

Corporate Corruption:
Prevention in
Practice

企業防貪 實踐要訣

Corruption encroaches upon a company's profits, damages the reputation, and drives customers, investors and talents away. Although Hong Kong has ranked as the world's freest economy in the Heritage Foundation's Index of Economic Freedom for 22 straight years, and as the least corrupt territory in Asia in the 2014 TRACE Matrix (a global index to assess business bribery risk), the possibility of corruption in a corporate setting should never be underestimated.

In 2015, the Independent Commission Against Corruption (ICAC), the city's law enforcement agency dedicated to fighting and preventing corruption, received around 1,800 corruption complaints related to the private sector. A portion of them was related to listed companies involving a significant amount of money, which might have caused immense loss to investors and stakeholders. It is therefore imperative for company directors and senior executives to do all they can to prevent the risks of corruption and fraud.

Corruption in Listed Companies

In Hong Kong, the primary piece of anti-corruption legislation is the Prevention of Bribery Ordinance, which governs bribery acts in both the public and private sectors. One of its objectives is to proscribe acts breaching agents' fiduciary duties to their principals. Among other things, the Ordinance prohibits:

- an agent (e.g. a director or an employee of a company) from soliciting or accepting any advantage without the permission of his principal (e.g. the company he works or act for), or;
- any person from offering any advantage to an agent without the permission of the latter's principal.

For the agent's doing or forbearing to do any act in relation to his principal's affairs or business.

It is also an offence for any agent, with intent to deceive his principal, to use any false, erroneous or defective receipt, account or other document in respect of which the principal is interested.

Broadly speaking, an advantage is defined in the Ordinance as anything of value except entertainment, the latter of which refers to the provision of food and drink for immediate consumption and any other entertainment connected with such provision. The maximum penalty for these offences is a fine of HK\$500,000 and an imprisonment of seven years¹.

While corruption may appear in any functional area or level of operation in a business, an ICAC case concluded by the court recently illustrates some common features of corrupt practices in listed companies. In this case, an entrepreneur, a certified public accountant, and an executive director of a listed company were convicted of bribery and fraud in relation to the acquisition of a mainland plantation project by the listed company.

¹ Further information about the anti-corruption laws in Hong Kong can be found in the ICAC website: http://www.icac.org.hk/en/law_enforcement/acl/index.html.

貪污蠶食公司盈利、破壞商譽，更令企業失去顧客、投資者和良才。雖然香港連續22年獲傳統基金會《經濟自由度指數》評為全球最自由經濟體，而且在2014年全球商業貪污風險評估 TRACE Matrix中，香港的廉潔水平在亞洲亦高踞首位，但是我們仍不能低估商業機構內可能出現的貪污問題。

廉政公署（廉署）作為本港致力打擊及預防貪污的執法機構，於2015年接獲約1,800宗涉及私營機構的貪污投訴。這些案件部分與上市公司有關，並牽涉巨額款項，往往為投資者及持份者帶來嚴重損失。因此，公司董事及高層管理人員有必要全力預防貪污和詐騙風險。

上市公司的貪污行為

《防止賄賂條例》是香港的主要反貪法例。該條例規管涉及公營或私營機構的賄賂罪行，目標之一為禁止代理人違反對主事人的受信責任。條例列明禁止：

- 代理人（例如公司董事或僱員）在未經主事人（例如該代理人受聘或代表行事的公司）許可的情況下，索取或接受任何利益；或
- 任何人向代理人提供任何利益，而未經後者的主事人許可。

而該代理人作出或不作出任何與其主事人事務或業務有關的作為。

此外，任何代理人意圖欺騙其主事人，使用任何載有虛假、錯誤或欠妥的陳述，以及對其主事人有利關係的收據、帳目或其他文件，亦屬違法。

在《防止賄賂條例》中，「利益」泛指「款待」之外任何具有價值的東西。「款待」即指供應在當場享用的食物及飲品，以及任何與此項供應有關的其他款待。上述罪行的最高刑罰是罰款港幣50萬元及監禁7年¹。

雖然貪污舞弊可見於企業營運的任何範疇或工序，但一宗近年審結的廉署案件，正好點出上市公司貪污問題的某些典型特徵。涉案的一名商人、一名執業會計師及一名上市公司執行董事在該上市公司收購內地一項林木種植計劃時，進行貪污及詐騙，被裁定罪名成立。

該商人及會計師在執行董事的協助下，向上市公司主席提供港幣1.8億元賄款，以購入主席的股份。主席則安排其上市公司以港幣5億元，收購一間離岸公司及其在內地的一項林木種植業務。其後透過改組董事局，該商人取得上市公司的控制權。在收購過程中，犯案人隱瞞貪污勾當，詐騙聯交所及公司股東。

¹ 有關香港反貪法例的進一步資料，請瀏覽廉署網頁：http://www.icac.org.hk/tc/law_enforcement/acl/index.html。

The entrepreneur and the accountant had, with the assistance of the executive director, offered the chairman of the listed company bribes amounting to HK\$180 million for acquiring the chairman's shareholding. In return, the chairman arranged his listed company to acquire an offshore company for the mainland plantation project at HK\$500 million. Consequently, the constitution of the listed company's board of directors was changed and the entrepreneur secured control of the listed company. In the course of the acquisition, the offenders defrauded the Stock Exchange and shareholders by concealing the corrupt deal.

This case highlights how a few unscrupulous company directors and senior executives may take advantage of their position for personal gains at the expense of shareholders' interest. The problems are often compounded by a weak internal control system, professionals who failed their duties as guardians or even facilitated the wrongdoings, and complex financial transactions intending to conceal the malpractices. Corruption and fraud cases in listed companies, in particular those related to IPOs, merger and acquisition and backdoor listing activities, are also often intertwined with breaches of the securities laws or the Stock Exchange's Listing Rules.

Mitigating Corruption Risks

Before corruption and fraud inflict real damage to the business, management can always take the initiative to mitigate the risks by reviewing their position, strengthening the anti-corruption system and developing an ethical corporate culture. While there is no one-size-fits-all solution, the following principles may help enterprises devise their own strategies.

Leadership: The tone at the top is vital. Top management should have a conviction that good governance and an ethical culture are the foundation for their company's success. They should demonstrate their commitment to ethical leadership, articulate the company's zero tolerance of malpractice to all stakeholders, and provide the staff with adequate support, such as: communication channels to make enquiries on compliance matters and report malpractices.

Code of Conduct: An effective code of conduct gives members of the company a clear guidance on the ethical standard they are expected to observe, and instils confidence in investors, customers and business associates. The code should state the company's policy on integrity issues such as accepting and offering advantages, managing conflict of interest, handling confidential information and reporting malpractice. The provisions should be feasible and reasonable, and should apply to all staff including board members to manifest the corporation's commitment to compliance with one single ethical standard.

Internal Control: A comprehensive internal control system can help the company prevent and detect malpractices as early as possible. Common measures include clarifying work procedures, defining responsibilities, supervising the staff effectively, keeping records and computer data in a proper way, and maintaining the check and

此案顯示一小撮的公司董事及高層管理人員，濫用職權謀取私利，犧牲股東利益。加上公司內部監管系統過於寬鬆；專業人士把關不力，甚至朋比為奸；以及藉複雜的財務交易隱瞞舞弊行為，均會令問題更為嚴重。上市公司的貪污和詐騙個案，尤其與招股、併購及借殼上市活動有關的案件，亦經常同時涉及違反相關證券條例或聯交所的上市規則。

減低貪污風險

在貪污及詐騙問題對業務造成真正損害之前，管理層其實可以主動檢視公司面對的處境、加強防貪制度，以及建立廉潔的企業文化，從而減低貪污風險。雖然每間公司情況各異，所需的策略亦絕不相同，但企業在制訂防貪方案時，可參考以下原則。

誠信領導：領導層重視廉潔文化至為重要。他們必須確信良好管治及廉潔文化，是公司發展成功的基石，並須知行合一，向持分者表明公司絕不容忍貪污，以及向職員提供充足支援，例如提供渠道，讓職員查詢合規事宜和舉報違規行為。

行為守則：有效的行為守則，能為公司成員所須恪守的操守水平提供清晰指引，亦可加強投資者、顧客和生意夥伴的信心。守則應訂明公司就誠信事宜相關的政策，例如接受及提供利益、管理利益衝突、處理機密資料、舉報不當行為等。有關規定應合理可行，並適用於包括董事局成員在內的全體人員，以示公司對職業操守的要求一視同仁。



balance. The system should be reviewed regularly, keeping pace with the corporate development.


Integrity Training: To ensure members of the company understand the required ethical standard, integrity training should be organised for all levels of staff. Seminars, workshops or self-learning packages may be used to enhance the staff's knowledge of the legal, regulatory and corporate requirements for integrity, and equip them with necessary skills in handling corruption risks in the workplace.

Assistance from the ICAC

The ICAC, through its Hong Kong Business Ethics Development Centre (HKBEDC), promotes business ethics and corporate governance as the first line of defence against corruption in the private sector. In 2015, HKBEDC launched an ethics promotion programme for listed companies in collaboration with 18 co-organisers to promote good corporate governance, enhance personal integrity of directors and senior executives, entrench ethical corporate culture, and fortify internal control system in light of the latest challenges in the corporate world.

Under the programme, the Centre revamped its *Toolkit on Directors' Ethics* to include the latest legal and regulatory updates on duties of listed company directors and common corruption risks faced by them. In addition, the ICAC will:

- produce a new training package to sharpen skills of directors and professionals in upholding corporate governance;
- promulgate a corruption prevention guide to assist listed companies in strengthening risk management and system control as required by revised Listing Rules of the Stock Exchange of Hong Kong;
- convene a conference on business ethics for listed companies, in which stakeholders may exchange their experience in practising ethical governance;
- organise integrity training programmes for company directors and related professionals; and
- offer tailor-made ICAC services to all Hong Kong listed companies to assist them in strengthening ethical governance.

Companies are welcome to visit the website of HKBEDC (www.hkbedc.icac.hk) for more information about the ICAC's services and initiatives to help business organisations promote business ethics and prevent corruption. 

— Hong Kong Business Ethics Development Centre Independent Commission Against Corruption

內部監控：實行全面的內部監控制度，有助及早預防及查察公司內的舞弊情況。常見的監控措施計包括：制訂清晰的工作程序、明確界定職責範圍、有效督導員工、妥善保存記錄及電腦數據，以及維持合適的監察與制衡機制。公司亦應定期檢討內部監控制度，以配合機構的發展。


誠信培訓：公司應為各級員工提供誠信培訓，確保他們明白所需秉持的操守水平。培訓可透過研討會、工作坊或自學教材的方式進行，藉此讓職員清楚認識在法律、規例和企業層面上對誠信操守的要求，以及掌握處理與工作相關的貪污風險的能力。

廉署協助

廉署透過轄下的香港商業道德發展中心（中心），多年來向私營機構推廣商業道德及企業管治，以作為抵禦貪污的首度防線。2015年，中心聯同18個協辦機構，推行上市公司誠信推廣計劃，藉此提倡良好企業管治、提高董事及管理人員的個人誠信、鞏固企業的道德文化、加強內部監控制度，以應付商業社會近年出現的新挑戰。

在是次計劃下，中心更新了《董事誠信實務指南》，內容涵蓋有關上市公司董事職務的最新法規，以及董事經常面對的貪污風險。此外，廉署將會：

- 製作全新的培訓教材，以提升董事及專業人士秉持企業管治的技巧；
- 推出防貪指引，協助上市公司加強風險管理及制度監控，以符合聯交所上市規則的最新要求；
- 舉辦上市公司商業道德會議，讓持份者交流實踐誠信企業管治的經驗；
- 為公司董事及相關專業人士舉辦誠信培訓計劃；以及
- 向全港所有上市公司提供度身訂造的防貪服務，協助它們加強誠信管治。

如欲了解更多廉署協助企業推廣誠信和預防貪污的服務和活動，歡迎瀏覽香港商業道德發展中心的網站 (<http://www.hkbedc.icac.hk>)。 

— 廉政公署 香港商業道德發展中心

