



CONSTRUCTION
INDUSTRY COUNCIL
建造業議會



PREVENTION OF BRIBERY



Procurement Alert
001/20

Prevention of Bribery

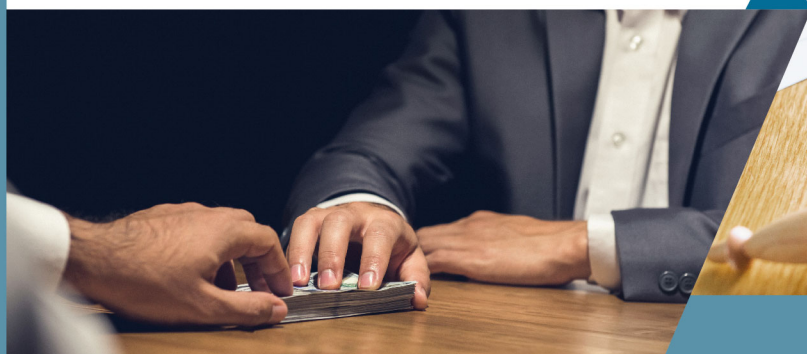
A former foreman and a worker of a construction company were each sentenced to three months' imprisonment in August last year for soliciting and accepting illegal rebates from five electricians for securing their employment at a construction site, contrary to Section 9(1)(a) of the Prevention of Bribery Ordinance (POBO, Cap. 201)¹.

In a construction related corruption case reported by the Independent Commission Against Corruption (ICAC) recently, the accused misrepresented to construction workers that some senior officers would accept rebates for falsifying the work experience of job-seekers, whereby defrauded the company and accepted advantages from fellow workers. The above acts constituted bribery as they were performed without the employer's consent. Not only had the company suffered financial losses, but also tarnished the reputation of the construction industry.

Furthermore, typical corruption scenarios that occur in outsourced and subcontracted works include:

- solicitation of referral fee or "tea money" from job-seekers or workers without the contractor / subcontractor's consent, so as to offer interview or job opportunities, arrangements for contract renewal or allocation of work;
- falsification of attendance records for colluded workers, thereby assisting them in earning extra wages;
- acceptance of advantages by site supervisory personnel to cover up / accept substandard or incomplete works of offeror contractors / subcontractors;

¹ Under Section 9(1) of POBO, an agent (e.g. employee) who, without the permission of his principal (e.g. employer), solicits or accepts an advantage as a reward or inducement for doing or forbearing to do anything, or favouring or disfavouring anyone, in relation to his principal's affairs, commits an offence. The person offering the advantage under such circumstances may also commit an offence under Section 9(2) of the Ordinance.



- acceptance of advantages by engineering personnel in return for early processing and release of payments to offeror contractors / subcontractors;
- ordering unnecessary variation orders by engineering personnel and over-valuing the orders to favour colluded contractors / subcontractors;
- approving unreasonable and inflated extension of time and compensation claims for colluded contractors / subcontractors; and
- issuing completion certificates to colluded contractors/subcontractors when the works concerned have not been completed.

A healthy and fair market is the cornerstone of Hong Kong's social prosperity and stability. Construction industry stakeholders should uphold a high standard of integrity and probity, and drive enhancement in quality by preventing corruption in construction works. In order to prevent bribery, employers and contractors should raise their anti-corruption awareness and adopt the following measures:

- Including a Probity Clause in the contracts/subcontracts to prohibit the contractors/subcontractors from offering, soliciting or accepting advantages. An example of such clause is as follows:

➤ Prevention of Bribery

The Contractor (Subcontractor) shall prohibit its employees, agents, and subcontractors who are involved in this Contract (Subcontract) from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) when conducting business in connection with this Contract (Subcontract).

- Issuing a code of conduct / guideline to prohibit internal staff from soliciting or accepting advantages from contractors, subcontractors, suppliers or workers, or offering advantages to other persons in relation to their work.
- Issuing a code of conduct / guideline to prohibit site personnel from accepting any frequent or lavish entertainment from, or engaging in any inappropriate social activities with contractors or subcontractors.
- Requiring staff to avoid and declare conflict of interest and establishing a mechanism for the declaration and management of conflict of interest.
- As stipulated in Section 19 of POBO, the customs of the industry shall not be held as a defence. If there is a suspicion of a contractor, subcontractor or its employee offering bribes, please report to the ICAC immediately.



➤ Report Corruption Channels

In Person : ICAC Report Centre (24-hour service)
G/F, 303 Java Road, North Point, Hong Kong

By Phone : 25 266 366 (24-hour hotline)

By Mail : The ICAC, G.P.O. Box 1000, Hong Kong

The information provided in this alert is for general reference only and should not be considered as legal advice. Please seek professional advice or consult the ICAC in respect of the detailed requirements in force and assistance in implementing corruption prevention measures.



■ Corruption Prevention Advisory Service

The Corruption Prevention Advisory Service (CPAS) of the Corruption Prevention Department, ICAC provides free, confidential and tailor-made corruption prevention services to private companies upon request.

For further information, please contact the CPAS at:

Hotline : 2526 6363

Fax : 2522 0505

Email : cpas@cpd.icac.org.hk

Website : <http://cpas.icac.hk>



■ Reference

- ICAC – Press Release “Duo jailed for bribery over employment of electrical workers”
https://www.icac.org.hk/en/press/index_id_770.html
- ICAC – “Best Practice Checklist” Letting and Administration of Works Contracts
https://cpas.icac.hk/UPLoadImages/InfoFile/cate_43/2016/d44f09f9-b49d-4c6d-aea4-04f1c1b02c3a.pdf

Disclaimer

Whilst reasonable efforts have been made to ensure the accuracy of the information contained in this publication, the CIC nevertheless would encourage readers to seek appropriate independent advice from their professional advisers where possible. Readers should not treat or rely on this publication as a substitute for such professional advice for taking any relevant actions.
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