Bank on Integrity

A Practical Guide for Bank Managers

This Guide is jointly developed by

Independent Commission Against Corruption

HONG KONG MONETARY AUTHORITY
香港金融管理局

The Hong Kong Association of Banks

The DTC Association

香港銀行學會
The Hong Kong Institute of Bankers

Points to Note in Using this Guide

Descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance and other relevant ordinances/laws in this Guide are necessarily general and abbreviated for ease of understanding. Users of the Guide are advised to refer to the original text of the relevant ordinances/laws or seek legal advice on particular issues where necessary. The ICAC, the organizers and Working Group of this Guide will not accept any responsibility, legal or otherwise, for any loss occasioned to any person acting or refraining from action as a result of any material in this Guide.

Case scenarios are used in this Guide to illustrate the legal requirements and corruption risks and to highlight the lessons learnt. While they are drawn up based on actual corrupt practices, each case scenario is hypothetical and does not mean to refer to any particular case or relate to any particular company or person.

The advice and tips given in the Guide are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or professional requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities as well as by their employers as appropriate, and apply appropriate practices that best suit the operational needs and risk exposures of their companies and business environment.

Throughout this Guide, the male pronoun is used to cover references to both the male and female. No gender preference is intended.

CONTENTS

ATTACHMENTS

1. Sample Code of Conduct
2. Sample Probity Clauses in Contracts to be Awarded
3. The ETHICS-PLUS Decision Making Model

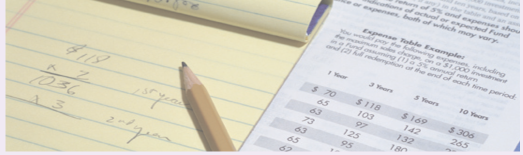
INTRODUCTION

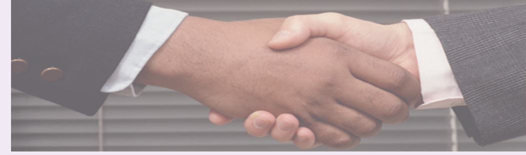
Good corporate governance practices and a robust banking system are linchpins to Hong Kong's success in being one of the most important international financial centres in the world. Businessmen, depositors and investors worldwide bank on the high integrity standards and well-established system and control in our banking sector. To sustain this competitive edge and achieve healthy growth, we must be vigilant in upholding the high integrity standard, not only by constantly reminding ourselves of the standard that we should adhere to, but also constantly upgrading ourselves to meet the expectations of our customers, business partners, and community.

This Guide aims at providing a user-friendly as well as informative reference for bank managers and practitioners to enhance their awareness of the anti-corruption laws applicable to their business environment; the actual and potential risks of corruption involved; and advice and tips on how bank managers and practitioners may help their banks prevent corruption.

PART 1

LEGAL REQUIREMENTS AND STANDARDS OF BEHAVIOUR





To ensure compliance with and adherence to a high standard of integrity, and avoid pitfalls of corruption in carrying out the banks' business, bank directors and employees should have an understanding of the relevant legal and probity requirements. The following provides a gist of the relevant provisions of the Prevention of Bribery Ordinance (Cap. 201), other ordinances and codes of conduct.

1.1 Legal Requirements[1]

1.1.1 Prevention of Bribery Ordinance (Cap. 201) (POBO) – Section 9

Bribery in the private sector is governed under this provision. Directors, managers and staff of a bank should have an adequate understanding of the provision, so as to avoid and help avoid potential breaches of the law by themselves, their staff and agents. The following is gist of Section 9 of the Ordinance, its key elements and some examples relating to a bank's environment.

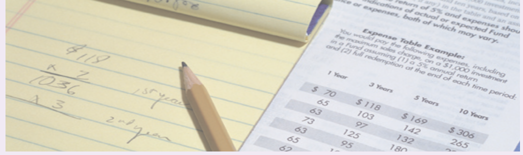
(a) Section 9 – Corrupt Transactions with Agents

- Section 9 (1) - It is an offence for an agent to, without reasonable excuse, solicit or accept an advantage as an inducement to, or reward for, his doing or forbearing to do any act, or showing or forbearing to show favour or disfavour to any person, in relation to his principal's affairs, except with his principal's permission.

- Section 9 (2) - Any person who offers an advantage to an agent for the above purpose also commits an offence.

- Section 9 (3) - Any agent who, with an intent to deceive his principal, uses any receipt, account or other document which contains any statement which is misleading or false or defective in any material particular and in respect of which the principal is interested, is guilty of an offence. For example, if a bank staff knowingly uses false documents/inflated valuation reports on loan collaterals to facilitate a customer's loan approval with intent to deceive the bank, he may have breached Section 9(3), even if he has not accepted an advantage for his act.

[1] *The full text of the ordinances can be accessed through the Department of Justice's Bilingual Laws Information System website (http://www.legislation.gov.hk/index.htm).*



(b) Principal

- The principal is the employer or any authorized persons of the employer. For a bank staff or director and in relation to the bank's business affairs, the bank is the principal.

(c) Agent

- An agent is a person acting for the principal. A bank's director or employee is an agent of the bank in carrying out the bank's business.

(d) Advantage

- An advantage includes money, gift, discount, commission, loan, offer of employment, service, etc.

- Entertainment, defined as the provision of food or drink (e.g. a free business meal) provided for consumption on the occasion and any other entertainment connected with, or provided at the same time as, such provision (e.g. a show or performance provided at the venue where the meal is provided), is not an advantage under the Ordinance.

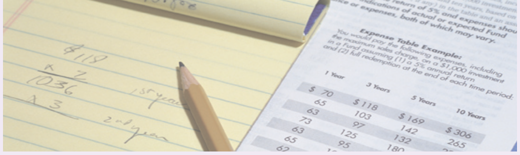
(e) Principal's Permission[2]

- If the advantage is accepted with the principal's permission[3], then neither the agent nor the offeror commits an offence.

- The permission refers to permission by the principal of the recipient of the advantage. The permission of the offeror's principal for him to offer the advantage is irrelevant.

[2] *Staff of a bank are subject to more stringent requirements under the Banking Ordinance (Cap. 155) in relation to the acceptance of advantage. See subsequent section of this Guide for situations when there is no defence of the bank having agreed to the acceptance of the advantage concerned under the Banking Ordinance.*

[3] *In the context of this Guide, the principal is the bank, for which decisions including permission for staff to accept advantages can normally be made by the Board of Directors (e.g. through policy or Code of Conduct endorsed by the Board) or persons with appropriate authority to make such decisions (e.g. the CEO) or explicitly delegated with authority to make such decisions (e.g. the policy/Code may have delegated the authority to give permission in exceptional cases to the Human Resources Director).*



- The permission must be given before the advantage is offered, solicited or accepted. In any case where an advantage has been offered or accepted without prior permission, the agent must apply for his principal's permission as soon as reasonably possible.

(f) Custom Constitutes No Defence

- It is not a defence to claim that an advantage accepted or offered is customary in any profession, trade, vocation or calling.

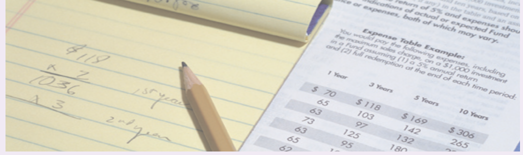
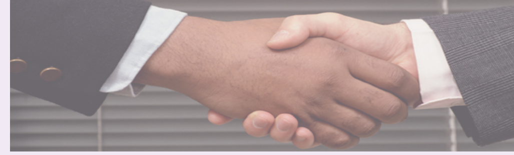
(g) Acceptance and Offer

- The advantage does not have to be actually/physically received by the agent for an offence to be committed. The agent/offeror commits an offence when he agrees to accept/offer the advantage.

- The agent commits the offence if he accepts the advantage for himself or for another (e.g. for his spouse or any social, professional body he is a member of), and if another person accepts it on his behalf (e.g. the advantage is received by his spouse on his behalf).

(h) Penalty

- A person convicted of an offence under Section 9 of the Prevention of Bribery Ordinance is subject to a maximum penalty of ***seven years' imprisonment*** and ***a fine of HK$500,000***.

1.1.2 Prevention of Bribery Ordinance (Cap. 201) (POBO) – Section 4 and Section 8

In addition to dealing with customers or business sector partners, directors and staff of a bank may come across occasions where they have to deal with public servants. They should therefore be aware of the following provisions which prohibit the offering of advantages to public servants in relation to business dealings.

(a) Section 4 – Bribery

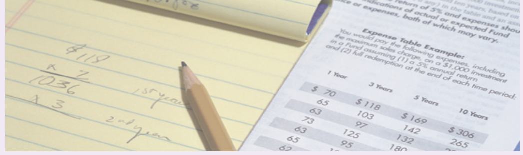
- It is an offence to offer an advantage to a public servant as an inducement to, or reward for, or on account of the public servant's performing or abstaining from performing any act in his official capacity; assisting, favouring, hindering, or delaying any person in the transaction of any business with a public body.
- Examples of public servants include staff of the Hong Kong Monetary Authority, Securities and Futures Commission, Stock Exchange of Hong Kong Ltd. which are public bodies.

(b) Section 8 – Bribery of Public Servants while Having Business Dealings with Public Bodies

- It is an offence to, while having dealings with a government department or public body, offer any advantage to an officer of the government department or a public servant employed by the public body.

1.1.3 Banking Ordinance (Cap. 155) – Sections 123 & 124

- It is an offence for any director or employee of a bank to ask for or accept advantages for his own personal benefit, or for that of his relatives, for showing favour to any person when approving loans or credit facilities from the bank. There is no defense of the bank having agreed to the acceptance of the advantage concerned (Section 124).
- Bank staff is prohibited from committing deliberate deception by making false entry of documentation in relation to the bank's business (Section 123).



1.1.4 Other Relevant Ordinances/Laws

Offences under the following ordinances/laws are sometimes associated with corruption. Directors, managers and staff of a bank should be aware of the risk exposure.

(a) Securities and Futures Ordinance (Cap. 571)

Part XIII of the Ordinance prohibits insider dealing in relation to listed corporations and other market misconduct such as false trading, price rigging, market manipulation, etc. in securities or futures trading. As many banks provide wealth management services, the managers and staff involved should be aware of the relevant provisions and restrictions when providing trading services to clients, and resist any corrupt offers or requests for undue favour.

(b) Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615)

Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)

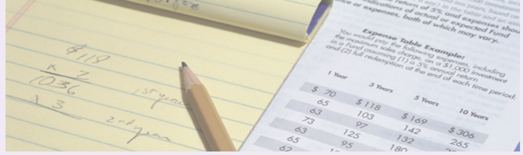
Organized and Serious Crimes Ordinance (Cap. 455)

United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

These ordinances set out offences relating to money laundering and the obligations of financial institutions in customer due diligence and reporting of money laundering activities. As bank managers and staff frequently assist customers to handle their funds (e.g. remittance), they should be aware of the relevant provisions, and resist any corrupt offers or undue requests.

(c) Personal Data (Privacy) Ordinance (Cap. 486)

This ordinance protects privacy with respect to personal data. As banks collect and maintain large amount of personal data of customers which may have commercial value to other parties, bank managers and staff should take note of the restrictions in using personal data and resist any corrupt offers or undue requests in relation to customer data.



1.1.5 Criminal Law of the People's Republic of China – Articles relating to Bribery[4]

The Criminal Law of the People's Republic of China prohibits the acceptance/offering of bribes by/to private company/enterprise employees and the offering of bribes to State functionaries or State organs, State-owned enterprises, Institutions, etc. Due to the increase in cross-boundary business activities, staff of banks in Hong Kong may need to travel to and carry out duties in the Mainland. They should therefore be aware of the anti-bribery provisions under the Criminal Law of the People's Republic of China[5].

1.2 Standards of Behaviour

1.2.1 Code of Conduct

The expected standards of behaviour of banks and their staff are set out in the statutory guideline on Code of Conduct[6] in the Supervisory Policy Manual issued by the Hong Kong Monetary Authority (HKMA). The guideline has set out the minimum standards which the HKMA expects the banks to adopt, and requires every Authorised Institution to develop its own Code of Conduct to set out the standards of behaviour expected of its management and employees. A gist of the elements that are particularly relevant to corruption prevention is highlighted below:

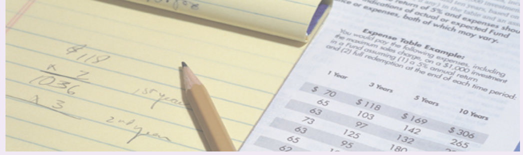
(a) Ethical Values

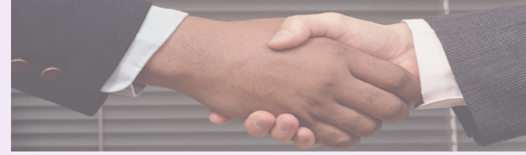
Staff are expected to follow ethical values in conducting business which should include honesty, integrity, diligence and accountability.

[4] *Regarding the Mainland legislation, please visit the following websites:*
Ministry of Commerce of the People's Republic of China: www.mofcom.gov.cn
Supreme People's Procuratorate of the People's Republic of China: www.spp.gov.cn

[5] *Readers may refer to "Business Success: Integrity & Legal Compliance Corruption Prevention Guide for SMEs in Guangdong, Hong Kong and Macao" published jointly by the ICAC and the Guangdong Provincial People's Procuratorate, the extract of which can be assessed on the ICAC website (www.icac.org.hk), or a request for the publication can be made online or via any ICAC Offices.*

[6] *The full text can be accessed through the Hong Kong Monetary Authority website on http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CG-3.pdf*





(b) Personal Benefits

Staff should not solicit, accept and retain personal benefits from any customer of the bank or any individual or organization doing or seeking to do business with it, except where permitted within the criteria set out in the Code of Conduct. They should also actively discourage customers from offering personal benefits of any kind, including any type of gift, favour, service, loan, fee or anything of monetary value.

(c) Conflicts of Interest

Staff should avoid situations that may lead to or involve a conflict of interest, actual or potential and, in case of doubt, seek the advice of the designated officer of their bank.

(d) Granting Credit

Staff with lending authority should have specified limits that commensurate with his rank or function according to the bank's credit policy.

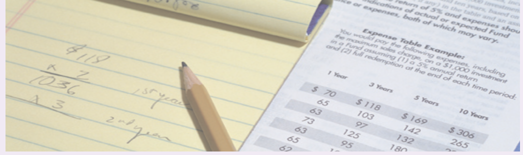
No staff member should grant credit to himself, his relatives or companies in which he or his relatives have a personal interest.

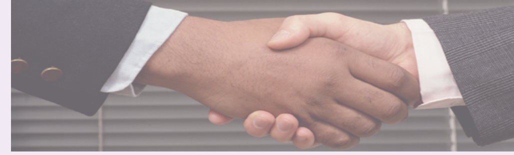
(e) Receiving Credit

No staff member or his relatives should borrow or receive credit from third parties on a favoured basis or on terms other than at arm's length unless previously approved by the bank.

(f) Conduct When Obtaining Business

No staff member should offer any bribe or similar consideration to any person or company in order to obtain business for the bank.





(g) Use of Information

Staff should handle carefully information relating to customers to ensure compliance with relevant statutory requirements and common law on customer confidentiality. They should not release customer information to a third party without written consent of the relevant customer.

(h) Personal Investments

No staff member should deal in the shares or other securities of any listed company when possessing privileged or price-sensitive information that is not generally known to the shareholders of that company and to the public.

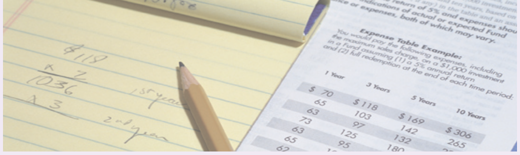
(i) Outside Employment

Staff should obtain prior written approval from the bank before taking up any directorship, employment or part-time commercial duties (paid or unpaid) outside the bank.

(j) Reporting Responsibility

A staff member should be alert to matters which could give rise to fraud, deception, theft, forgery, corruption or other illegal activities. If they reasonably suspect that an illegal activity is being perpetuated, they should immediately report it to the bank. Failure to report such activity immediately may result in disciplinary action.

For banks' Code of Conduct officers: A sample Code of Conduct provided by the Corruption Prevention Department of the ICAC to private companies for reference to help them refine their company codes of conduct is at Attachment 1. The Corruption Prevention Department also offers advice on codes of conduct compiled by private companies, including banks, with regard to corruption prevention.



1.2.2 Other Relevant Guidelines

Regulators and industry associations issue guidelines to banks from time to time. Bank managers and staff should be aware of the relevant guidelines in carrying out the bank's business.

(a) Hong Kong Monetary Authority (HKMA)

The HKMA issues guidelines[7] on various activities carried out by the banks in Hong Kong, including guidelines on prevention of money laundering.

(b) The Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA)

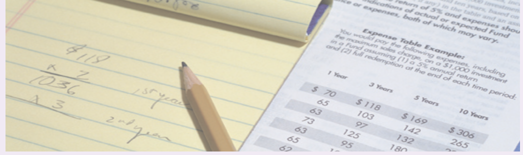
The HKAB and DTCA have also jointly issued the Code of Banking Practice[8] for their members in dealing with their daily operations with customers. It specifically covers banking services such as current accounts, savings and other deposit accounts, loans, overdrafts and card services.

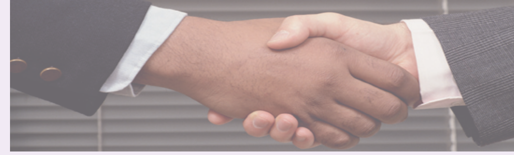
(c) Securities and Futures Commission (SFC)

The SFC has issued a Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission. General Principle (GP1) "honesty and fairness" under this code sets out the anti-bribery guidelines for a licensed or registered person and requires him to be familiar with the POBO. The SFC is also guided by this Code of Conduct when considering whether a licensed or registered person satisfies the requirement that he is fit and proper to remain licensed or registered.

[7] *Available on HKMA's website (http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/guidelines/).*

[8] *Available on HKAB's website (http://www.hkab.org.hk/) and DTCA's website (http://www.dtca.org.hk/cop.asp).*





(d) Insurance Agents Registration Board (IARB)

Bank employees marketing and selling insurance products are registered with and supervised by IARB (set up by the Hong Kong Federation of Insurers (HKFI)). The board has to be satisfied that these employees are fit and proper persons[9] (e.g. whether subject to any order of the court for fraud, dishonesty or misfeasance) and meet other requirements specified in the Code of Practices issued by HKFI with the approval of the Insurance Authority.

[9] *Readers may refer to paragraph 58(d) & (f) and paragraph 80(l) of "Code of Practice for the Administration of Insurance Agents" issued by the Hong Kong Federation of Insurers. Full text can be accessed through the HKFI website at http://www.hkfi.org.hk/pdf_publications/e_CodePractice_2010.pdf*


PART 2 LEGAL AND INTEGRITY ISSUES AND LESSONS LEARNT FOR BANK MANAGERS

This Part, through hypothetical case scenarios which are drawn up based on actual corrupt practices, illustrates the relevant POBO provisions and highlights the risks of corrupt practices in a banking business environment. It not only provides lessons learnt on areas where bank managers should increase their awareness and apply good control practices, but also reminders for managers and frontline staff to help them defend themselves against corruption pitfalls and temptation. When other legal requirements are involved in a case scenario, they will also be mentioned.

The case scenarios are grouped into the following four typical banking activities, showing the risks of corruption or malpractice in different business functions.

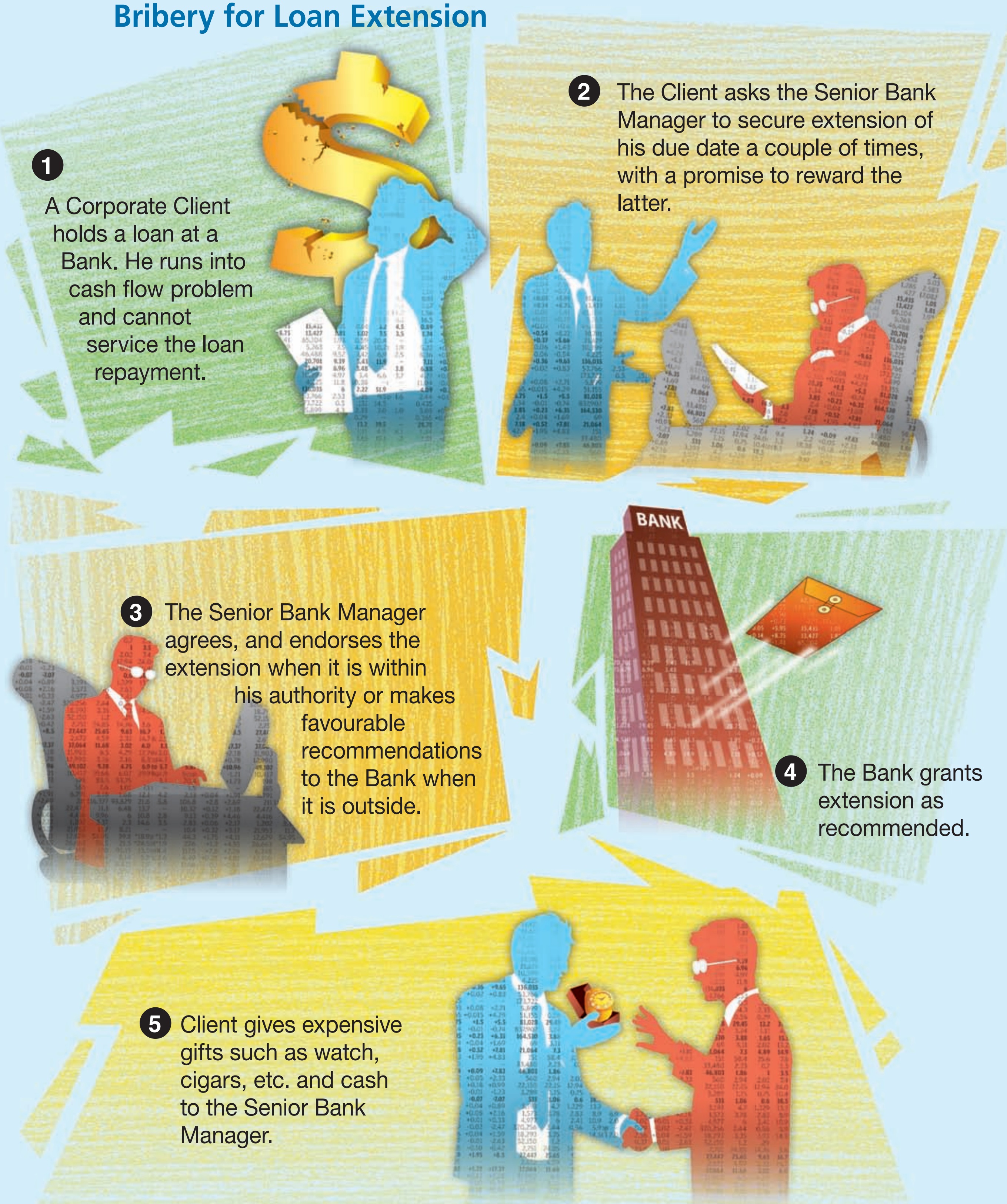
- Lending (5 case scenarios) – refer 2.1
- Customer Portfolio Management (3 case scenarios) – refer 2.2
- Sales (2 case scenarios) – refer 2.3
- Procurement and Contract Administration (1 case scenario) – refer 2.4

The activities, potential offences[1] and risks highlighted in the above cases are for illustration only and are by no means exhaustive.

[1] *These are meant to illustrate the major points of law under the POBO & other possibly related regulations based on the facts presented in the case scenarios. Whether an offence is committed in an actual case of a similar scenario depends on the merits of the case.*

2.1 Lending – 5 Cases

2.1.1 Lending Case 1 – Bribery for Loan Extension



Potential Offences

- The **Senior Bank Manager**, being an employee (agent) of the **Bank** (the principal) and without the permission of the **Bank**, agreed to assist the **Client** to secure extension of the latter's loan (an act in relation to the **Bank**'s business) in return for advantages as rewards, contravened Section 9(1) of the POBO. The offence was committed when he agreed to the offer even though he had not received the rewards or actually provided any assistance. The **Client** contravened Section 9(2) of the POBO when he offered the advantages to induce the manager to give him the favour.

- The **Senior Bank Manager** might have also contravened Section 124 of the Banking Ordinance.

Lessons Learnt

Corruption Risks

- For efficiency, bank managers are often delegated with authorities to endorse certain loan-related applications up to certain limits. The risk of corruption is in proportion to the discretion bank managers are allowed to exercise. The greater the discretion, the higher the corruption risk.

- The restructuring of distressed loans is a corruption-prone area easily overlooked. A desperate debtor could entice the bank manager to secure favourable credit terms for him, e.g. extension of credit facilities.

Good Control Practices

- Desirably, separate credit approval authority from staff who deal directly with customers.

- If certain delegation is deemed unavoidable for operational efficiency, ensure the limit is not excessive having regard to the staff's rank, and conduct appropriate supervision, spot checks and independent assurance check based on risk management on such cases. The delegation/limit should be tightened further for higher-risk customers.

- Exercise the same vigilance and independence in the approval of the restructuring of existing loans, as that of new credit facilities.

- Monitor credit performance of loans through exception reports/computer-aided auditing, and build in technical controls in the system to alert the management on exceptional/irregular cases as necessary, e.g. identify irregularities like repeated extensions of repayment due dates and the approving bank officers involved; limit the number of extensions; and assign the case to another bank staff for processing when the number of extension exceeds the number permitted.

Reminder Against Pitfalls of Corruption

- When a customer is willing to bribe for favour in credit approval, it reflects both the underlying financial problems of his business and his poor integrity. His chance of defaulting repayment will be high. An internal review of the case will unearth the impropriety and corruption dealing.

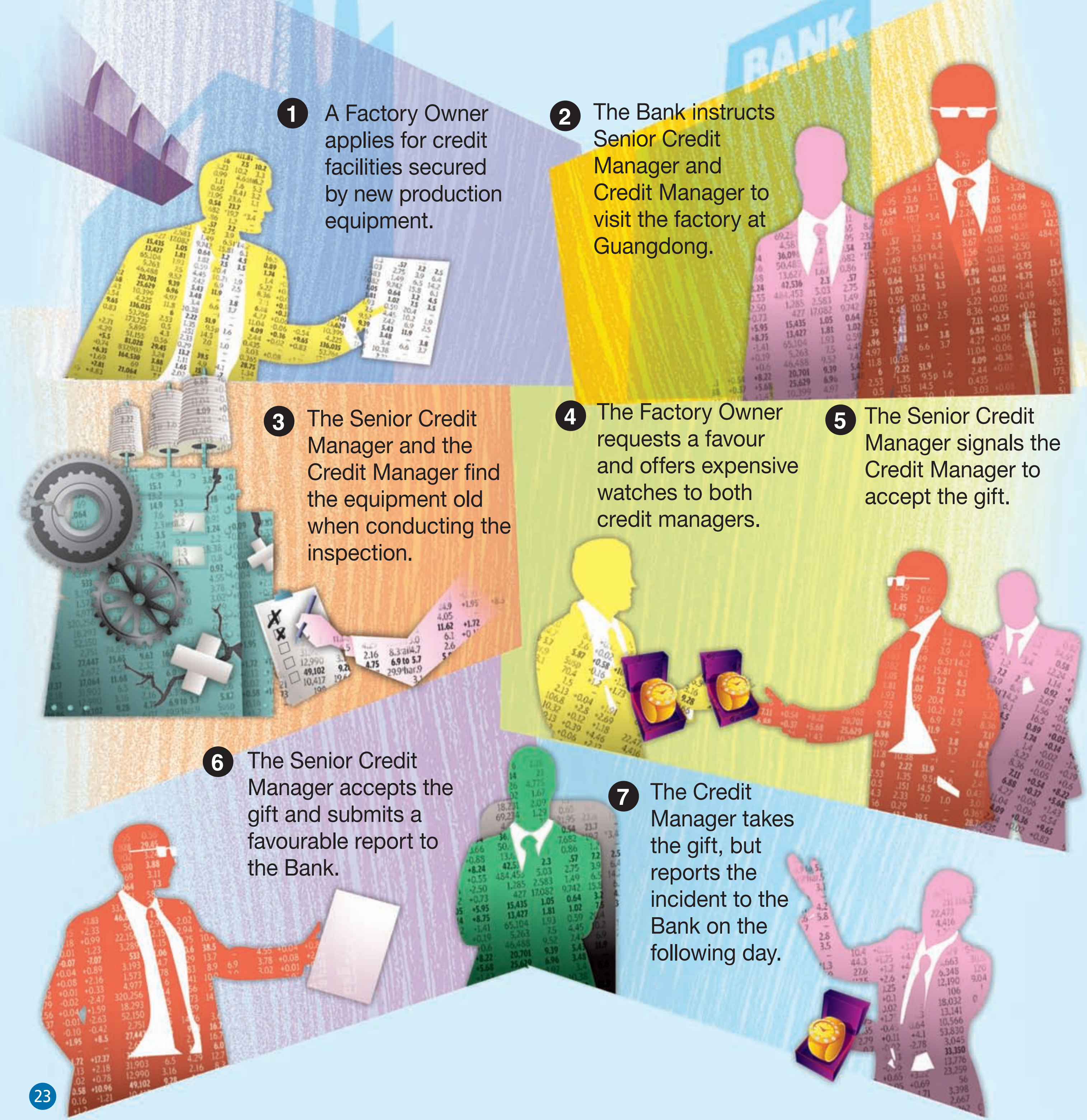
- The offeror may not be the only person in his company who knows about the corrupt dealing, and the bank staff has no knowledge of or control over who knows. People who know (e.g. the offeror's business partner, staff) may report the crime for various reasons (e.g. subsequent breaking up of relationship with the offeror).

- With a stringent control mechanism of a bank, the loans are subject to audit/ assurance checks. Thus there is a good chance that the corrupt dealings will be detected.

- Once the staff accepts the bribe, he will probably face further requests from the client to the extent that he is unable to entertain.

- Corruption in the lending function will result in an increase in bad loans, affecting the bank's business and profitability. Ultimately the bank staff himself would suffer.

2.1.2 Lending Case 2 – Bribery during Site Inspection



Potential Offences

- The **Senior Credit Manager**, an employee (agent) of the **Bank** (the principal), without the permission from the **Bank**, accepted an advantage (a watch) from **Factory Owner** as a reward for turning a blind eye to the old equipment and giving him a favourable site inspection report (an act in relation to the **Bank**'s business). Although the acceptance took place outside Hong Kong, some of the acts took place in Hong Kong (e.g. submission of a favourable report to the **Bank**). Hence, **Senior Credit Manager** contravened Section 9(1) of the POBO. The **Factory Owner** contravened Section 9(2) of the POBO.

- **Senior Credit Manager** might have also contravened Section 124 of the Banking Ordinance.

- Although **Senior Credit Manager** is the supervisor of **Credit Manager**, he did not have the authority to permit the latter to accept the advantage.

Lessons Learnt

Corruption Risks

- It is very common for banks' corporate clients to have their business operations such as production plants or other assets in the Mainland or elsewhere outside Hong Kong. When site inspection/visit by bank staff is required in assessing a loan application, the staff are exposed to significant risk of temptation, which could comprise bribes, gifts, and excessive entertainment or services.

- In the scenario above, had the Senior Credit Manager been assigned to make the site visit alone, the corrupt dealing might go undetected.

The assignment of staff of the same unit to conduct the high-risk task was conducive to corruption, in particular as one was the supervisor of another. The Credit Manager did not turn down the offer on the spot probably because of the pressure from his supervisor, and *could* eventually collude with the latter.

Good Control Practices

- As far as practicable, assign more than one staff members to conduct site visits in higher risk cases, and they should preferably be of different units (e.g. one being the subject bank officer, the other a credit department officer) to avoid the situation of a subordinate being "pressurized" by his supervisor to act in collusion.

- Educate staff that when an advantage has been accepted without prior permission, he must apply for the permission of or report the case to the bank as soon as reasonably possible.

- Provide an independent, trustworthy and confidential channel for reporting malpractice, and encourage staff to report any suspected corruption to the ICAC.

- To enhance accountability, require site inspections to be documented with photos of the sites and assets concerned, as far as possible.

- Require submission of purchase invoice of the assets to verify the age and value, and require updated independent assessment report as far as practicable.

- Conduct random independent audit/assurance review on higher risk cases, e.g. site visits done by a bank staff member alone.

- Although some business/transactions need to be conducted outside Hong Kong, as far as practicable, ensure some important/key processes (e.g. submission/approval of credit proposal) are carried out in Hong Kong.

- Communicate to customers, in particular non-local customers, the bank's anti-bribery stance and acceptance of advantages/entertainment policy, with emphasis on zero tolerance to corruption involving staff.

Reminder Against Pitfalls of Corruption

- Due to the cultural background, some customers from other regions may regard the offering of gifts/rewards for assistance provided or favour shown as a common practice. It is NOT necessary and NOT appropriate for the bank staff to adopt and follow their culture, as this is in breach of the POBO.

- The offeror may mislead the bank staff to believing that the POBO is not breached when the gift is accepted outside Hong Kong. Bank staff should be aware that

  - as some of their work in relation to a case (e.g. submission of proposal/recommendation to the bank) will take place in Hong Kong, the POBO still applies to their acts in handling the cases;
  - this is a question of integrity, irrespective whether it is in breach of the POBO or not; and
  - they should follow the code of conduct issued by the bank.

- Considerations under Lending Case 1 are applicable in this scenario.

2.1.3 Lending Case 3 – Bribery and Collusion with Third Party for Favour in Mortgage Loan Application

1 A Property Developer frequently offers a Manager of a Finance Company expensive lunches and the Manager and his wife free golf trips.

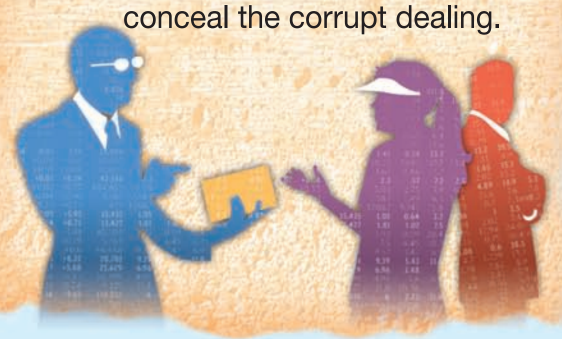
2 The Property Developer applies for a loan to redevelop village houses, and asks the Manager to assist him to secure a higher loan amount, promising a reward.

3 The Manager bribes a Valuer of a Property Valuation Agency with whom he has good relationship to inflate the collateral value in the report.

4 The Property Valuer prepares a false valuation report to the Finance Company.

5 Based on the false valuation and the Manager's recommendation, the Finance Company approves the loan.

6 The Property Developer pays a commission as reward to the Manager's wife, attempting to conceal the corrupt dealing.



Potential Offences

- The **Manager**, an employee (agent) of the **Finance Company** (the principal), accepted commission (advantage) from the **Property Developer** as a reward for favourably recommending the loan proposal (an act in relation to the **Finance Company**'s business). Under the POBO, the **Manager** was considered to have accepted the advantage as his wife received the advantage on his behalf. Hence, without permission of the Finance Company to accept the advantage, the **Manager** contravened Section 9(1) of the POBO. The **Property Developer** contravened Section 9(2) of the POBO when he requested the **Manager**'s assistance with an offer of reward.

- The **Manager** in turn also breached Section 9(2) of the POBO for bribing the **Property Valuer** (agent of the **Property Valuation Agency**) to inflate the value of the collateral, while the latter contravened Section 9(1) of the POBO. They also contravened Section 9(3) by each submitting false, misleading valuation reports to their employers.

- The **Manager** might have also breached Section 124 of the Banking Ordinance.

Lessons Learnt

Corruption Risks

- A bank staff puts himself in an obligatory position if he frequently accepts advantages like free trips[2] or lavish entertainment from the bank's customers or potential customers.

- Should frontline managers be able to select or influence the appointment of valuation agencies, or even the valuers for the loan applications they process, it would weaken the safeguards as provided by independent valuation.

Good Control Practices

- Set up a central team (e.g. at head/back office) to handle the collateral valuation, including contacting and assigning cases to valuation agencies following laid down mechanism and criteria (if the bank uses more than one agency).

- Obtain valuation from two or more independent agencies for assets over a certain amount.

- Engage valuation agencies who have put in place an anti-bribery policy and code of conduct, and supported with integrity training for staff.

- Require staff to declare conflict of interest to their supervisors if any personal acquaintance has business dealings with the bank through them.

[2] *Trips usually involve transportation and accommodation which are regarded as advantages.*

Reminder Against Pitfalls of Corruption

- There is no free lunch. Lavish meals and free trips are common sweeteners. Through all these treatments, a corrupt relationship between the parties is built up and a sense of obligation is developed for the receiver to reciprocate when the offeror raises an undue request. Bank staff should refrain from accepting these treatments from those who may potentially become customers/business partners/service suppliers of the bank.

- Acceptance of "sweeteners" by a bank staff (even without being immediately required by the offeror to do something in return) could already breach the bank's staff code of conduct.

- Considerations under Lending Case 1 are applicable in this scenario.

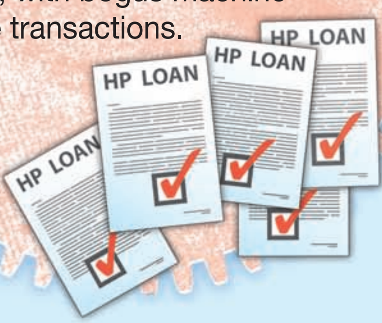
2.1.4 Lending Case 4 - Conspiracy to Make Bogus Hire Purchase Loans

1. An SME Owner wants to buy new machines by hire and purchase (HP) loan at 90% of the purchase value, but banks only lend up to 60%.

2. A Machine Supplier issues an inflated invoice so that SME Owner can borrow more, and refers him to a Finance Company's Sales Executive whom the Supplier is familiar with.

3. Despite spotting the scam, the Sales Executive turns a blind eye and seeks credit approval for the loan, so as to meet his sales quota.

4. Having succeeded once, the Sales Executive conspires with the Machine Supplier to help a number of other SME clients who face similar diffculties to obtain HP loans, with bogus machine purchase transactions.



5. Some SMEs default payment, and internal audit's investigation exposes the scam.

Potential Offences

- The **Sales Executive**, an employee (agent) of the **Finance Company** (the principal), intended to deceive/mislead the **Finance Company** by using invoices which contain false information. Notwithstanding he did not receive any bribes, he contravened Section 9(3) of the POBO.

- The **Sales Executive**, **Machinery Supplier** and **SME Owners** could be charged with fraud against the **Finance Company**, or conspiracy to defraud the **Finance Company**.

Lessons Learnt

Corruption Risks

- Over reliance on sales staff to provide borrowers' information without counter checks increases the risk of manipulation.

- Machine suppliers also stand to benefit if HP loans are approved, and may entertain requests to inflate/falsify invoices.

- Facing keen competition in the industry and pressure to secure loan business in the bank, a bank staff may cross the line.


Good Control Practices

- Set up a central team (e.g. head/back office) to conduct vigilant due diligence especially on high credit risk customers, e.g.
  - verify information provided by customers through the front office; and
  - conduct reference check internally/externally.

- As far as possible, conduct independent assessment of machine suppliers involved in HP transactions to ascertain their reliability.

- Gauge reasonableness of the sales prices on invoice, e.g.
  - compare the same/comparable goods sold at other dealers; and
  - valuation by independent external agencies.

- Monitor the performance of HP accounts relating to individual machine suppliers.

- Conduct regular assurance check to detect irregularities/unusual trend, e.g. big jump in sales volume from a single sales staff with cases of the same referral source or similar nature (e.g. same machine supplier).

Reminder Against Pitfalls of Corruption

- Sales Executive rationalizes his acts by regarding his practice as helping the Finance Company to secure more loan business, at the same time helping the SMEs to overcome difficult situations. However, the fact that customers have to obtain higher loans through a fraudulent means suggests they are high risk customers. Granting them higher loans increases the risk exposure of the Finance Company.

Approving a higher loan based on inflated collateral value or bogus transactions may also result in an unusual increase in bad debt cases, and internal review by the Finance Company would detect the irregularity involved.

2.1.5 Lending Case 5 - Falsifying Client's Loan Application

1 A Relationship Manager (RM) manages a portfolio of corporate clients. He notes that an SME client, Client A, has been lax in checking account statements.

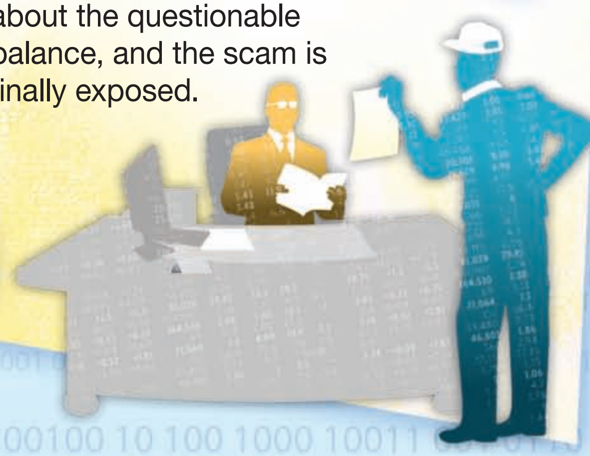
2 Without Client A's knowledge, the RM fraudulently applies for an increase of Client A's credit line, and forges the client's instructions to draw funds from the credit line and transfer the money to an account he controls.

3 When Client A raises doubt about his credit line balance, the RM claims it was caused by a computer system error.

4 The RM forges another loan application by Client A, using Client B as guarantor, with forged signatures, and uses the loan to settle the debit balance in Client A's credit line to cover up his earlier scam.

5 During the credit approval and fund transfer processes, the backend staff have doubts, but they only clarify with the RM. The RM's Supervisor also raises query but easily accepts the RM's explanation without follow-up.

6 Client A makes enquiry with the RM's Supervisor about the questionable balance, and the scam is finally exposed.



Potential Offences

- The **Relationship Manager** (agent) contravened Section 9(3) of the POBO by using forged documents to deceive the **Bank** (the principal) in approving an increase in **Client A**'s credit limit and **Client A**'s new loan, and to transfer money out from **Client A**'s account.

- The **Relationship Manager** could be charged with a series of crimes including theft (of **Client A**'s money), fraud and forgery.

Lessons Learnt

Corruption Risks

- It may be desirable from the customer service angle that a Relationship Manager provides personal service and acts as the bank's single contact point for important clients. However, if all verification/clarification of questionable or doubtful transactions are routed through the Relationship Manager, it would undermine checks and balances and create opportunities for manipulation by an unscrupulous Relationship Manager.

- Banks may not wish to regularly change Relationship Managers' postings or swap their client portfolios. While the need for good customer service is understandable, the lack of periodic staff rotation increases the risk of manipulation by unscrupulous staff and may allow fraud or malpractice to continue for a long period of time.

- It is very common for a Relationship Manager to provide his mobile phone number to clients for good customer service. An unscrupulous Relationship Manager, however, could advise a client to always contact him by mobile phone so that he could personally take all calls from the client, even during his leave, so as to avoid exposure of any problematic transactions/conditions to other bank staff.

- Back office staff usually rely on frontline staff to verify the customers' signatures. Hence, it is not easy to detect any falsified signatures by an unscrupulous frontline staff.

- Even when there are signs of irregularity, supervisors may not step up their vigilance against their subordinates because of the trust in them or lax control.

Good Control Practices

- Define a customer contact protocol so that the bank can strike a balance between customer service and control, i.e. define circumstances that back office staff could/should contact customers to verify/clarify sensitive transactions (e.g. unusual transfer instructions of large sums to third party accounts, high-value credit facility applications), which may be packaged as service calls.

- Enforce the requirement to take annual vacation leave; arrange and introduce back-up/second officer to corporate customers and require staff on leave to refer/transfer customer calls to colleagues who are on duty; and/or implement staff rotation (say, on a three–year basis) as far as practicable, e.g. changing Relationship Managers' posting, reshuffling some of their customer portfolios.

- Specify the threshold for high value cases for verification of signatures, at least at random, by supervisors.

- Remind supervisors to stay vigilant to potential risk of corrupt practices and make thorough enquiries into any suspected irregularities.

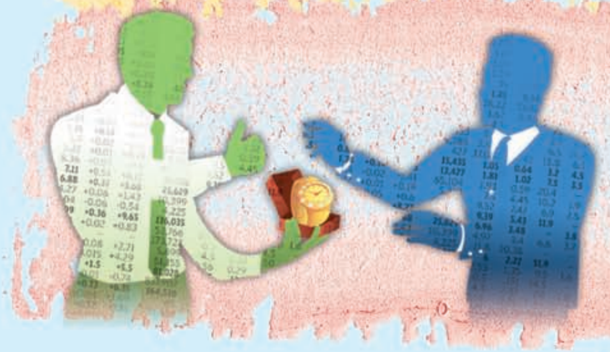
Reminder Against Pitfalls of Corruption

- Nearly all bank staff misusing customers' funds believe that the misuse is only temporary and can be rectified shortly. However, the crime is committed as soon as funds are misused and the cases cannot be "settled" even if the funds are "repaid" before they come into light.

2.2 Customer Portfolio Management – 3 Cases

2.2.1 Customer Portfolio Management Case 1 - Accepting Reward Without Principal's Permission

1. A Relationship Manager (RM) manages the investment account of a Businessman, who is his former employer. Due to their personal relationship, the RM accords the Businessman with priority in providing latest investment information and executing investment transactions.



2. The Businessman makes good investment gains, and personally rewards the RM with bonuses. The RM accepts the bonuses given their acquaintance and personal relationship.

3. When the market turns bad, the Businessman suffers heavy investment losses. He vents extreme comments at the RM during a meeting. The RM's Supervisor who joins the meeting becomes suspicious about their relationship, and probes into the case.

4. The RM admits that he has received advantage from the Businessman.

Potential Offences

The **Relationship Manager**, an employee (agent) of the **Bank** (the principal), accepted bonuses (advantages) from the **Businessman** as a reward for his service in managing the **Businessman**'s investment portfolio (an act in relation to the **Bank**'s business) without the permission of the **Bank**, contravened Section 9(1) of the POBO. The **Businessman** contravened Section 9(2) of the POBO.

Lessons Learnt

Corruption Risks

- The personal relationship between a Relationship Manager and the customer would give rise to conflict of interest, which is conducive to favouritism towards the customer, e.g. priority handling and information.

- Bank staff may be exposed to more unsolicited offer of rewards or advantages due to the growing number of customers from different cultures, who may regard offering monetary rewards to private company staff a norm.

- Reward to staff from satisfied customers is hard to detect procedurally.

Good Control Practices

- Enhance staff's integrity awareness and promote ethical culture by
  - disseminating a clear message by top management on commitment to business ethics and integrity, and zero-tolerance to unethical practices;

- specifying the integrity standard expected of all staff in a Code of Conduct, in particular, the restrictions on acceptance of advantages from bank customers, and the requirement for staff to declare and avoid conflict of interest; and
- conducting periodic (induction, refresher) staff training on integrity and anti-corruption.

Communicate to customers, in particular non-local customers, the bank's anti-bribery and acceptance of advantages policy.

Reminder Against Corruption Pitfalls

- Accepting any offer of reward, bonus, etc. from customers puts the bank staff at risk of breaching the POBO and the bank's stringent policy and restrictions.
- Actual/potential conflict of interest situations invite allegations of impropriety and should be avoided whenever possible. Bank staff should therefore declare any conflict of interest with the customers they serve to their supervisor.
- Favourable treatment towards a customer may put a bank staff under suspicion of corruption. Bank staff should therefore handle all customers' accounts and provide services to them in a fair manner, and should not provide any undue favour to customers.
- A happy customer may not remain happy forever. Corrupt dealings often come to light when the relationship turns sour.

2.2.2 Customer Portfolio Management Case 2 - Bribery for Assistance in Money Laundering

1 An affluent Client asks a Bank Manager to provide a bank account for him to transfer huge sums of money around without revealing his identity, and offers to pay the Bank Manager a percentage of the funds transferred as commission.

2 The Bank Manager requests an SME Owner who has a trading company which is largely inactive to allow him to perform such transactions through the company's bank account at a fee.

3 At first, the SME Owner checks before signing any bank documents for fund transfers, but over time, he slackens and even gives the Bank Manager the company chop.

4 The scam is exposed when the Bank notices suspicious transactions in the SME Owner's accounts: large sums are frequently deposited and then transferred to various accounts shortly, and the sums do not commensurate with the company's business turnover volume.

Potential Offences

- The **Bank Manager**, an employee (agent) of the **Bank** (the principal) and without the permission of the **Bank**, accepted advantage from the **Client** as a reward for helping the latter to perform suspicious transactions through the **Bank** (an act in relation to **Bank**'s business). The **Bank Manager** contravened Setction 9(1) of the POBO, while the **Client** contravened Section 9(2).

- The **Bank Manager** might have committed an offence under the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (AMLO) if he knowingly defrauded the **Bank** and caused the **Bank** to contravene a specified provision in the AMLO.

- The **Bank Manager** might have committed an offence under the Drug Trafficking (Recovery and Proceeds) Ordinance (DTRPO), Organized and Serious Crimes Ordinance (OSCO), United Nations (Anti-Terrorism Measures) Ordinance (UNATMO) if there was evidence to show that he had failed to disclose, as soon as reasonable, his knowledge or suspicion of any property that represented proceeds of drug trafficking, an indictable offence or was terrorist property respectively.

- The **SME Owner** might have committed a money laundering offence notwithstanding his "limited role".


Lessons Learnt

Corruption Risks

- As a result of escalated attention and measures against anti-money laundering and counter-terrorist financing, criminals are willing to tempt bank staff with hard-to-resist rewards so as to achieve their illegal ends.

Good Control Practices

- Educate staff on the requirements of the AMLO.

- Assign independent team/staff to monitor fund movements using built-in system controls to identify and facilitate the investigation of suspicious transactions, e.g. new accounts or previously inactive accounts having frequent large payments made to third parties.

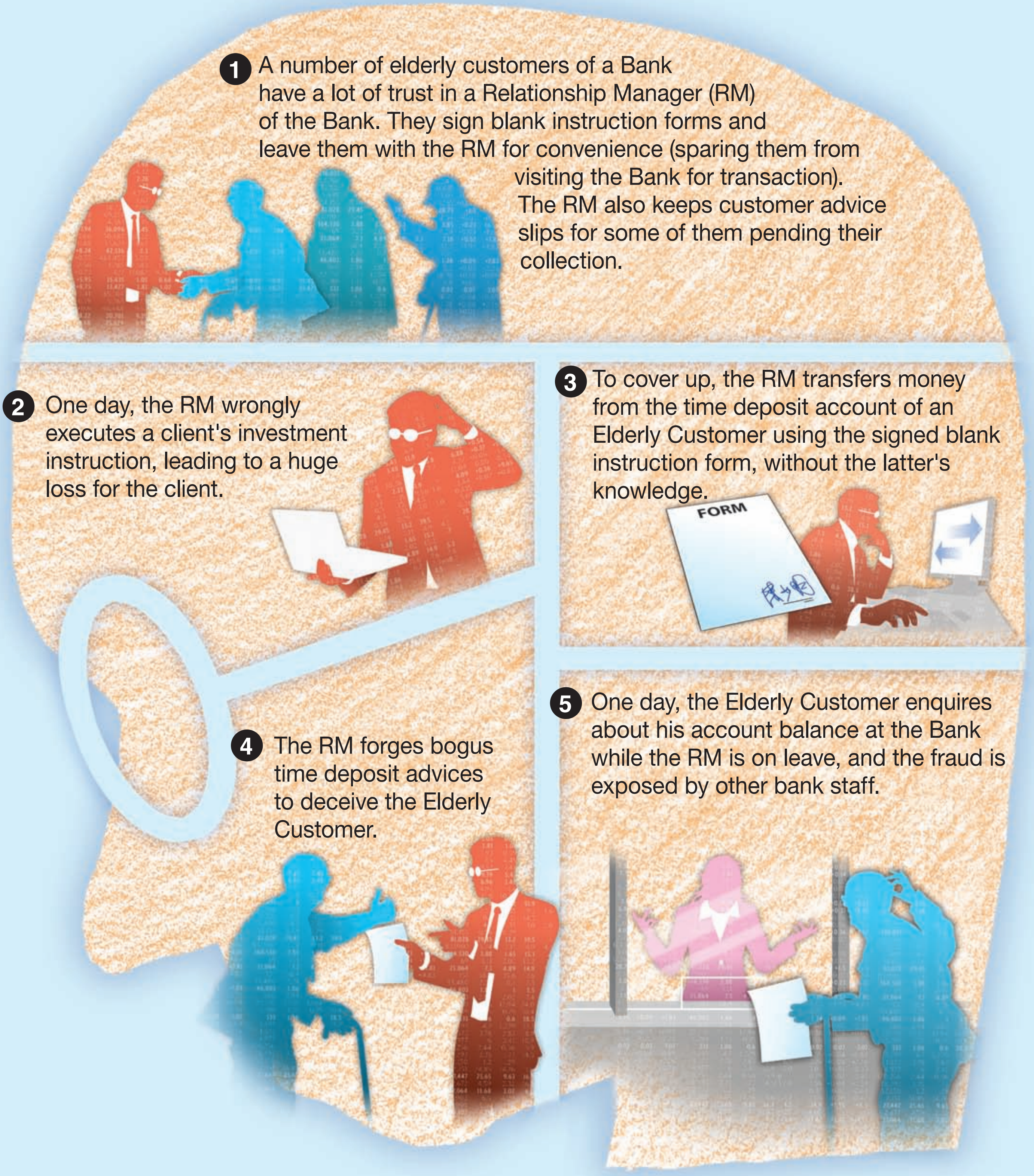
- Make all staff aware that the bank must comply with the AMLO and constantly monitor fund transfers and audit the related control/processes, so as to provide a deterrent.

Reminder Against Corruption Pitfalls

- Money laundering is a serious crime. Persons requesting assistance in money laundering could also be involved in other serious crimes (e.g. organized crime, drug trafficking). The bank staff puts himself at risk in dealing with such persons.

- Given the anti-money laundering controls that banks are required to put in place, the money laundering activities could be readily detected. The client could also be arrested for other criminal activities leading to the exposure of the money laundering activities.

2.2.3 Customer Portfolio Management Case 3 - Misuse of Vulnerable Customers' Funds



Potential Offences

- The **Relationship Manager** (agent) contravened Section 9(3) of the POBO by using a false document (forged customer instruction) to deceive the **Bank** (the principal).
- The **Relationship Manager** might also be charged with a series of crimes including theft, fraud and forgery.

Lessons Learnt

Corruption/Fraud Risks

- Some elderly customers may be vulnerable to exploitation as they may entrust the bank staff (e.g. the Relationship Manager) to execute transactions for them (e.g. signing blank instruction forms for the Relationship Manager to keep or giving their e-banking passwords to the Relationship Manager) so as to save physical visits to the bank.
- The keeping of account advice for customers by the Relationship Managers pending their collection is vulnerable to falsification or withholding of advice for concealing irregularities.
- Inactive, dormant accounts with a large balance or credit line are subject to risk of exploitation, as the account owners may not monitor their accounts properly or may have changed addresses without informing the bank.
- Risks under Lending Case 5 are also applicable in this scenario.

Good Control Practices

- Prohibit bank staff from keeping pre-signed blank instruction forms from customers.

- Frontline staff should not suggest computer-illiterate, elderly customers to open an e-banking account. For those who are using e-banking accounts, advise them not to give their passwords or other forms of access tokens/information to anyone.

- For good customer service and care, give customers advice or reminders (e.g. advisory messages on statements, webpages or other communications) where appropriate on good practices in protecting their funds/accounts from abuse that may be associated with corruption.

- Require supervisor to listen to phone recordings at random between frontline staff and clients (where recording facility and customer consent is available) for spotting any irregularities, e.g. explanation to customers regarding transactions on the statements.

- Define a customer contact protocol, i.e. define circumstances that back office staff could/should contact customers to verify sensitive/doubtful transactions (e.g. unusual transfer instructions of large sums to third party accounts).

- Avoid holding account advice by frontline staff for customers' collection. If this is necessary, enhance the security arrangements, e.g. keeping it in a safe with dual access control and a register for collection by the customers at the collection counter, assisted by the Relationship Manager if necessary.

- Enforce requirements to take annual vacation leave, arrange and introduce back-up/second officer to vulnerable customers, and require staff on leave to refer/transfer customer calls to colleagues who are on duty, and/or implement staff rotation (say, on a three-year basis) as far as practicable, e.g. change postings of the Relationship Managers, reshuffle some of their customer portfolios.

- Devise control measures to protect dormant accounts from possible abuse, e.g. alert on unusual fund movements, verification, confirmation with the customers, require supervisors' review/override for transactions on inactive accounts, and require any withdrawals to be made by the account holder in person with identification document to minimize risks of fraud.

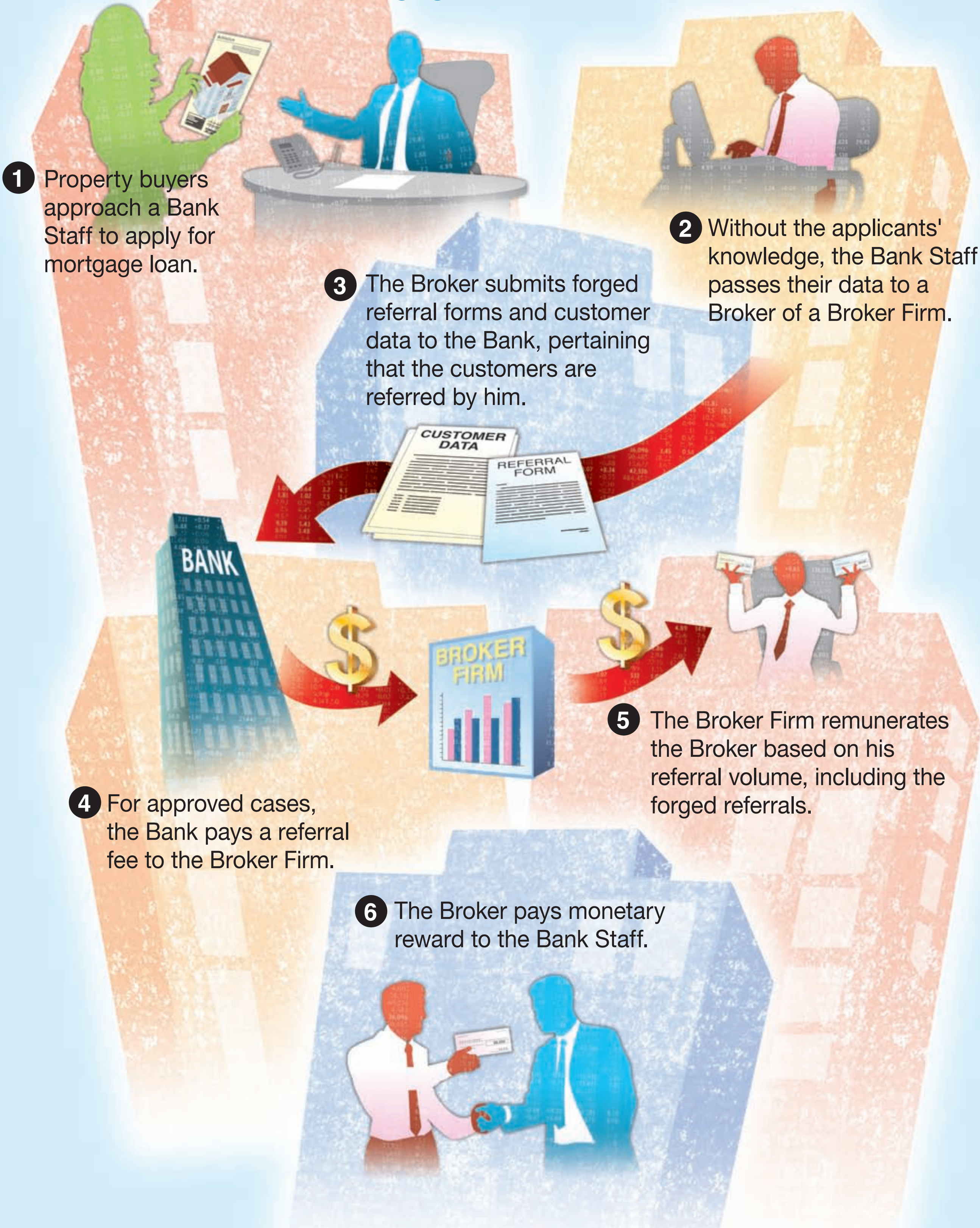
Reminder Against Corruption Pitfalls

- A mistake in performing a duty or transaction would only result in the bank's disciplinary action and in the most serious case, dismissal. However, misusing a customer's or the bank's funds to cover up a mistake is a crime. It would not cover up the mistake and avoid its consequence, but it would lead to a more devastating consequence - imprisonment, loss of reputation, and difficulty in finding a job in the banking sector, etc.

- Covering up a balance shortage with funds stolen from another account will result in a balance shortage in the latter. The perpetrator will quickly run out of options and the abuse will eventually be detected.

2.3 Sales – 2 Cases

2.3.1 Sales Case 1 - Collusion with Mortgage Broker to Deceive Bank



Potential Offences

- The **Bank Staff** (agent) of the **Bank** (the principal), without the **Bank**'s permission accepted an advantage (money) from the **Broker**, as a reward for transferring data of the **Bank**'s customers to the **Broker** (an act in relation to the **Bank**'s business), contravening Section 9(1) of the POBO. The **Broker** contravened Section 9(2) of the POBO.

- The **Broker** contravened Section 9(3) of the POBO by submitting forged referral forms to the **Broker Firm**, his employer to mislead the latter in the matter.

- The **Bank Staff** and the **Broker** might be charged with fraud against the **Bank**, or conspiracy to defraud the **Bank**.

Lessons Learnt

Corruption Risks

- Keen competition among banks for mortgage loans has driven up the referral fees paid to brokers. Some banks may even offer big bonus if the referral volume meets certain threshold. Bank staff may want to get a share of the referral fee by manipulating the system.

- Competition among brokers is equally keen. The handsome bonus may entice some brokers to make corrupt approach to bank staff in order to secure more referrals.

Good Control Practices

Dedicate a central team to receive and validate referrals from broker firms and,

- if the prospect is an existing bank customer, verify the signature on the referral form;
- contact the prospect to ascertain the referral; and
- disqualify referrals received by the bank after the date of loan application as in such cases the customers have approached the bank for a loan themselves before/without the need of the brokers' referral.

Require bank staff to input the applications received into a sales tracking system daily, to prevent staff from post-dating or deferring the mortgage loan applications so as to allow time for a broker to forge and present a referral.

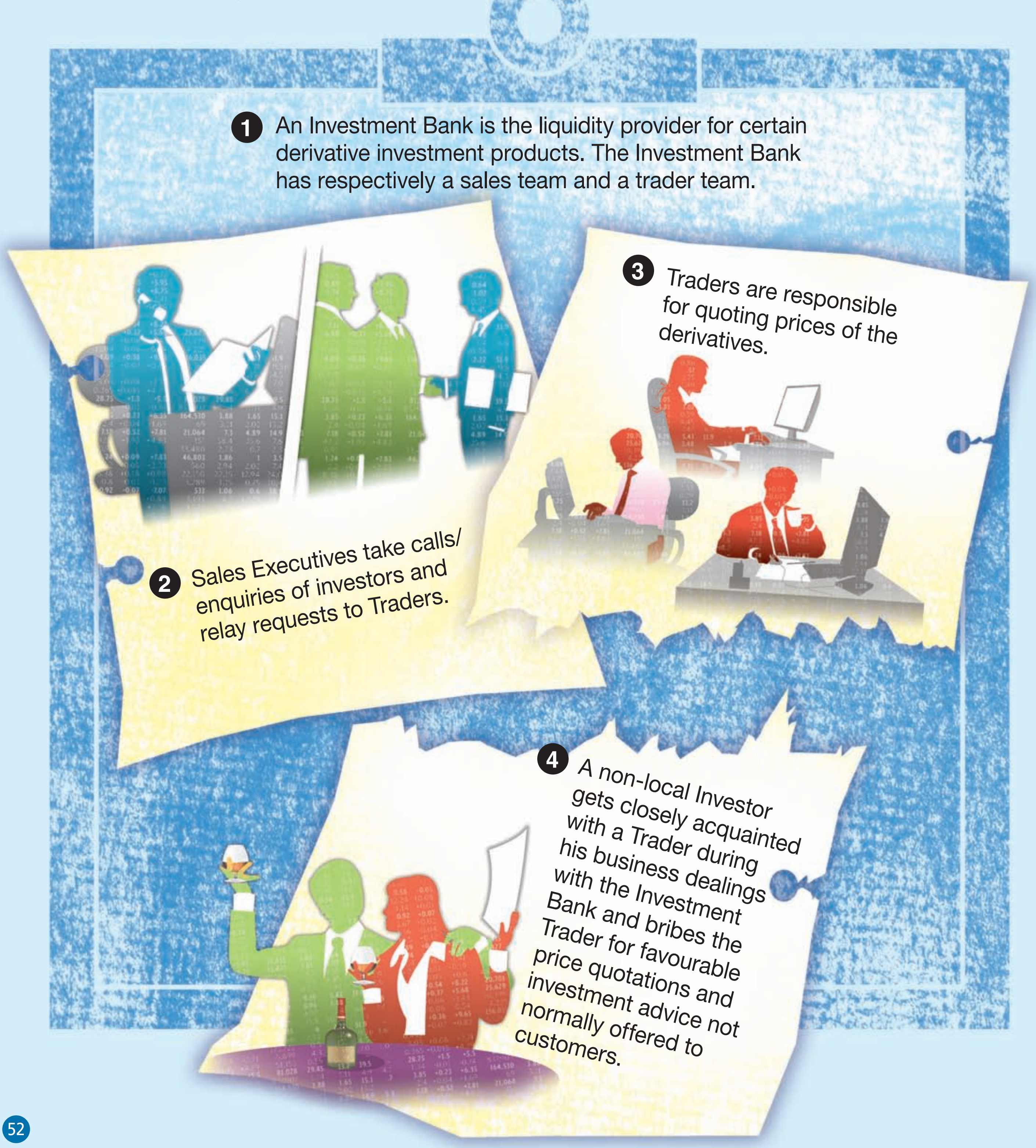
Managers should monitor business intake volume and trend of individual staff members and be alert to any unaccountable, unusual changes, such as sudden drop in volume of walk-in applications coupled with a sudden increase in referral volume, and initiate investigation (e.g. by reporting to the Compliance/Audit Department) if necessary.

Managers should watch out if their subordinates have any unusually close relationships, such as frequent/lavish entertainment, with brokers.

Reminder Against Corruption Pitfalls

The act is very risky. The Bank Staff may think only he and the Broker know about the secret arrangement, but any enquiry or verification of information with the customer by the bank would expose the deception.

2.3.2 Sales Case 2 - Bribery for Favourable Prices



Potential Offences

- The **Trader**, an employee (agent) of the **Investment Bank** (the principal), without the permission of the **Investment Bank**, contravened Section 9(1) of the POBO by accepting advantage from the **Investor** as a reward for favourable price quotations and providing investment advice (acts in relation to the **Investment Bank**'s business). The **Investor** contravened Section 9(2) of the POBO for offering the advantage to the **Trader** for the above purpose.

- The **Trader** might have committed offences under Section 295 of the Securities and Futures Ordinance if there was evidence to show that he was engaged in false trading.

Lessons Learnt

Corruption Risks

- One key role of the traders is to provide quotes for derivative investment products, taking into consideration of the supply and demand situation at the time and the maximum spread specified in the listing document (amongst other requirements). If traders make close acquaintance with investors, there is a role conflict and an increased risk of corruption (e.g. offering favourable price quotations to investors).

- Bank staff may be exposed to more unsolicited offer of rewards or advantages due to the growing number of non-local customers, who may regard offering of monetary rewards to private company staff normal.

Good Control Practices

- Define the roles and responsibilities of traders and sales executives clearly and prohibit the former from dealing and communicating with customers directly regarding quotations.

- Establish protocol or provide guidelines to bank staff to prevent them from providing inappropriate advice/information to investors.

- Inform the customers concerned the relevant policies and procedures of the bank, including anti-bribery and acceptance of advantages policies, to prevent them, especially non-local customers, from possible exploitation or breach of the anti-bribery law, due to lack of information or understanding.

- Conduct regular assurance check to facilitate detection of abnormal trends/signs of manipulation.

Reminder Against Corruption Pitfalls

- Considerations under Customer Portfolio Management Case 1 are applicable in this scenario.

2.4 Procurement and Contract Administration – 1 Case

2.4.1 Procurement & Contract Administration Case – Administration of Renovation Contract in the Mainland

1. A Bank plans to renovate its branch network in Guangdong and assigns a staff to be the Project Manager to station in the Mainland to oversee the project.

2. The Mainland Contractor responsible for the renovation keeps offering the Project Manager entertainment and free trips in the Mainland.

3. In the renovation of the first branch, the Project Manager finds the workmanship and materials sub-standard.

4. The Mainland Contractor "reminds" the Project Manager of the entertainment and free trips provided, and further offers money to the Project Manager for recommending to the Bank's head office in Hong Kong to continue to appoint him to renovate other Mainland branches.

5. The Mainland Contractor's staff who knows about the corrupt dealing blows the whistle.


Potential Offences

- The **Project Manager**, an employee (agent) of the **Bank** (the principal), accepted an advantage from the **Mainland Contractor**, as a reward for making a recommendation to the **Bank**'s head office in Hong Kong to accept the contractor's substandard works and employ the same contractor to renovate other branches (an act in relation to the **Bank**'s business and took place in Hong Kong), contravening Section 9(1) of the POBO. The **Mainland Contractor** contravened Section 9(2) of the POBO. As the **Project Manager**'s recommendations to the **Bank** took place in Hong Kong, the Hong Kong ICAC has jurisdiction to investigate and prosecute the case in Hong Kong.

Lessons Learnt

Corruption Risks

- Procurement of goods and services is one of the most corruption-prone business processes, in particular those involving high values or specialist knowledge and specialised products or services, e.g. renovation and maintenance works.

- In the procurement of specialised products or services or administration of contracts, companies often rely on a single staff member who is a specialist, without effective checks and balances and segregation of duties, which increases the corruption risk.

- It is now common for banks to send staff to work in the Mainland office. The staff are exposed to significant risk of temptation due to their perceived remoteness from the main office in Hong Kong and the absence of supervisory control measures.


Good Control Practices

- Lay down guidelines for key procurement stages, including drawing up purchase/service requests, sourcing suppliers, inviting, receiving, opening and evaluation of quotations/tenders and monitoring performance of suppliers/contractors etc.[3]

- Assign supervisors to conduct site inspections to ensure compliance with the laid down guidelines and to detect malpractice, such as connivance of substandard performance of contractors.

- Circulate regularly the staff code of conduct to remind staff to refrain from accepting frequent/lavish entertainment from contractors/suppliers which may otherwise affect one's objective commercial judgment.

- Ensure, as far as practicable, some important/key process/processes (e.g. approval) are carried out in Hong Kong although some business/transactions need to be conducted outside Hong Kong.

- Communicate to suppliers/contractors, in particular non-local ones, the bank's anti-bribery and acceptance of advantages/entertainment policy, and zero tolerance to corruption, and provide channel(s) for feedback/enquiry.

- Managers should watch out if their subordinates have any unusual close relationships, such as frequent/lavish entertainment, with suppliers/contractors.

Reminder Against Corruption Pitfalls

- Considerations under Lending Case 3 are applicable in this scenario.

[3] *Readers may refer to Best Practice Checklists published by the ICAC on Letting and Administration of Works Contracts, Management of Works Consultancies, and Procurement. These Checklists can be assessed on the ICAC website (www.icac.org.hk).*

PART 3 GOOD INTERNAL CONTROL PRACTICES AND ETHICS IN MANAGEMENT

All banks should put in place sound and comprehensive governance and internal control systems in accordance with the Supervisory Policy Manual issued by the HKMA, relevant regulations and conventions, and principles of good control.

Every bank manager/supervisor should help the bank in effectively implementing good internal control and integrity management, and exercising ethical decision-making in the day-to-day management and operation of his/her branch/unit. Without their support, it will be difficult for the bank's senior management or the Compliance and Internal Audit Unit to implement good governance and control solely on their own.

The following outlines a set of principles and recommends some good practices of internal control (the system approach) and integrity management (the human approach). An ethical decision-making model is also included for reference by bank managers and staff.

3.1 Good Internal Control Practices

3.1.1 Policies, Work Procedures and Guidelines

- Clear and adequate policies, procedures and guidelines should be laid down and issued on all business processes, including the handling of clients and their accounts and information, credit approval, anti-money laundering measures, etc. Appropriate control measures including segregation of duties, approving authorities, documentation, supervisory checks and monitoring, computerized processes, etc. should be built into the policies, procedures and guidelines.

- The policies, procedures and guidelines should be effectively communicated to all staff concerned, which should be reinforced by briefing or training where practicable.

- For business/transactions involving customers from outside Hong Kong (e.g. lending to a customer overseas or renovating bank branches in the Mainland), it is advisable to carry out certain important processes (e.g. approval) in the Hong Kong head office (where applicable) to exercise better supervision and control and deter corrupt practices.

3.1.2 Duties and Authorities

- The duties, responsibilities, authorities, and chain of command of staff at all levels should be clearly defined and made known to the staff.

- The duties and levels of authority (e.g. credit approval authority) should commensurate with the staff's rank, experience and expertise, taking into consideration the need to minimize the risk of corruption.

3.1.3 Segregation of Duties and Checks and Balances

- Incompatible functions (e.g. execution, approval, verification, record-keeping) in business processes with risks of corruption or malpractice should be assigned to different staff members/parties as far as practicable. Customer handling/relationship management and credit approval/verification should be segregated as far as possible.

- Staff administration measures such as job rotation (say, on a three-year basis), compulsory annual leave arrangements and assignment of a second/backup officer where practicable should be implemented for functions with risks of corruption or malpractice.

- Processes/transactions susceptible to corruption or malpractice performed by one staff should be subject to counter-check by another as far as practicable.

The following are some examples of segregation of duties/enhanced checks and balances from the lessons learnt in Part 2, which are by no means exhaustive:

(a) Lending

- credit approval authority should normally be vested in functions independent of the frontline marketing department; in case frontline staff has credit approval authority, the levels of authority should commensurate with the staff's rank, experience and expertise;

- assign more than one staff from different units to perform higher risk tasks (e.g. conducting site visits to assess the value/condition of collaterals located outside Hong Kong) as far as practicable;

- assign a central team to handle/verify collateral valuation and engage independent agencies to appraise the value of a collateral; and

- assign a central team to conduct customer due diligence especially for high credit risk customers.

(b) Customer Portfolio Management

- require Relationship Managers to refer/transfer customer calls to colleagues during their vacation leave, and/or as far as practical (say, on a three-year basis), change postings of the Relationship Managers, or reshuffle some of their customer portfolios; and

- assign the back office to verify sensitive/doubtful transactions directly with the customers concerned.

(c) Sales

- assign a central team to collect and initially process brokers' referrals before distributing to branches for further processing; and

- do not allow derivative traders to deal directly with investor customers.

3.1.4 Record-keeping and Information Security

- Business processes/transactions should be properly documented and promptly recorded, with details including the customers' instructions and the staff members involved in processing, validating, authorizing and executing the transactions.

- Decisions/actions for important or exceptional cases should be documented with justifications provided.

- Confidential, commercially sensitive information and customer data should be safeguarded with sufficient administrative as well as technical controls, e.g. access authorities should be defined and restricted based on the need-to-know principle, access should be monitored and logged for audit purpose, hard copies should be safely kept, etc.

The following are some examples of documentation and information security measures from the lessons learnt in Part 2, which are by no means exhaustive:

(a) Lending

- require site inspections to be preferably documented with appropriate photos.

(b) Customer Portfolio Management

- keep customer advices pending for customers' collection in a safe with dual access control and register; and

- maintain phone recordings between frontline staff and customers (where applicable, especially during closing of regulated sales transactions).

3.1.5 Effective Supervision

- Supervisors should provide guidance and advice to their staff on proper procedures and practices.

- Supervisors should remain vigilant at all times in monitoring the operations in or involving their units, conduct routine and risk-based spot checks on operations and transactions as appropriate, stay alert to potential risk of corrupt practices, and make thorough enquiries into suspected irregularities.

- Information management systems and management/exception reports should be made available to facilitate monitoring and supervision by supervisors and senior management.


The following are some examples of the higher-risk types of transaction, including those revealed from the lessons learnt in Part 2, which are by no means exhaustive:

(a) Lending

- approval of terms (e.g. extension of repayment due date) in restructuring distressed loans;

- hire purchase loans involving unreasonably priced goods/assets; and

- borrowers with reputations for extravagant lifestyles which do not commensurate with their income/assets.

(b) Customer Portfolio Management

- transactions related to "vulnerable" accounts e.g. those dormant for a long time and/have wrong correspondence addresses (i.e. account statements cannot reach customers), or have advices held at the bank for customers' collection;

- third party withdrawal/transfer transactions performed on accounts of the elderly/illiterate which appear inconsistent with past behaviour, particularly those performed via e-banking; and

- new accounts or previously inactive accounts having frequent large payments to third parties, or transaction sums not commensurate with the customer's business turnover volume (for company accounts).

(c) Sales

- unusual changes in business intake volume and trend of individual staff performance e.g. an upsurge in the sales volume of a single staff with cases of similar nature/referral source; and

- appraisals, reports or feasibility studies from "experts" or business referrals from sources unfamiliar to the bank.


(d) Procurement and Contract Administration

- procurement of specialized products or services or administration of contracts (particularly at remote sites outside Hong Kong) overseen by a single specialist staff member.

3.1.6 Communication

- Relevant policies and procedures should be made transparent and communicated to the customers and business partners concerned, including the bank's anti-bribery and acceptance of advantages/entertainment policies, and zero-tolerance to corrupt practices in order to prevent them from possible exploitation or breach of the anti-bribery law due to lack of information or understanding.

- For good customer service and care, give customers advice or reminders (e.g. advisory messages on statements, web pages or other communications) where appropriate on good practices in protecting their funds/accounts from abuse that may be associated with corruption.

- Reliable and independent channels for receiving feedback or complaints from staff, customers and business partners should be set up and made known to all those concerned.

3.1.7 Internal Audit and Compliance Monitoring

- Compliance checks and verifications of transactions should be appropriately conducted by supervisory or independent units/staff (i.e. staff not responsible for processing the transactions or customers' requests). Where there are doubtful transactions, verification should be made directly with the customer by independent staff.

- Internal audit should be conducted on processes that are exposed to risks of corruption or malpractices so as to give all staff the perception that any malpractice stands a good chance of being detected.

- High-risk, vulnerable types of transactions should be identified and assurance reviews should be conducted more frequently on such transactions.

- Complaints investigation should be conducted or monitored by independent staff/unit and the result reported to the appropriate level of management.

- Suspected corruption or other crimes or breaches should be promptly reported to the relevant law enforcement agencies.

The following are some examples of audit, compliance and complaints handling practices from the lessons learnt in Part 2, which are by no means exhaustive:

(a) Lending

- conduct independent audit on cases calling for site visits to assess the value/ condition of collaterals located outside Hong Kong, especially those assessed by a bank staff member alone.

(b) Other Business Functions

- the examples of higher-risk transactions listed under "Effective Supervision" are also suitable for conducting risk-based audit.

3.2 Integrity Management

3.2.1 Integrity Management Programme

An ethical corporate culture and high standard of integrity drives the ethical behaviour of an organization and its members and business partners, which is vital for the long-term sustainable development of the organization. This can be fostered through a corporate integrity management programme, which should include the following:

(a) Ethical Leadership

- Loud and clear top-level commitment to business ethics and integrity and zero-tolerance to corrupt or unethical practices, e.g. by including integrity and professional ethics in the core values of the corporation, or sending out messages from the CEO or other senior directors in corporate newsletters.

- Leaders setting examples and being role models in ethical decision-making.

(b) Code of Conduct

- A Code of Conduct or probity guidelines for staff and board of directors laying down the integrity standard expected, setting out the policy and restrictions on acceptance of advantages, and guidelines on handling conflict of interest and managing relationship with customers and business partners, etc.

  ❖ A sample Code of Conduct is provided by the ICAC for reference by private companies in general.

  ❖ The Advisory Services Group of the ICAC provides advice on the drawing up of company Code of Conduct.


(c) Education and Training

- Provide induction and refresher training (including online training) to all bank staff on integrity, prevention of bribery, Code of Conduct requirements, relevant regulations and compliance requirements, and bank policies and procedures. Training should also be provided to managers and supervisors to raise their corruption prevention awareness and knowledge. Educational campaigns may also be held regularly, such as launching a series of seminars, posters, stationery items with integrity messages or core values, etc. The ICAC has provided a training video along with this Guide, and can assist private companies in developing ethics training programmes.

(d) Probity Requirements for Business Partners

- The bank should have a policy of not doing business with unethical business entities. The bank's ethical commitment, probity requirements governing its personnel (e.g. acceptance of advantage policy) and zero-tolerance of corrupt practices should be communicated to its business partners (e.g. suppliers and contractors) and customers, especially those from outside Hong Kong who may be accustomed to different cultures regarding the offering of business gifts. One way is to include probity requirements in a statement to business partners and in contract conditions requiring them to adopt anti-bribery practices in business dealings with/of the bank (sample probity clauses are at Attachment 2).

(e) Enquiry/Reporting Channel(s)

- Reliable and confidential channel(s) should be provided for staff and business partners to make enquiry about integrity issues/dilemmas or reporting integrity breaches.


(f) Enforcement

- A system comprising internal investigation/enquiry function and procedures, and disciplinary mechanisms should be in place to deal with possible integrity breaches. Breaches should be handled fairly with appropriate action, and suspected corruption or other crimes should be reported to the relevant law enforcement agencies, so as to send a clear message to other staff that there is no chance to take with the bank. Consideration could also be given to include integrity in staff's performance appraisal.

3.2.2 Managing Staff Integrity

Managers and supervisors should be accountable not only for the business performance of their subordinates, but also for their ethical conduct in handling the bank's business. Hence, they should:

- provide guidance and advice to their staff on integrity, ethical conduct, as well as requirements of the Code of Conduct;

- not assign unreasonable tasks to a subordinate which he would not be able to complete without taking the backdoor or circumventing any rules or procedures, and provide close guidance and proper support to the subordinate if he has to handle a task with potential ethical risk;

- watch out if subordinates have any unusual behaviour which might warrant closer observation, enquiry, reminder or action, examples of which include:

    - ❖ sudden change to an extravagant lifestyle and spending habit incommensurate with income from the bank;

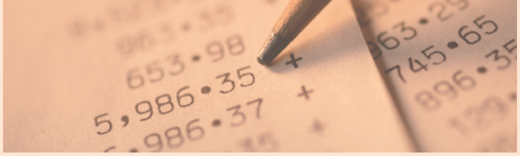
    - ❖ overly close personal relationship with certain customers, suppliers or contractors, e.g. frequent entertainment, pleasure trips or gambling with them;

- ❖ signs of financial distress or indebtedness, e.g. fax messages from debt collector, borrowing from colleagues;
- ❖ signs of depression, constant state of stress, pressure or tension;
- ❖ nervous, irritated, overly reactive or defensive to simple enquiries about his work or conduct;
- ❖ reluctance to take any holiday, accept a transfer, or allow any other colleague to assist in his tasks;
- ❖ habit of heavy gambling;
- ❖ frequently making various excuses in favour of certain customers, suppliers, etc. or regarding doubtful transactions, or frequently requesting exceptional handling of cases;
- ❖ failures and delays in maintaining proper or complete records or reports; and
- ❖ accumulating and presenting large number of cases to an acting manager for approval when the manager is on leave, or at busy times when the manager has little time to examine the cases.

3.3 Making Ethical Decision – The ETHICS-PLUS Decision Making Model

Top management and senior managers are always required to make decisions in the face of ethical dilemmas. The ETHICS-PLUS Decision Making Model at Attachment 3 can be a useful tool to help one make sound judgments after mentally going through an array of important variables and handle ethical dilemmas properly at work.

PART 4 SERVICES AND ASSISTANCE



The law enforcement authorities, regulatory authorities and industry associations provide a wide range of services to assist bank managers in promoting and maintaining a high standard of professional ethics in the banking industry. Interested parties can contact the following organizations for details.

4.1 Independent Commission Against Corruption

4.1.1 Consultancy Services on Corruption Prevention

The Advisory Services Group of the Corruption Prevention Department of the ICAC provides free, confidential and tailored corruption prevention advice to private companies or private sector practitioners on request, and will answer any enquiries about this Guide. For further information, please contact the Group through the following channels:

Phone: 2526 6363

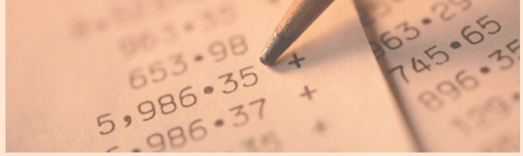
Fax: 2522 0505

E-mail: asg@cpd.icac.org.hk

4.1.2 Corporate Ethics Programmes

The Hong Kong Ethics Development Centre of the ICAC aims to promote business and professional ethics in Hong Kong on a long-term basis. The Centre:

- publishes practical guides and training packages on business and professional ethics;
- provides business organizations with a full range of consultancy and training services to enhance corporate governance; and
- organizes ethics promotion activities with trade associations and professional bodies to strengthen the ethical standard of trade practitioners.



For enquiries, please contact the Centre through the following channels:

Phone: 2587 9812

Fax: 2519 7762

E-mail: hkedc@crd.icac.org.hk

Website: www.hkedc.icac.hk

4.1.3 Reporting Corruption

Any person encountering corruption should make a report to the ICAC through one of the following channels:

Phone: 25 266 366 (24-hour service)

Mail: G.P.O. Box 1000, Hong Kong

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

ICAC Regional Offices

4.1.4 ICAC Website

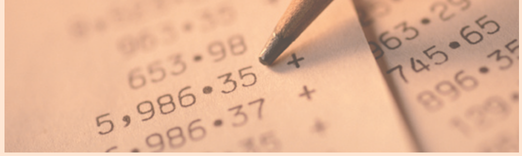
You may also visit the ICAC Homepage at www.icac.org.hk for latest information or email the ICAC at general@icac.org.hk for enquiries.

4.2 Commercial Crime Bureau, Hong Kong Police Force

The Commercial Crime Bureau of the Hong Kong Police Force investigates serious and complex commercial fraud, computer crime, and the counterfeiting or forgery of currency, coinage, credit cards, other commercial instruments and travel and identity documents. Please contact the Bureau through the following channels:

Phone: 2860 5012

Website: www.police.gov.hk



4.3 Joint Financial Intelligence Unit

The Joint Financial Intelligence Unit (JFIU) is the reception point for reports about suspicious financial activity made under the provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance (DTRPO) and the Organized and Serious Crimes Ordinance (OSCO), and suspicious transaction report related to terrorist property made under the United Nations (Anti-Terrorism Measures) Ordinance (UNATM). JFIU is jointly run by staff of the Hong Kong Police Force and the Hong Kong Customs & Excise Department.

You are obliged to report any suspicions of a money laundering transaction to a designated officer or compliance officer in your bank who should be responsible for reporting to the JFIU. Please contact the Unit through the following channels:

Phone: 2866 3366

E-mail: jfiu@police.gov.hk

Website: www.jfiu.gov.hk

4.4 Hong Kong Monetary Authority

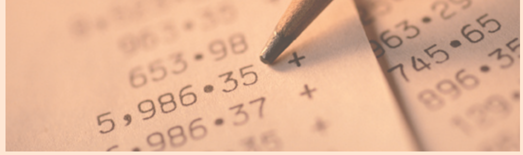
Bank managers should approach their usual supervisory contacts in the Hong Kong Monetary Authority (HKMA) if they have questions on the compliance of the relevant laws and guidelines. The HKMA also receives related public complaints through the following channels.

Phone: 2878 1378

E-mail: bankcomplaints@hkma.gov.hk

Address: Complaint Processing Centre,
55/F, Two International Finance Centre,
8 Finance Street, Central
Hong Kong

Website: www.hkma.gov.hk



4.5 Securities and Futures Commission

The Securities and Futures Commission (SFC) is responsible for administering the laws governing the securities and futures markets in Hong Kong. The SFC also provides enquiry services to financial practitioners and intermediaries on how to enhance ethical standards. Please contact the Commission through the following channels:

Phone: 2231 1222

E-mail: enquiry@sfc.hk

Address: 35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

Website: www.sfc.hk

4.6 Industry Associations

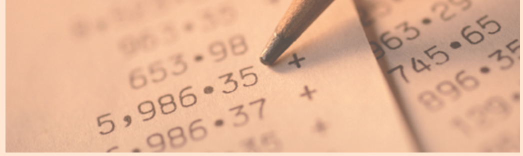
The industry associations also play an important role in the pursuit of professional excellence and endeavour to enhance ethical standards in business practice amongst members. These organizations include:

The Hong Kong Association of Banks
Phone: 2521 1160 or 2521 1169

E-mail: info@hkab.org.hk

Address: Room 525, Prince's Building, Central
Hong Kong

Website: www.hkab.org.hk



The DTC Association

Phone: 2526 4079

E-mail: dtca@dtca.org.hk

Address: Unit 1704, 17/F, Bonham Trade Centre
50 Bonham Strand East, Sheung Wan
Hong Kong

Website: www.dtca.org.hk

The Hong Kong Institute of Bankers

Phone: 2815 1552

E-mail: hkib@hkib.org

Address: 3/F Guangdong Investment Tower
148 Connaught Road
Hong Kong

Website: www.hkib.org

Hong Kong Federation of Insurers

Phone: 2520 1868

E-mail: hkfi@hkfi.org.hk

Address: 29/F Sunshine Plaza
353 Lockhart Road, Wanchai
Hong Kong

Website: www.hkfi.org.hk

Attachment 1 Sample Code of Conduct

Sample Code of Conduct

Ethical Commitment

1. The (*name of company*) (hereafter referred to as the Company) regards honesty, integrity and fair play as our core values that must be upheld by all directors and staff[1] of the Company at all times. This Code sets out the basic standard of conduct expected of all directors and staff, and the Company's policy on acceptance of advantage and handling of conflict of interest when dealing with the Company's business.

Prevention of Bribery

2. The Company prohibits all forms of bribery and corruption. All directors and staff are prohibited from soliciting, accepting or offering any bribe in conducting the Company's business or affairs, whether in Hong Kong or elsewhere. In conducting all business or affairs of the Company, they must comply with the Prevention of Bribery Ordinance (POBO) of Hong Kong and must not:

   (a) solicit or accept any advantage from others as a reward for or inducement to doing any act or showing favour in relation to the Company's business or affairs, or offer any advantage to an agent of another as a reward for or inducement to doing any act or showing favour in relation to his principal's business or affairs;

   (b) offer any advantage to any public servant (incl. Government / public body employee) as a reward for or inducement to his performing any act in his official capacity or his showing any favour or providing any assistance in business dealing with the Government / a public body; or

   (c) offer any advantage to any staff of a Government department or public body while they are having business dealing with the latter.

   (The relevant provisions of the POBO are at **Annex 1**.)

[1] *"Staff" cover full-time, part-time and temporary staff, except where specified.*

Acceptance of Advantage

3. It is the Company's policy that directors and staff should not solicit or accept any advantage for themselves or others, from any person, company or organization having business dealings with the Company or any subordinate, except that they may accept (but not solicit) the following when offered on a voluntary basis:

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

   (b) gifts given on festive or special occasions, subject to a maximum limit of $ _________ in value; or

   (c) discounts or other special offers given by any person or company to them as customers, on terms and conditions equally applicable to other customers in general.

4. Gifts or souvenirs described in paragraph 3(a) that are presented to directors and staff in official functions are deemed as offers to the Company. The directors and staff concerned should report the acceptance to the Company and seek direction as to how to handle the gifts or souvenirs from the *approving authority*[2] using Form A (**Annex 2**). If a director or staff member wishes to accept any advantage not covered in paragraph 3, he/she should also seek permission from the *approving authority* using Form A.

5. However, a director or staff member should decline an offer of advantage if acceptance could affect his/her objectivity in conducting the Company's business or induce him/her to act against the interest of the Company, or acceptance will likely lead to perception or allegation of impropriety.

[2] *Specify the post of the approving authority in the Code and the Form.*

6. If a director or staff member has to act on behalf of a client in the course of carrying out the Company's business, he/she should also comply with any additional restrictions on acceptance of advantage that may be set by the client (e.g. directors and staff members performing any duties under a government or public body contract will normally be prohibited from accepting advantages in relation to that contract).

Offer of Advantage

7. Directors and staff are prohibited from offering advantages to any director, staff member or agent of another company or organization, for the purpose of influencing such person in any dealing, or any public official, whether directly or indirectly through a third party, when conducting the Company's business. Even when an offer of advantage carries no intention of improper influence, it should be ascertained that the intended recipient is permitted by his employer/principal to accept it under the relevant circumstance before the advantage is offered.

Entertainment

8. Although entertainment[3] is an acceptable form of business and social behaviour, a director or staff member should avoid accepting lavish or frequent entertainment from persons with whom the Company has business dealing (e.g. suppliers or contractors) or from his/her subordinates to avoid placing himself/herself in a position of obligation.

Records, Accounts and Other Documents

9. Directors and staff should ensure that all records, receipts, accounts or other documents they submit to the Company give a true representation of the facts, events or business transactions as shown in the documents. Intentional use of documents containing false information to deceive or mislead the Company, regardless of whether there is any gain or advantage involved, may constitute an offence under the POBO.

---

[3] *Entertainment refers to "entertainment" as defined in the POBO, i.e. food or drink provided for immediate consumption on the occasion, and any other entertainment provided at the same time.*

Compliance with Laws of Hong Kong and in Other Jurisdictions

10. Directors or staff must comply with all local laws and regulations when conducting the Company's business, and also those in other jurisdictions when conducting business there[4] or where applicable[5].

Conflict of Interest

11. Directors and staff should avoid any conflict of interest situation (i.e. situation where their private interest conflicts with the interest of the Company) or the perception of such conflicts. When actual or potential conflict of interest arises, the director or staff member should make a declaration to *the approving authority* through the reporting channel using Form B (**Annex 3**).

12. Some common examples of conflict of interest are described below but they are by no means exhaustive:

    (a) A staff member involved in a procurement exercise is closely related to or has financial interest in the business of a supplier who is being considered for selection by the Company.

    (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 involved in the process.

    (c) A director of the Company has financial interest in a company whose quotation or tender is under consideration by the Board.

    (d) A staff member (full-time or part-time) undertaking part-time work with a contractor whom he is responsible for monitoring.

---

[4] *The **"Integrity and Compliance with the Law : a guide to the prevention of corruption for SME entrepreneurs investing in Guangdong and Hong Kong"** jointly published by the ICAC and the Guangdong Provincial People's Procuratorate provides guidance on the anti-bribery laws in Chinese Mainland and Hong Kong. Directors and staff conducting the Company's business there may find it helpful.*

[5] *Some other countries' anti-bribery laws have provisions with extra-territorial effect, e.g. the UK's Bribery Act 2010, the USA's Foreign Corrupt Practices Act.*

Misuse of Official Position, Company Assets and Information

13. Directors and staff must not misuse their official position in the Company to pursue their own private interests, which include both financial and personal interests and those of their family members, relatives or close personal friends.

14. Directors and staff in charge of or having access to any Company assets, including funds, property, information, and intellectual property, should use them solely for the purpose of conducting the Company's business. Unauthorized use, such as misuse for personal interest, is strictly prohibited.

15. Directors and staff should not disclose any classified information of the Company without authorization or misuse any Company information (e.g. unauthorized sale of the information). Those who have access to or are in control of such information, including information in the Company's computer system, should protect the information from unauthorized disclosure or misuse. Special care should also be taken in the use of any personal data, including directors', staff's and customers' personal data, to ensure compliance with Hong Kong's Personal Data (Privacy) Ordinance.

Outside Employment

16. If a staff member wishes to take up employment outside the Company, he must seek the prior written approval of the *approving authority*. The *approving authority* should consider whether the outside employment would give rise to a conflict of interest with the staff member's duties in the Company or the interest of the Company.

Relationship with Suppliers, Contractors and Customers

Gambling

17. Directors and staff are advised not to engage in frequent gambling activities (e.g. mahjong) with persons having business dealings with the Company.

Loans

18. Directors and staff should not accept any loan from, or through the assistance of, any individual or organization having business dealings with the Company. There is however no restriction on borrowing from licensed banks or financial institutions.

    [The Company may wish to include other guidelines on the conduct required of directors and staff in their dealings with suppliers, contractors, customers, and other business partners as appropriate to specific trades.]

Compliance with the Code

19. It is the responsibility of every director and staff member of the Company to understand and comply with this Code, whether performing his duties of the Company in or outside Hong Kong. Managers and supervisors should also ensure that the staff under their supervision understand well and comply with this Code.

20. Any director or staff member in breach of this Code will be subject to disciplinary action, including termination of appointment. Any enquiries about this Code or reports of possible breaches of this Code should be made to (post of a designated senior staff member). In cases of suspected corruption or other criminal offences, a report should be made to the appropriate authority.

____

(Name of Company)

Date :

Extracts of the Prevention of Bribery Ordinance (Cap. 201)

Section 9

(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 4

(1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or

(c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body,

shall be guilty of an offence.

(3) If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

Section 8

(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

Section 2

"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.

Section 19

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.

Annex 2
Form A

(Company Name)
REPORT ON GIFTS/ADVANTAGES RECEIVED

Part A – To be completed by Receiving Staff

To : (Approving Authority)

Description of Offeror :

Name & Title : ______________________

Company : ______________________

Relationship (Business / Personal) : ______________________

Occasion on which the Gift/Advantage was / is to be received : ______________________

Description & (assessed) value of the Gift/Advantage : ______________________

Suggested Method of Disposal :	**Remark**
( ) Retain by the Receiving Staff	______________________
( ) Retain for Display / as a Souvenir in the Office	______________________
( ) Share among the Office	______________________
( ) Reserve as Lucky Draw Prize at Staff Function	______________________
( ) Donate to a Charitable Organization	______________________
( ) Return to Offeror	______________________
( ) Others (please specify) :	______________________

____
(Name of Receiving Staff)
(Date) (Title / Department)

Part B – To be completed by Approving Authority

To : (Name of Receiving Staff)

The recommended method of disposal is ***approved / not approved**. *The gift/advantage concerned should be disposed of by way of : ______________________

____
(Name of Approving Authority)
(Date) (Title / Department)

**Delete as appropriate*

Annex 3
Form B

(Company Name)
DECLARATION OF CONFLICT OF INTEREST

Part A – Declaration *(To be completed by Declaring Staff)*

To : (Approving Authority) via (supervisor of the Declaring Staff)

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

Persons/companies with whom/which I have official dealings
My relationship with the persons/companies (e.g. relative)
Relationship of the persons/companies with our Company (e.g. supplier)
Brief description of my duties which involved the persons/companies (e.g. handling of tender exercise)

(Name of Declaring Staff)
(Date) (Title / Department)

Part B – Acknowledgement *(To be completed by Approving Authority)*

To : (Declaring Staff) via (supervisor of the Declaring Staff)

Acknowledgement of Declaration

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

❑ 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, and you must uphold the Company's interest without being influenced by your private interest.

❑ Others (please specify) :

(Name of Approving Authority)
(Date) (Title / Department)

*Delete as appropriate

Attachment 2

Sample Probity Clauses in Contracts to be Awarded

SAMPLE PROBITY CLAUSES IN CONTRACTS TO BE AWARDED

Ethical Commitment

Prevention of Bribery

(A) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, except with permission of [Name of Company] (hereafter referred to as the Company) solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in relation to the business of the Company. The Contractor shall also caution his directors, employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the business of the Company. The Contractor shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and subcontractors are aware of the aforesaid prohibition and will not, except with permission of the Company, solicit or accept any advantage, excessive hospitality, etc. in relation to the business of the Company.

(B) The Contractor shall not, and shall procure that his directors, employees, agents and sub-contractors who are involved in this Contract shall not, offer any advantage to any Board member or staff in relation to the business of the Company.

Declaration of Interest

(C) The Contractor shall require his directors and employees to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed. The Contractor shall require his agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.

(D) The Contractor shall prohibit his directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Contractor shall require his agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.

(E) The Contractor shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that his directors, employees, agents and sub-contractors who are involved in this Contract are aware of the provisions under the aforesaid sub-clauses (C) and (D).

Handling of Confidential Information

(F) The Contractor shall not use or divulge, except for the purpose of this Contract, any information provided by the Company in the Contract or in any subsequent correspondence or documentation, or any information obtained when conducting business under this Contract. Any disclosure to any person or agent or sub-contractor for the purpose of the Contract shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract. The Contractor shall take all necessary measures (by way of internal guidelines or contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or sub-contractor. The Contractor shall indemnify and keep indemnified the Company against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Company may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his directors, employees, agents or sub-contractors.

Declaration of Ethical Commitment

(G) The Contractor shall submit a signed declaration in a form (see Annex) prescribed or approved by the Company to confirm compliance with the provisions in aforesaid sub-clauses (A) (B), (C), (D), (E) and (F) on prevention of bribery, declaration of interest and confidentiality. If the Contractor fails to submit the declaration as required, the Company shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D), (E) and (F) on prevention of bribery, declaration of interest and handling of confidential information, the Contractor and the subcontractors employed for the performance of duties under this Contract are required to deposit with the Company a copy of the internal guidelines issued to their staff.

Declaration Form by Service Providers on their Compliance with the Ethical Commitment Requirements

To: ***[Name of Company]***

Contract No.: ______________________

Title: ____________________________

In accordance with the Ethical Commitment clauses in the Contract:

(1) We confirm that we have complied with the following provisions and have ensured that our directors, employees, agents and sub-contractors are aware of the following provisions:

(a) prohibiting our directors, employees, agents and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance (Cap 201) in relation to the business of the Company except with the permission of the Company;

(b) requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to their respective company management any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract, and in the event that a conflict or potential conflict is disclosed, take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;

(c) prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment (other than in the performance of this Contract), with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract and requiring our agents and sub-contractors to do the same; and

(d) taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the Company from being divulged to a third party other than those allowed in this Contract.

Signature ______________________

(Name of the Contractor) ______________________

(Name of the Signatory) ______________________

(Position of the Signatory) ______________________

(Date) ______________________

Attachment 3

The ETHICS-PLUS Decision Making Model

The ETHICS-PLUS Decision Making Model

The ETHICS-PLUS Decision Making Model has been developed by the ICAC to help you identify the ethical issue at stake and guide you to reach a chosen course of action or a justified decision in a structured and systematic way.

While it is easy for us to identify the obvious wrongs which are against the laws or regulations in each situation, the Model also encompasses other moral factors, such as self values and perceptions from others, to be considered when making our ethical decisions. The Model aims not to provide a definite answer or infallible solution to each ethical dilemma at stake. The value of it is to encourage each decision-maker to go through a thoughtful and rational analysis and assess more deeply the underlying factors of a dilemma before arriving at a resolution.

1. The ETHICS process - Six major steps to follow

Establish the relevant facts and identify the ethical issues

↓

Take stock of all stakeholders or parties involved

↓

Have an objective assessment of each stakeholder's position

↓

Identify viable alternatives and their effects on the stakeholders

↓

Compare and evaluate the possible consequences of each alternative with reference to the PLUS standards expected

↓

Select the most appropriate course of action

2. The PLUS standards - Four key factors to consider

Professional/Trade-related/Company code of conduct

↓

Legal requirements; e.g. are there any breaches of the laws such as the Prevention of Bribery Ordinance, Banking Ordinance, etc.?

↓

Uncompromising self values; e.g. honesty, fairness, trustworthiness, etc.

↓

Sunshine test; i.e. whether the issue can be discussed openly

Case Study - A Sinking Friendship

The following case study aims to demonstrate how to apply the ETHICS-PLUS Decision Making Model to tackle an ethical dilemma related to work.

Sharon has been serving as a branch manager of a bank for over five years. She has established good customer relationships and maintained an extensive personal network, especially with Ben, owner of an SME trading company. As the daughters of both Sharon and Ben are close friends studying in the same school, where Ben is also the Parent-Teacher Association (PTA) Chairman, Sharon always meets Ben and his wife in school activities and they become close friends.

Ben comes to meet Sharon at her office this morning to review his investment portfolio and ways to recover the financial loss caused by the recent slump of the stock market. As the loss has severely affected his company's cash flow, Ben requests Sharon to help secure a large loan from her bank. To facilitate the loan application, Ben urges Sharon to do him a favour and keep his financial problems back when her staff makes recommendation to the bank. Knowing that Sharon's daughter would like to join a popular study tour sponsored by the PTA in the summer holiday, Ben hints that he can use his influence as PTA Chairman to "guarantee" a place in the study tour for her daughter as a token of thanks.

Should Sharon help Ben get over his financial problems or turn down his request?

By using the ETHICS-PLUS Decision Making Model, the analysis is outlined below:

Step 1: Establish the relevant facts and identify the ethical issues

Facts:	• Sharon and Ben, having official dealings for some years and their kids studying in the same school, become close friends.

	• Ben is confronted with severe financial problems caused by the recent slump of the stock market. • Ben asks Sharon to help secure a large loan from her bank to help ease his financial burden. • Ben hints to "guarantee" a place for her daughter in the study tour by making use of his capacity as PTA Chairman as a token of thanks.

Ethical Issue:	• To help Ben get over his financial problems or turn down his request?

Step 2: Take stock of all stakeholders or parties involved

In this case, stakeholders are:

- Sharon
- Ben
- Sharon's daughter
- Sharon's bank

Step 3: Have an objective assessment of each stakeholder's position

Sharon:	• If she helps Ben cover up his financial problems during the course of his application for the bank loan, she cannot fulfill her fiduciary responsibility of protecting the bank's interests as Ben may not be able to repay the loan. Even worse, she may be liable to prosecution. • She will fail to uphold her professional competence if she covers up the financial problems of Ben and assists him in applying for the loan.

	• Her reputation and career prospect may be impaired when her act of covering up Ben's problems is exposed to the bank's management. • Relationship between Sharon and Ben may be jeopardised if Sharon turns down Ben's request.
Ben:	• He may be liable to prosecution for offering the advantage to Sharon, i.e. to show a favour to Sharon by using his influence as the PTA Chairman to secure a place for her daughter. • His company may become bankrupt without Sharon's assistance in obtaining the bank loan. • He may not be able to repay the loan on schedule and thus affect his financial credibility.
Sharon's Daughter:	• If Sharon accedes to Ben's request, her daughter will secure a place in the study tour. She may broaden her horizons and enrich her personal portfolio.
Sharon's Bank:	• Her bank's reputation may be tarnished if Sharon's act becomes known to the public. • Her bank may suffer a financial loss if Ben fails to repay the loan. • Her bank's corporate culture may be adversely affected as Sharon, being a branch manager, sets a bad example to her subordinates. • Tolerance of Sharon's act may lead to loss of customers' trust and affect staff morale if it becomes known.

Step 4: Identify viable alternatives and their effects on the stakeholders

(a) Agree to help Ben keep his financial problems back and accept his offer.

(b) Agree to help Ben but apply for the study tour through normal procedure.

(c) Advise Ben to resolve his financial crisis through other means instead of getting the bank loan.

(d) Refuse Ben's request and report the matter to the management.

(e) Any other alternatives.

Step 5: Compare and evaluate the possible consequences of each alternative with reference to the PLUS standards expected

Professional codes of conduct imposed by the regulatory authorities / company rules:

Major rules under the Supervisory Policy Manual CG-3 "Code of Conduct" issued by the Hong Kong Monetary Authority

- Staff should not use the power or authority deriving from their position to gain a personal benefit or an indirect benefit (e.g. for their relatives or other related parties).
- Staff should be alert to matters which could give rise to fraud, deception, corruption or other illegal activities. He should immediately blow the whistle on suspected illegal activities.
- Staff should avoid situations that may lead to or involve a conflict of interest, actual and potential.

As a bank staff, Sharon should truly reflect Ben's financial problems when she makes recommendation for his loan application. Her acceptance of Ben's offer of a "guaranteed place" in the study tour will lead to actual conflict of interest that is against the banking rules or company's code of conduct. Even worse, it will be a breach of the law (see "Legal requirements" below).

Legal requirements:

- If Sharon accepts Ben's offer of a "guaranteed place" in return for assisting him in obtaining the loan, both Sharon and Ben may commit a corruption offence under Section 9 of the Prevention of Bribery Ordinance (PBO) and breach Section 124 of the Banking Ordinance. According to PBO, "advantage" refers to both tangible and intangible items, including Ben's exercise of his power as PTA Chairman to "guarantee" a place of the study tour for Sharon.
- If Sharon makes use of false or erroneous documents to deceive the bank and helps Ben cover up his financial problems during the loan application process, Sharon may also breach Section 9(3) of PBO and Section 123 of the Banking Ordinance.

Uncompromising self values:

- Sharon has to ask herself whether a particular alternative is commensurate with her personal values, such as loyalty to her bank, honesty, fairness and professional competence in conducting her official duties and above all her personal integrity.

Sunshine test:

- Can Sharon disclose her decision to any parties, including her bank, colleagues, friends and family members, without misgivings?

Step 6: Select the most appropriate course of action

- After comparing and evaluating each alternative against the PLUS standards, select an appropriate course of action which can maximise the important values and the interests of all stakeholders.

Our suggestion:	• Since helping Ben cover up his financial problems in the course of his loan application will breach the corporate guidelines and even the anti-corruption law, Sharon should decline Ben's request without hesitation. • To avoid being suspected of conspiring with Ben to defraud the bank and to stop Ben's attempt to bribe other bank staff, Sharon should consider reporting the matter to the bank and appropriate authority as necessary.

Conclusion

The ETHICS-PLUS Decision Making Model aims to provide a way for the actor to exercise moral rationality before jumping to a quick decision or action and enlighten the actor the different angles to consider the dilemmas and the consequences of each possible solution. The point is that by going through a thoughtful and rational analysis, the actor should be able to make a more balanced and justified decision ultimately.

It is also worth pointing out that the toughest choice sometimes lies not in refraining from wrongdoings but between the alternatives that are all seemingly right, viable and important. Here is an example:

- Your bank sets up a one-off fund to subsidise an overseas study programme for staff. A high-flying officer submits her application one day after the deadline since she has just returned from an official trip. It is **RIGHT** to reject her late application; however, it is also **RIGHT** to process her application to groom her for a senior position.

The Hong Kong Ethics Development Centre of the ICAC has also developed a holistic ethical thinking process to help managerial staff resolve more complicated ethical dilemmas involving the right-versus-right situations. For more details, please call the Centre on 2587 9812.