appear necessary to offer advantages in the course of business, investors should clarify whether such advantages are lawful and whether they are directly relevant to their investment projects. If the party accepting advantages is employed by a Hong Kong company, he must obtain his employer's prior approval. If the recipient is a representative of a unit in the Mainland, one should ensure that his acceptance of an advantage has been endorsed by that unit and that the advantage will accrue to the unit as a whole – not to any individual (or a number of unit employees). Please refer to page 13 regarding the definition of “offering bribes to a unit” in Article 391 of the *Criminal Law of the PRC*.

Investors should observe the following when drawing up a contract for investment projects in the Mainland:

- ◆ **Define any offer of advantages in the contract** — An investor may sometimes need to enhance his competitive edge by proposing lawful advantages to a trading partner, whether an enterprise or unit. When he sets up a factory, for example, he may offer to provide shuttle buses for workers commuting between workplace and living quarters. He may also arrange overseas study tours or training courses for staff of his Mainland trading partners. As these advantages are clearly intrinsic to the project, the investor should guard against any suspicion of intentional bribery by spelling them out clearly in the contract and limiting himself to offering only those advantages so specified.
- ◆ **Define how payments and commissions are to be made** — Should representatives of trading partners ask investors to pay commissions in a specific way, for example, depositing money into company accounts outside the territory, investors should state the method of payment clearly in all contracts and invoices, normally restricting this to traceable payments such as crossed cheques and telegraphic remittances. Cash payments should never be made whether directly or via a third party.
- ◆ **Report irregularities in contractual negotiations** — If irregularities are encountered during contractual negotiations, e.g. if a representative of the counterpart solicits personal advantages in return for a business deal, the investor should immediately report the case to a local anti-corruption agency.

Chapter Three *Training Materials on Corruption Prevention*

A comprehensive staff training programme is most essential to build up an integrity corporate culture. Managers should arrange regular training for staff to enhance their awareness on anti-graft laws, the ways to prevent corruption and the importance of work ethics.

Corruption prevention training may take different forms. Managers may arrange seminars or make use of various promotional materials, such as display of posters and showing of training videos at public places (e.g. dining or rest areas), to make staff fully aware of the importance of probity.

(1) Seminars

Managers are encouraged to arrange seminars on corruption prevention for staff, and use the computer file provided with this information kit for presentation.

Q&As on Integrity Management	
Questions	Points for discussion
What are the benefits of ethical management?	<ul style="list-style-type: none">◆ Prevention is better than cure. The first step to corruption prevention is to ensure that all staff perform their duties with high ethical standards.◆ Companies practicing ethical management will provide a yardstick for staff members to follow when they encounter ethical dilemmas at work.◆ Ethical management can enhance the reputation of a company and also bring along sustainable competitiveness and long-term profitability.

<p>What are “corruption” and “bribery”?</p>	<ul style="list-style-type: none"> ◆ In Hong Kong, “corruption” is a general term used to describe the act of soliciting and accepting bribes. In legal terms, accepting a bribe means that an agent (normally the employee) accepts an advantage in relations to his official duties without the consent of his principal (normally the employer). ◆ In the Mainland, “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; whereas “bribery” broadly refers to the offering and acceptance of bribes. Accepting a bribe is the act of taking advantage of one’s office to solicit or accept money or property from another person illegally so as to seek benefits for such a person.
<p>What is an “advantage”?</p>	<ul style="list-style-type: none"> ◆ In Hong Kong, “advantage” generally refers to money, gifts, loans, rewards, commissions, employment, contracts, service, favours and discharge of liability whether in whole or in part, but excludes entertainment. ◆ In the Mainland, “money or property” refers to money and materials, e.g. currency, gold, silver and other materials that can be measured in terms of value and amount; whereas “benefits or gain” refers to property and various labour services that cannot be measured in terms of value and amount, e.g. job redeployment, allocation of population register, arrangement of employment, etc.
<p>What is to be done when an advantage is offered by suppliers?</p>	<ul style="list-style-type: none"> ◆ It is an offence for an employee to accept an advantage without obtaining prior permission from his employer as a reward for his doing any act in relation to his official duties. ◆ If an employee accepts an advantage in relation to his official duties, he should declare the acceptance and seek approval from his company as soon as possible as stipulated in the staff code of conduct.

	<ul style="list-style-type: none"> ◆ One should decline an offer of an advantage if the acceptance could affect their objectivity in conducting the company's business, or induce them to act against the interest of the company, or lead to allegations of impropriety.
Should sub-contractors' invitations to dinner be accepted?	<ul style="list-style-type: none"> ◆ Although entertainment is an acceptable form of business and social behaviour, staff members should turn down offers of lavish or frequent entertainment in order to avoid embarrassment or loss of objectivity when conducting company business.
Should a company offer an advantage to employees of its client companies in order to secure business?	<ul style="list-style-type: none"> ◆ It is an offence for an employee to solicit or accept an advantage, without the prior consent of his principal, from another party in return for the latter's reciprocal act. Any person who offers an advantage to an employee in this circumstance is also guilty of an offence. ◆ To avoid infringing the law inadvertently, one should pay attention to the relevant rules or regulations specific to the place of doing business before offering an advantage, no matter whether it is in Hong Kong or the Mainland.
What is "conflict of interest"?	<ul style="list-style-type: none"> ◆ A conflict of interest is a situation in which an employee's personal interests interfere with the proper discharge of his or her official duties. ◆ Private interest includes both the financial and personal interests of the employee himself, his family or other relations, friends, any association he has joined or any person with whom he has frequent contact or to whom he owes a favour or is obligated in any way.
How should conflict of interest situations be handled?	<ul style="list-style-type: none"> ◆ "Avoid" and "declare" are the fundamental of handling conflict of interest situations. ◆ Staff members should avoid situations that may lead to an actual or perceived conflict of interest situation which would involve criticism of staff integrity or damage to the company's interests and reputation.

	<ul style="list-style-type: none"> ◆ If a conflict of interest situation is unavoidable, the employee concerned should declare the situation to the company to demonstrate his impartiality.
What is a code of conduct?	<ul style="list-style-type: none"> ◆ A code of conduct is a written statement of the standard of behaviour expected of the management and employees of the company.
What should be included in a code of conduct?	<ul style="list-style-type: none"> ◆ A code of conduct usually covers the following areas: <ul style="list-style-type: none"> ● Prohibit illegal offer or acceptance of advantages ● Avoid offering and acceptance of lavish entertainment ● Remind staff of the ways to handle conflicts of interest ● Prevent the misuse of company proprietary information or property ● Seek prior approval from company for outside employment ● Proper use of information and communication systems ● Specify enquiry or complaint channels
How can system control in the company be strengthened?	<ul style="list-style-type: none"> ◆ The company can assess the effectiveness of its internal system of controls according to the following ten basic principles: <ul style="list-style-type: none"> ● Comprehensible company policies ● Clear work procedures ● Clear job responsibilities ● Appropriate segregation of duties and functions ● Adequate safeguards against tampering with sensitive information ● Strict implementation of monitoring measures ● Independent and active audit checks ● Channels for complaints and views ● Continuous review on the monitoring systems ● Zero tolerance of malpractice and illegal behaviour

<p>What are the points to note in managing staff integrity?</p>	<ul style="list-style-type: none"> ◆ Unethical behaviour or malpractice may lead to corruption. Managers should be sensitive to the behaviour and working attitude of staff such as: <ul style="list-style-type: none"> ● their relations with subordinates, clients or suppliers ● their attitude towards entertainment or gifts offered by suppliers ● their way of handling their own financial problems ● their lifestyles or spending patterns, e.g. indebtedness arising from heavy gambling or squandering
<p>How should ethical dilemmas be handled?</p>	<ul style="list-style-type: none"> ◆ Staff encountering ethical dilemmas may consider the following points when making decision: <ul style="list-style-type: none"> ● Does it violate the law? ● Is the decision in breach of company's code of conduct?
<p>Summary By words and by deeds</p> <ul style="list-style-type: none"> ◆ Dare Not Bribe ◆ Cannot Bribe ◆ Will Not Bribe 	<ul style="list-style-type: none"> ◆ Staff of all levels should act as role models practicing what they advocate and take decisive measures to achieve the following: <ul style="list-style-type: none"> ● “Dare Not Bribe”: Enforce the company's code of conduct effectively and report corruption promptly ● “Cannot Bribe”: Strengthen and implement internal system of controls to plug possible corruption loopholes ● “Will Not Bribe”: Establish a clean corporate culture and enhance staff integrity and their sense of belonging

(2) “Unusual Conflicts” - Training Package for Business Organisations

The scenarios depicted in this self-learning package could enhance managers’ awareness in the effective handling of conflict of interest situations. This package comprises a DVD and an information booklet. Managers may refer to the analyses in the information booklet after viewing the DVD.



(3) Publicity Posters (Chinese version only)

To strengthen publicity, the company is encouraged to put up posters at prominent places to remind staff of the need to strictly follow company’s policy on anti-corruption.



Extracts of the Prevention of Bribery Ordinance (Laws of Hong Kong Cap. 201)

Section 9 Corrupt transaction with agents

(1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

(a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

shall be guilty of an offence.

(3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document-

(a) in respect of which the principal is interested; and

(b) which contains any statement which is false or erroneous or defective in any material particular; and

(c) which to his knowledge is intended to mislead the principal,

shall be guilty of an offence.

(4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).

(5) For the purposes of subsection (4) permission shall-

(a) be given before the advantage is offered, solicited or accepted; or

(b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 11 Giver and acceptor of bribe to be guilty notwithstanding that purpose not carried out, etc.

(1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do or having done or forborne to do, any act referred to in that section, it shall be no defence that -

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the advantage without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Section 19 **Custom not to be a defence**

In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Section 2 **Interpretation**

‘Advantage’ means:

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap 554), particulars of which are included in an election return in accordance with that Ordinance.

‘Entertainment’ means:

The provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions.

Extracts of Corruption and Bribery Offences from the *Criminal Law of the People's Republic of China*

Important Points to Note

The information below is only a summary of the provisions of the *Criminal Law of the PRC* relating to corruption and bribery offences. One should consult the original text of the relevant laws and seek legal advice in case of doubt.

It is important to note that many of the laws and statutes of the Mainland have no equivalent official English translation. We have therefore provided a transliteration of relevant laws where necessary, but readers are advised to refer to the original Chinese version for further clarification.

1. Embezzlement by State functionaries

Article 382 Any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement.

Any person authorised by State organs, State-owned companies, enterprises, institutions or people's organisations to administer and manage State-owned property who, by taking advantage of his office, appropriates, steals, swindles the said property or by other means illegally take it into his own possession shall be regarded as being guilty of embezzlement.

Whoever conspires with the person mentioned in the preceding two paragraphs to engage in embezzlement shall be regarded as joint offenders in the crime and punished as such.

Article 383 Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:

- (1) An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.

- (2) An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property.
- (3) An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If an individual who embezzles not less than 5,000 yuan but less than 10,000 yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.
- (4) An individual who embezzles less than 5,000 yuan; if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.

Whoever repeatedly commits the crime of embezzlement and goes unpunished shall be punished on the basis of the cumulative amount of money he has embezzled.

Article 183(2) If an employee of a State-owned insurance company or any person who is assigned by a State-owned insurance company to an insurance company that is not owned by the State to engage in public service commits the act prescribed in the preceding paragraph (i.e. taking advantage of his position, deliberately fabricates the occurrence of an insured accident and falsely settles a fictitious claim, thereby swindling the insured amount of money out of the company and taking it into his own possession), he shall be convicted and punished according to the provisions in Article 382 and 383 of this Law.

Article 271(2) If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or if a person who is assigned by a State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits the act mentioned in the preceding paragraph (i.e. taking advantage of his position, unlawfully takes possession of the money or property of his own unit), he shall be convicted and punished in accordance with the provisions of Article 382 or 383 of this Law.

Article 394 Any State functionary who, in his activities of domestic public service or in his contacts with foreigners, accepts gifts and does not hand them over to the State as is required by State regulations, if the amount involved is relatively large, shall be convicted and punished in accordance with the provisions of Articles 382 and 383 of the Law.

2. Embezzlement through dereliction of duty by employees of enterprises

Article 271(1) Any employee of a company, enterprise or any other unit who, taking advantage of his position, unlawfully takes possession of the money or property of his own unit, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property.

3. Illicit division of State-owned assets

Article 396(1) Where a State organ, State-owned company, enterprise, institution or people's organisation, in violation of State regulations and in the name of the unit, divides up State-owned assets in secret among all the individuals of the unit, if the amount involved is relatively large, the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount involved is huge, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

4. Misappropriation of public funds

Article 384 Any State functionary who, by taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds for profit-making activities, or misappropriates a relatively large amount of public funds and fails to return it after the lapse of three months, shall be guilty of misappropriation of public funds and shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years. Whoever misappropriates a huge amount of public funds and fails to return it shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment. Whoever misappropriates for his own use funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief shall be given a heavier punishment.

Article 185(2) If any employee of a State-owned commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other State-owned financial institution and any person who is assigned by a State-owned commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other State-owned financial institution to the mentioned institutions in the preceding paragraph (i.e. a commercial bank, stock exchange, futures exchange, securities company, futures brokering company, insurance company or any other financial institution) that are not owned by the State to engage in public service commits the act mentioned in the preceding paragraph (i.e. taking advantage of his position, misappropriates money belonging to the said units or any client), he shall be convicted and punished according to the provisions in Article 384 of this Law.

Article 272(2) If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or any person who is assigned by a State-owned company, enterprise, or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits any act mentioned in the preceding paragraph (i.e. taking advantage of his position, misappropriates the funds of his own unit for personal use or for loaning them to another person), he shall be convicted and punished in accordance with the provisions of Article 384 of this Law.

5. Misappropriation of a unit's funds

Article 272(1) Any employee of a company, enterprise or any other unit who, taking advantage of his position, misappropriates the funds of his own unit for personal use or for loaning them to another person, if the amount is relatively large and the funds are not repaid at the expiration of three months, or if the funds are repaid before the expiration of three months but the amount involved is relatively large and the funds are used for profit-making activities or for illegal activities, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, or if it is relatively large but is not returned, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

6. Acceptance of bribes by State functionaries

Article 385 Any State functionary who, by taking advantage of his position, extorts money or property from another person, or illegally accepts another person's money or property in return for securing benefits for the person shall be guilty of acceptance of bribes. Any State functionary who, in economic activities, violates State regulations by accepting rebates or service charges of various descriptions and taking them into his own possession shall be regarded as guilty of acceptance of bribes and punished for it.

Article 163(3) Any employee of a State-owned company or enterprise who, being engaged in public service or who is assigned by a State-owned company or enterprise to engage in public service in a company or enterprise that is not owned by the State, commits any of the acts mentioned in the preceding two paragraphs (i.e. taking advantage of his position, demands money or property from other person or illegally accepts another person's money or property in return for the benefits he seeks for such person; or violating State regulations in economic activities, accepts rebates or service charges of various descriptions and takes them into his own possession), shall be convicted and punished according to the provisions in Articles 385 and 386 of this Law.

Article 184(2) Any employee of a State-owned banking institution or any person assigned by a State-owned banking institution to a banking institution that is not owned by the State to engage in public service who commits the act mentioned in the preceding paragraph (i.e. in financial activities demands money or property from another person or illegally accepts money or property from another person in return for the benefits secured for such person or, in violation of State regulations, accepts rebates or service charges of various descriptions and takes them into his own possession), shall be convicted and punished according to the provisions in Articles 385 and 386 of this Law.

Article 388 Any State functionary who, by taking advantage of his own functions and powers or position, secures illegitimate benefits for an entrusting person through another State functionary's performance of his duties and extracts from the entrusting person or accepts the entrusting person's money or property shall be regarded as guilty of acceptance of bribes and punished for it.

7. Acceptance of bribes by a unit

Article 387 Where a State organ, State-owned company, enterprise, institution or people's organisation extorts from another person or illegally accepts another person's money or property in return for securing benefits for the person, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Any of the units mentioned in the preceding paragraph that, in economic activities, secretly accepts off-the-book rebates or service charges of various descriptions shall be regarded as guilty of acceptance of bribes and punished in accordance with the provisions of the preceding paragraph.

8. Members of intermediary organisations deliberately providing false testifying papers

Article 229(2) Any member mentioned in the preceding paragraph (i.e. a member of an intermediary organisation, whose duty is to make capital assessment, verification or validation, to do accounting or auditing, or to provide legal service, etc.) , who commits the crime prescribed in the preceding paragraph (i.e. deliberately provides false testifying papers), demands money or property from another or illegally accepts money or property from another shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

9. Offering bribes to State functionaries

Article 389 Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State functionary shall be guilty of offering bribes.

Whoever, in economic activities, violates State regulations by giving a relatively large amount of money or property to a State functionary or by giving him rebates or service charges of various description shall be regarded as guilty of offering bribes and punished for it.

Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefits shall not be regarded as offering bribes.

10. Unit offering bribes

Article 393 Where a unit offers bribes for the purpose of securing illegitimate benefits, or in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with the provisions of Articles 389 and 390 of this Law.

11. Offering bribes to a unit

Article 391 Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State-owned company, enterprise, institution or people's organisation or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

12. Introducing a bribe

Article 392 Whoever introduces a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Any person who introduces a bribe but voluntarily confesses the act before he is investigated for criminal responsibility may be given a mitigated punishment or exempted from punishment.

13. Acceptance of bribes by employees of companies and enterprises

Article 163(1) and (2) Where an employee of a company or enterprise who, taking advantage of his position, demands money or property from other person or illegally accepts another person's money or property in return for the benefits he seeks for such person, if the amount involved is relatively large, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property. Any employee of a company or enterprise who, violating State regulations in economic activities, accepts rebates or service charges of various descriptions and takes them into his own possession shall be punished in accordance with the provisions in the preceding paragraph.

14. Offering bribes to employees of companies and enterprises

Article 164 Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company or enterprise, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

15. Failing to explain significant excess of property or expenditure over lawful income

Article 395(1) Any State functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall be recovered.

16. Concealing savings outside the territory of China

Article 395(2) Any State functionary shall, in accordance with State regulations, declare to the State his bank savings outside the territory of China. Whoever has a relatively large amount of such savings and does not declare them to the State shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention, if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or the competent authorities at a higher level.

Company Code of Conduct (Sample)

The Company believes that honesty, integrity and fair play are important company assets in business. It is therefore important for all directors and employees to ensure that the Company's reputation is not tarnished by dishonesty, disloyalty or corruption. This Code of Conduct sets out the standards of behaviour expected from the Company and the guidelines on how to handle different situations in business dealings. Contents of this Code of Conduct are applicable both inside and outside Hong Kong.

LEGAL REQUIREMENTS

2. Under Section 9(1) of the Prevention of Bribery Ordinance, any director or staff member soliciting or accepting an advantage in connection with his work without the permission of the employer commits an offence. The term "advantage", as defined in the Ordinance, includes money, gift, loan, fee, reward, employment, contract, service and favour. The person who offers the advantage may also commit an offence under Section 9(2) of the Ordinance.

3. Any director or staff member who, with intent to deceive his employer, falsifies documents or furnishes false accounting records may be guilty of an offence under Section 9(3) of the Ordinance. The full text of Section 9 of the Ordinance and a definition of "advantage" under Section 2 are given in Appendix 1.

SOLICITING OR ACCEPTING ADVANTAGES

4. It is the company policy that no director or staff member may solicit or accept any advantage from any persons having business dealings with the Company (e.g. clients, suppliers, contractors). However, staff are allowed to accept (but not solicit) the following gifts offered voluntarily:

(a) advertising or promotional gifts of a nominal value; or

(b) gifts given on festive or special occasions subject to a maximum limit of \$ _____ in value.

5. Directors and staff members should decline an offer of a gift if acceptance of it could affect their objectivity in conducting the Company's business, or induce them to act against the interest of the Company, or lead to allegations of impropriety. If a director or staff member wishes to accept a gift not covered in paragraph 4, he should seek permission in writing (via Form A) from (name and/or post of a senior staff).

OFFERING ADVANTAGES

6. Under no circumstances may a director or a staff member offer an advantage to any person or company for the purpose of influencing such person or company in any business dealings. Any advantage given in the conduct of the Company's business should be in accordance with the Company's prevailing policies on such matters and prior written approval of the Company should be obtained. It is also illegal to offer an advantage to a public servant to influence any contract, tender or auction in relation to the public body concerned.

OBSERVING LOCAL LAWS WHEN WORKING IN ANOTHER JURISDICTION

7. Paragraphs 4-6 above apply whether the solicitation, acceptance and offering of advantages are within or outside the boundary of Hong Kong. When doing business outside Hong Kong, directors and employees should also comply with the legal provisions of that particular country or region. Any director or employee who conducts business on behalf of the Company in another jurisdiction must abide by the laws of that jurisdiction, including its laws and regulations on anti-corruption, and all other laws and regulations pertaining to ethical business conduct.

ENTERTAINMENT

8. As defined in Section 2 of the Prevention of Bribery Ordinance, "entertainment" refers to food or drink provided for immediate consumption on the occasion, and of any other entertainment provided at the same time. Although entertainment is an acceptable form of business and social behaviour, staff must not accept lavish or frequent entertainment from persons with whom the Company has business dealings (e.g. suppliers or contractors) to avoid placing themselves in a position of obligation to the offerer.

9. Directors and staff members should be particularly vigilant to entertainment offered to them outside Hong Kong, and declare acceptance as soon as reasonably practicable after coming back to Hong Kong. Any free trips or travelling expenses are not included in the definition of "entertainment" but are considered as "advantages" under the Ordinance. Without prior consent of the company, acceptance of these advantages is strictly prohibited.

CONFLICTS OF INTEREST

10. A conflict of interest situation arises when the private interest of a director or a staff member competes or conflicts with the interest of the Company. Private interest includes both the financial and personal interests of staff members and those of their connections. Connections include family members, relatives, and close personal friends.

11. Directors and staff members should avoid situations which may lead to an actual or perceived conflict of interest situation, and should make a declaration in writing (via Form B) to (name and/or post of a senior staff) when such a situation arises. Failure to do so may give rise to criticism of favouritism, abuse of authority or even allegations of corruption.

12. Some common examples of conflicts of interest include:

- (a) A staff member involved in the procurement process who is closely related to or has a beneficial interest in a company which is being considered by the Company in the selection of a supplier or service provider; or
- (b) one of the candidates under consideration in a recruitment or promotion exercise is a family member, a relative or a close personal friend of the staff member responsible for the recruitment or promotion.

GAMBLING

13. Directors and staff members are advised not to engage in frequent and excessive gambling of any kind, including games of mahjong, with persons having business dealings with the Company. In social games of chance with clients, suppliers or business associates, they must exercise judgment and withdraw from any high stake games.

LOANS

14. Directors and staff members or your immediate family members should not grant or guarantee a loan to, or accept a loan from or through the assistance of, any individual or organisation having business dealings with the Company. There is, however, no restriction on normal bank lending.

OUTSIDE EMPLOYMENT

15. If directors and staff members wish to take concurrent employment, either on a regular or consulting basis, they must seek the prior written approval of (name and/or rank of a nominated officer) before accepting the employment.

HANDLING CONFIDENTIAL INFORMATION / COMPANY PROPERTY

16. All directors and staff members are prohibited from disclosing any information classified by the company to anybody without authorisation. Those who have access to or are in control of such information should at all times ensure its security and prevent any abuse or misuse of the information. Examples of misuse include disclosure of information in return for monetary rewards, or use of information for personal gains.

17. All directors and staff members are strictly prohibited from appropriating Company property for personal use or for resale. All company property, including corporate mainframes, minicomputer systems, data networks, software packages or equipment shall be used only for conducting the Company's business or for purposes authorised by the management. The Company may, without notice or payment in lieu, dismiss the offending staff member.

18. No director or staff member of the Company should alter equipment, facilities or install software without specific authorisation or develop his own applications without management approval. Security precautions should be exercised when using personal computers, and personal computer software should be obtained only from sources identified in the Company's relevant policy. All computer software should be used in strict compliance with the Copyright Ordinance.

USE OF INFORMATION AND COMMUNICATION SYSTEMS

19. Directors and staff members are not allowed to access any unauthorised websites or to download, e-mail, store or print any materials that may be considered inappropriate, offensive or disrespectful to others. Besides, the e-mail system of the Company is to be used primarily for business purposes. The Company reserves the right to monitor all e-mail messages and internet usage.

20. Directors and staff members are responsible for protecting and keeping confidential their own password and all other network access information and e-mail passwords. Any attempt by an unauthorised person to obtain sensitive information or to gain access to secure corporate locations, computers and internal information systems should be reported at once to the management or security department.

COMPLIANCE WITH THE CODE

21. It is the duty of every director and staff member to understand and comply with the Code. Managers should also ensure that their subordinates understand well and comply with the standards and requirements stated in the Code.

22. Anyone who is in breach of the Code will be subject to disciplinary action, including termination of employment. In cases of suspected corruption or other criminal offences, a report will be made to the ICAC or the appropriate authorities.

23. Channels of complaint are open to all shareholders and potential shareholders, customers and consumers, suppliers and contractors and all directors and employees of the Company. Any enquiries about the Code or complaints on possible breaches of this Code should be channelled to (name and/or rank of a nominated officer) for advice and action. The Company will consider all complaints impartially and efficiently. All information received will be kept confidential.

Relations with Suppliers and Contractors

Fair and open competition

The Company promotes fair and open competition and aims to develop and secure long-term relationships with suppliers and contractors based on mutual trust.

Meeting the public interest and accountability standards

The procurement of supplies or services should be conducted in a manner consistent with the highest ethical standards which assure a quality end product as well as the continued confidence of customers, suppliers and the public.

Procurement and tendering procedures

The contracting of services and the purchase of goods should be based solely upon price, quality and need.

Procurement and tendering actions should be conducted according to the following principles:

- ◆ The impartial selection of capable and responsible suppliers and contractors;
- ◆ The maximum use of competition;
- ◆ The selection of appropriate contract types according to need;
- ◆ Compliance with laws, relevant regulations and contractual obligations; and
- ◆ The adoption of an effective monitoring system and management controls to detect and prevent bribery, fraud or other malpractice in the procurement and tendering process.

Procurement and tendering processes implemented according to this policy will specifically include procedures and practices designed to detect and prevent fraudulent activity.

Bribery and corrupt practices

The Company prohibits bribery and corrupt practices. Directors and employees should follow company policy on the acceptance of advantages. Under no circumstances are they permitted to use insider information for their own private gain. Those involved in the selection of and purchase from suppliers and contractors should avoid any misuse of authority or engage in situations which could affect or appear to affect their ability to make free and independent decisions regarding the purchase and procurement of goods and services.

Payment procedures

The Company undertakes to pay suppliers and contractors on time and according to the agreed terms of trade.

Responsibilities to Shareholders and the Financial Community

Attractive returns in terms of increased earnings and long-term growth

The Company endeavours to achieve growth in earnings for shareholders over the long term. Shareholders and the financial community shall benefit from the productive, efficient and competitive operations of the Company.

Disclosure of information

The Company respects the right of shareholders and potential shareholders to obtain all information necessary for evaluating how their investments are being managed.

True and accurate information regarding the management of the Company, its financial position and its general plans shall be available to anyone with an interest in the Company.

Keeping of proper books and records

It is the policy of the Company to maintain complete and accurate records and accounts. All accounting records must be kept in compliance with all applicable laws.

The books and records of the Company should in reasonable and accurate detail, reflect all the transactions entered into by the Company and the Company's assets and liabilities. Detailed guidelines as to accounting controls and financial reporting are available to the directors and employees of the Company.

No false, incorrect or misleading statements or entries should be made in the Company's books, accounts, electronic records, documents or financial statements. Any director or employee who has information regarding any hidden funds or false entries in the Company's records should report the matter promptly to the senior management of the Company.

Insider trading

The Company will not tolerate the use of insider information by directors or employees to secure a personal advantage at the expense of the Company or of those not in the Company. The use for personal gain of insider information that has not been made public is illegal, unethical and strictly prohibited.

Employees of the Company should not disclose any insider information to other employees of the Company who do not need to know this information for operational purposes or to anyone outside of the Company. Employees should not circumvent these guidelines by acting through another party or by giving insider information to others for their use even if the Company will derive a financial benefit from this.

Relations with Customers and Consumers

Service to customers

The Company seeks to provide an efficient and courteous customer service in order to maintain customer satisfaction and co-operation with the Company. The Company shall keep its customers informed of the exact nature of the Company's capabilities and shall avoid making any misrepresentation, exaggeration or overstatement.

Commitment to offering quality and fair-value products

The Company shall always put customers first by providing them with good quality products at prices which represent good value for money.

Safety and fitness for use of goods

It is the policy of the Company to offer to its customers products that meet high standards of safety, quality and reliability.

Prompt product recall and related practices

The Company will bear full responsibility for all products which do not meet the required standards of safety, quality and reliability. In cases where product recalls are required, they shall be implemented promptly and expediently.

Product policies

The Company accepts its social responsibility to improve its products in order to promote a higher quality of life.

Pricing policies

The Company believes in the economic system of the free market, in which price is determined by supply and demand. The Company also seeks to provide customers with the highest quality products at fair prices which allow the Company a reasonable profit in relation to the value provided.

Customer information

All employees of the Company are committed to protecting the personal information of customers in strict compliance with the Personal Data (Privacy) Ordinance. The personal information of customers should be used in the proper context only for authorised business purposes and shall be accessible only to those employees who have a legitimate need to know.

(Name of Company)

Date :

REPORT ON GIFTS RECEIVED

Part A - Declaration (To be completed by Receiving Staff)

To : (Approving Authority)

Description of Offeror:

Name & title of offeror: _____

Company: _____

Relationship (business / personal): _____

Occasion on which the gift was / is to be received: _____

Description & (assessed) value of the gift: _____

Suggested Method of Disposal:

Remark:

Retained by the receiving staff _____

Retained for display / as a souvenir in the office _____

Share among the office _____

Reserve as lucky draw prize at staff function _____

Donate to a charitable organisation _____

Return to offeror _____

Others (please specify): _____

Date

Name of Receiving Staff
Title / Department

Part B - Acknowledgement (To be completed by Approving Authority)

To: (Receiving Staff)

The recommended method of disposal is *approved / not approved.

The gift(s) concerned should be disposed of by way of :

Date

Name of Approving Authority
Title / Department

*Delete as appropriate

DECLARATION OF CONFLICT OF INTEREST

Part A - Declaration (To be completed by Declaring Staff)

To : **(Approving Authority)**

I would like to report the following existing/potential* conflict of interest situation arising during the discharge of my official duties: -

Persons/companies with whom/which I have official dealings and/or personal interests

Brief description of my duties which involved the persons/companies mentioned above

Date

Name of Declaring Staff
Title / Department

Part B - Acknowledgement (To be completed by Approving Authority)

To : **(Declaring Staff)**

The information contained in your declaration form of _____ is noted. It has been decided that :-
(Date)

- You should refrain from performing or getting involved in performing the work, as described in Part A, which may give rise to a conflict.
- You may continue to handle the work as described in Part A, provided that there is no change in the information declared above.
- Others (please specify) :

Date

Name of Approving Authority
Title / Department

**Delete as appropriate*

Notification to Business Associates and/or Suppliers (Sample)

We wish to advise you of our company policy in regard to staff members soliciting or receiving any gift in connection with business dealings on behalf of the company.

It is our policy not to permit our employees to ask for any advantage in the form of gifts, in money or in kind, in their business dealings on behalf of the company. Acceptance of advantages without the prior and specific approval of (name and/or rank of a nominated officer of the Company) is also forbidden. We believe in fair and honest business and feel that gifts between business associates or trading partners are unnecessary and may even be detrimental to the development of a cordial and mutually beneficial business relationship.

All our staff are aware of this policy and they know that any breach is liable to result in disciplinary action. In such circumstances, we would also consider reporting the matter to law enforcement agencies.

We should therefore be grateful if you and your associates would report to (name and/or rank of a nominated officer of the Company) any attempt by any member of our staff to solicit any advantage from your company.

*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).

