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Corruption Prevention Advisory Service

CORRUPTION PREVENTION GUIDE FOR CONSTRUCTION INDUSTRY

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FOREWORD

Corruption in the construction industry resulting in substandard works would seriously threaten public safety and undermine public confidence in the quality of public works projects. Although the direct cost of construction-related corruption may be difficult to quantify, it has corrosive impacts of increasing operating and material costs, demoralising staff members, and damaging overall business performance of the organisation concerned.

This Corruption Prevention Guide (Guide) aims at providing organisations with a user-friendly and step-by-step procedural guide, with recommendations on safeguards to reduce corruption risks for the management of consultants, letting and administration of works contracts, and construction quality control testing. Organisations are expected to adapt the recommended safeguards to suit their organisational structure, resources, risk exposures, and any statutory requirements applicable to the works projects.

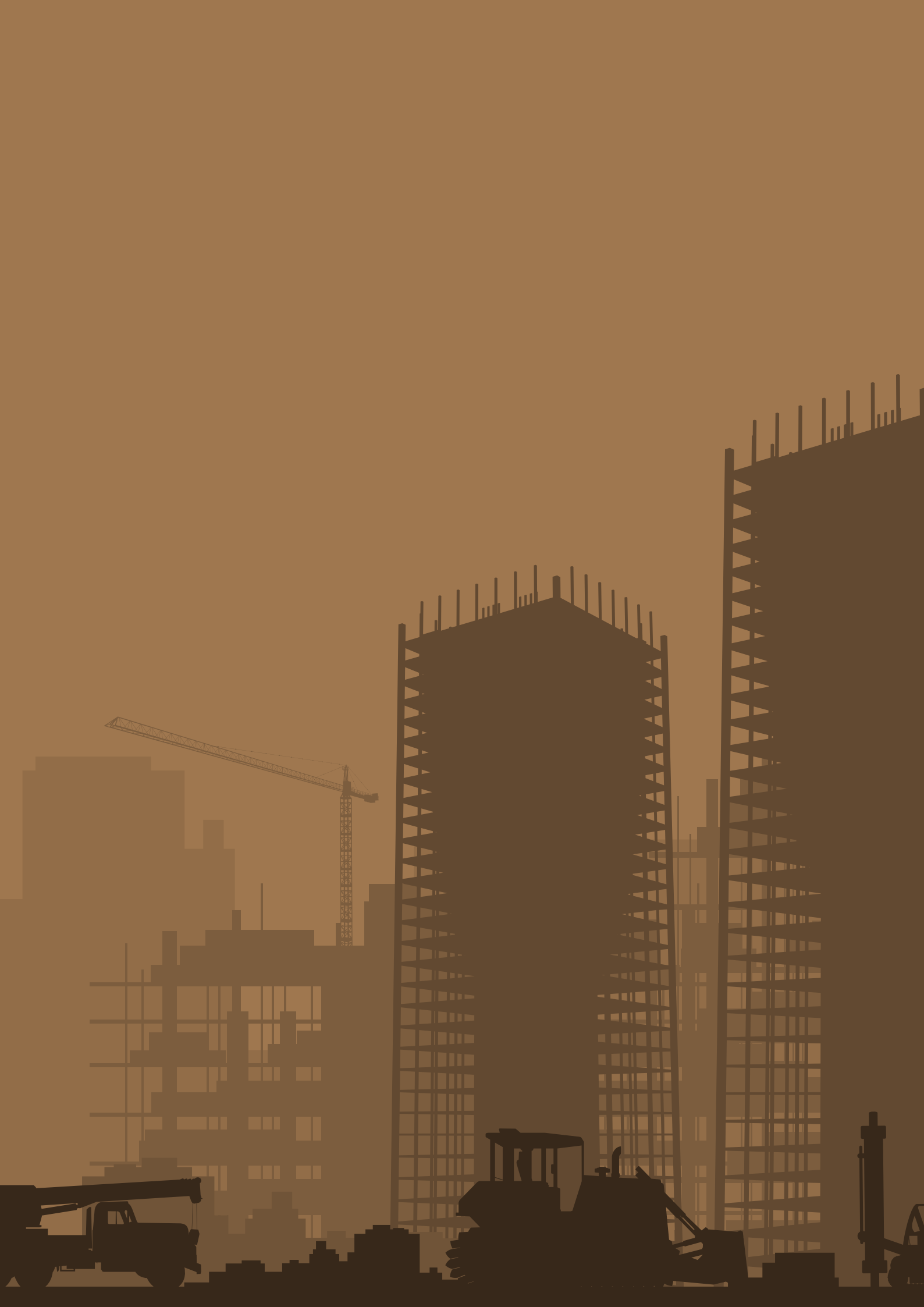
FROM THE EDITORIAL BOARD

Descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance (Cap. 201) and other relevant ordinances / laws in this publication are necessarily general and abbreviated for ease of understanding. Users of this 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 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. These case scenarios should be taken as hypothetical and not referring to any particular real case or any particular organisation or person. Moreover, the advice and recommendations given in this publication are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or contractual requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities, and adopt the appropriate measures that best suit the operational needs and risk exposure of their organisations. The information contained in this Guide is updated as at the last revision date shown.

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

September 2023



1 MANAGEMENT OF CONSULTANCIES

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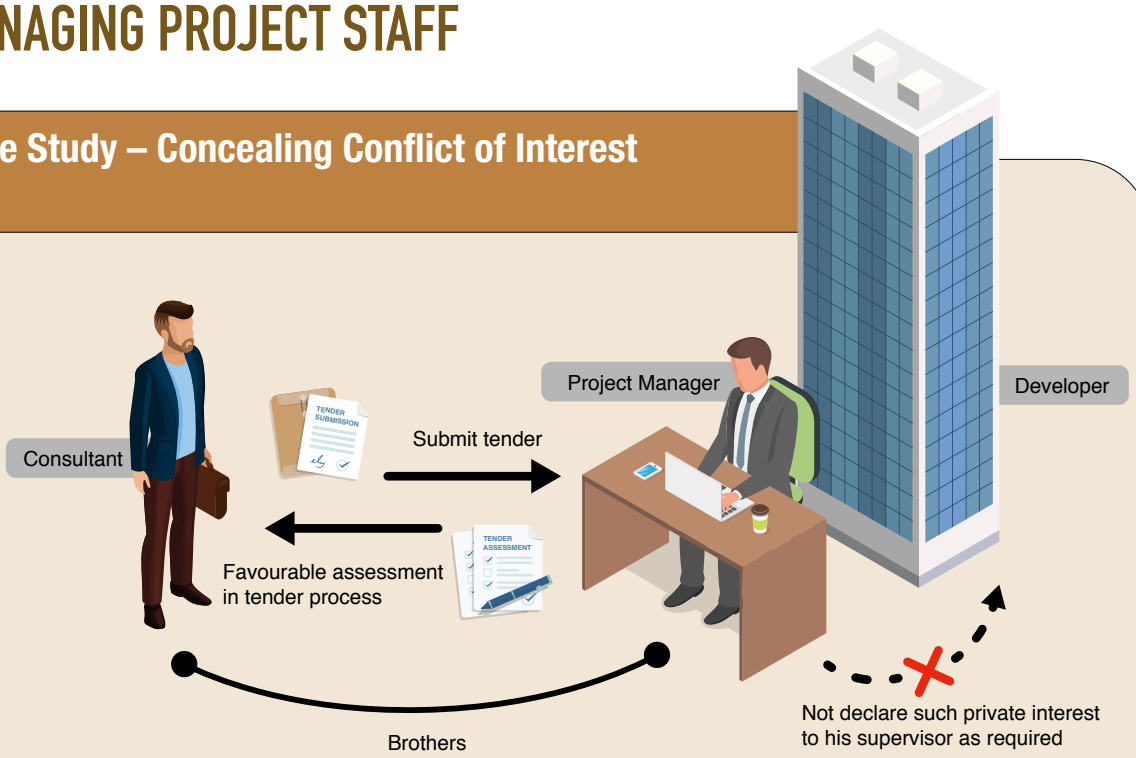
A consultant is a person or a company engaged to provide professional services in works projects, such as design work, sourcing and selection of contractors, and monitoring of their works quality on behalf of the organisation hiring the services.

Past corruption cases showed that poor performance of the consultant condoned by compromised staff members of the organisation could result in financial loss to the organisation. There were also cases of corrupt collusion between the employees of the consultant and the contractor, leading to substandard works which affect public safety. Below are recommendations on safeguards to minimise corruption risks for the employment of consultants and monitoring of their services.

1.1 IDENTIFYING NEEDS FOR CONSULTANTS AND MANAGING PROJECT STAFF

Case Study – Concealing Conflict of Interest



1 A developer employed a consultant to provide professional services for its building project. The developer's Project Manager was responsible for tender assessment. As stipulated in the staff code of conduct, the developer requires its staff to declare conflict of interest to their supervisor.

2 The Project Manager's brother owned a consultant and submitted a tender for the project. The Project Manager did not declare such conflict to his supervisor. He also provided favourable assessment to the consultant in the tender assessment process.

3 At the end, the consultant obtained the consultancy agreement.

Analysis and Points to Note

The Project Manager breached the developer's integrity requirement. He may also commit the offence of fraud under Section 16A of the Theft Ordinance (Cap. 210) by deliberately concealing his private interest. The developer should consider requiring its staff to positively declare whether or not they have conflict of interest concerning the tender exercise.

RECOMMENDED CONTROL MEASURES

Owner Organisation's Management (hereafter referred to "Management")

- Set up a project team comprising staff with the necessary technical knowledge.
- Assess and approve the engagement of consultants, having regard to the availability of expertise and resources within the organisation.
- Require project team members to comply with requirements on declaration and management of conflict of interest[1] **(Section 4.2)**.

Project Team

- Identify the need for works consultants and define the scope of consultancy.
- Justify the need for engaging consultants in writing.

[1] *A conflict of interest situation arises when the "private interests" of a staff member compete or conflict with the interests of the organisation or the staff member's official duties. Private interests include financial and other interests of the staff member himself; his family and other relations; his personal friends; the clubs and associations to which he belongs; any other groups of people with whom he has personal or social ties; or any person to whom he owes a favour or to whom he may be obligated in any way.*

1.2 PREPARING PROJECT BRIEF

RECOMMENDED CONTROL MEASURES

Project Team

- Clearly define the extent of work, skills and expertise required, deliverables and milestones for payment of the services provided.
- Specify the size of the firm, the minimum number of staff members and the professional qualifications required.
- Require the consultant to submit for approval a site supervision plan proposing a list of works items that require inspection, the frequency of inspection, the rank of the resident site staff who should carry out the inspection and/or sign the inspection checklist and a guideline on the details of inspection to be recorded for safety critical activities.
- Require the consultant to commit to ethical practices by issuing a code of conduct **(Section 4.1 and a sample at Appendix 1)** or probity guidelines to the employees.
- Consider the need to include a clause to debar the consultant from assisting or partnering with contractors to bid for the works contracts arising from the consultancy agreement, and to declare any investment in the business of any appointed contractors whom they supervise **(Section 1.7)**.

1.3 SHORT-LISTING CONSULTANTS

RECOMMENDED CONTROL MEASURES

Management

- Determine the way to short-list qualified consultants for invitation to tender (e.g. by way of a pre-qualification exercise through openly inviting expression of interest from consultants in case of sizeable projects, or through compiling a list of consultants for small projects).
- Specify the number of consultants to be short-listed for tender invitation to ensure there is adequate competitiveness.
- Designate a panel comprising staff members of the project team with the necessary technical knowledge, and including staff members from the user department to pre-qualify consultants who have expressed interest.

Project Team

- For major projects, conduct a pre-qualification exercise by openly inviting expression of interest.
- For minor projects, compile a reasonably long list of consultants through users' nominations, search from the consultant lists posted on the websites of the relevant government departments (e.g. list of consultants in the Building Surveying Category of Architectural and Associated Consultants Selection Board maintained by the Architectural Services Department[2] and the Authorized Persons list maintained by the Buildings Department[3]).
- Pre-determine the pre-qualification criteria, such as size of firm, expertise, experience, etc. and invite those consultants who have expressed interest or those on the long list to submit the required information for pre-qualification assessment.

Designated Panel

- Select qualified consultants to form the short-list for invitation to tender based on the laid down criteria and document the reasons if the number of qualified consultants falls short of the number specified.

Management

- Review and approve the short-list of qualified consultants.

[2] *The list of consultants in the Building Surveying Category of Architectural and Associated Consultants Selection Board is posted on the Architectural Services Department's website (https://www.archsd.gov.hk).*

[3] *The details of the Authorized Persons list are posted on the Buildings Department's website (https://www.bd.gov.hk).*

1.4 INVITING AND RECEIVING TENDERS

RECOMMENDED CONTROL MEASURES

Project Team

Tender Information

- Provide all short-listed consultants with the same information, such as tender forms and tender submission deadline, etc.
- Ensure all material tender information released in response to enquiries is given to all tenderers.
- Include in the tender document the need for a presentation, if required, and provide all tenderers with an equal opportunity to make a presentation.
- Allow sufficient time for the tenderers to prepare tender proposals.

Tender Evaluation Method

- Adopt a two-envelope system[4] for selecting tenders if price is not the only consideration, and require tenderers to submit tenders in duplicate (copies should be kept for record to facilitate future audit checks).
- Pre-determine the criteria for evaluation of tenders before the return of tenders and their weightings which should be included in the tender document.

Probity and Anti-Collusion Clauses

- Include in the tender document clauses prohibiting bribery and collusion in tendering **(Appendix 2)** and requiring the tenderers to submit, as part of the tender submission, a declaration undertaking compliance with the clauses **(Annex of Appendix 2)**.

[4] *Under the two-envelope system, tenderers are required to submit in separately sealed envelopes a technical proposal (containing information such as size of firm, resources, relevant experience, past projects, etc.) and a price proposal. Tenders are assessed using a marking scheme, and a weighting, e.g. 40:60, is given to the technical and price proposals.*

Tender Security

- Take precautionary measures to prevent leakage of tender information, for example:
  - Receive tenders in a double locked tender box with the keys kept by different staff members.
  - Task an independent team to witness tender opening.
- Record the identities and tendered sums of all tenders received in a summary sheet for future audit checks, or make copies of the tenders if duplicate copies are not submitted.
- Return tenders submitted beyond the deadline to the tenderers unopened as late tenders should not normally be accepted for the sake of fairness.
- Accept late tenders only with the endorsement of the management (or the tender board if any) on justifiable grounds.

1.5 EVALUATING TENDERS

RECOMMENDED CONTROL MEASURES

Management

- Designate an assessment panel comprising members with the required technical knowledge to evaluate the tenders and to make recommendations for selection.
- Invite an independent member from another department to sit on the assessment panel or conduct assessment of tenders (as far as practicable) to enhance checks and balances.
- Require the assessment panel to keep the tenders and records of assessment results for a specified period.

Designated Assessment Panel

Tender Presentation

- Remind all tenderers not to take the opportunity to revise their technical proposals or to disclose their price proposals at the presentation.
- Observe the rule prohibiting assessment panel members from disclosure of information concerning the technical merits of other tender proposals to any competing tenderers at the presentation.

Tender Evaluation

- Open the price proposals only after the technical proposals have been assessed if a two-envelope system is used.
- Independently evaluate the tenders according to the pre-determined criteria before calculating the total score.
- If parallel assessment of both technical and price proposals is unavoidable, there should be total segregation of the two assessment teams with no communication of the assessment details.
- Recommend the highest total scoring tender or the lowest conforming tender as the case may be, and provide justification in writing if this is not the case.
- Properly document and keep the assessment results for a specified period.

Management

- Consider all tender proposals and approve the assessment panel's recommendation.

1.6 CONDUCTING NEGOTIATIONS

RECOMMENDED CONTROL MEASURES

Management

- Determine the need for negotiation after the selection of consultants and, if this is necessary, designate a negotiation team comprising at least two persons to conduct the negotiation.
- Determine whether negotiation should be conducted with the selected consultant or with the highest scoring two or three consultants.
- Define the parameters or baseline for negotiation.
- Instruct the negotiation team members not to:
  - Indicate the price that must be met to qualify for further consideration at the negotiation.
  - Disclose information about other tender proposals if negotiation is conducted with more than one consultant.

Designated Negotiation Team

- Conduct the negotiation in official settings and within the defined parameters/baseline.
- Document the salient points of the negotiation to facilitate future audits.
- Require the consultant(s) to submit in writing a best and final offer after negotiation to confirm its/their offers.

Designated Assessment Panel

- Evaluate and recommend the best and final offer for approval.

Management

- Consider and approve the best and final offer after the negotiation.

1.7 AWARDING CONSULTANCY AGREEMENTS

RECOMMENDED CONTROL MEASURES

Project Team

Probity Clauses in Consultancy Agreement

- Include probity clauses **(Appendix 3)** in the consultancy agreement to commit the consultant to ethical practices and require the consultant to submit, as part of the payment application **(Section 1.9)**, a declaration undertaking compliance with the clauses **(Annex of Appendix 3)**.
- Include, where necessary, a clause to debar the consultant from assisting other consultants or contractors to bid for contracts arising from the consultancy agreement to avoid conflict of interest **(Appendix 4)**.

General Provisions in Consultancy Agreement

- Include the following provisions in the consultancy agreement to protect the interest of the organisation:
  - Specify the key personnel and their qualifications/experience to be provided by the consultant.
  - Specify the requirement that the consultant should notify the organisation of any change in key personnel.
  - Clearly state the payment method and time limit for processing payment applications.
  - Include a clause to “cap” expenses and fees to avoid excessive charges.
  - Include the condition for the consultant to submit a site supervision plan for agreement before commencement of works for projects to be supervised by the consultant.
  - Include the requirement for the consultant to seek approval from the project team for ordering any variation of works with cost implications, and comments from the project team for assessment of claims and extension of time applications submitted by the works contractors.
  - Make provisions for the project team to issue instructions to the consultant.
  - Make provisions for deduction of payment and termination of the agreement in case of deficiencies in performance (e.g. shortage of manpower).

Management

Tender Award

- Notify all successful and unsuccessful tenderers of the results as soon as possible.
- Set up a system for the issue of instructions to the consultants for task assignments in term consultancy agreement and define the levels of authority for issuing instructions and conduct supervisory checks on the need to issue instructions, in particular those involving expenses.

1.8 MONITORING CONSULTANTS' PERFORMANCE

RECOMMENDED CONTROL MEASURES

Management

- Set up a mechanism for regular reporting of the consultants' performance or for adverse reporting by the project team.
- Lay down the procedures for taking action in case of unsatisfactory performance, such as the issue of verbal advice, written notice or warning in case of persistent deficiencies.
- If applicable, maintain a database containing the details of individual consultancy agreements, their scope and records of the respective consultants' performance to facilitate the future selection of consultants **(Sections 1.3 to 1.5)**.
- Require project teams to make reference to any adverse performance records in future selection of consultants **(Sections 1.3 to 1.5)**.

Project Team

- Prepare reports on project progress and consultants' performance at suitable intervals and upon completion of the consultancy agreement for management information, including any notices or warnings issued and suggesting sanctions as necessary.

Management

- Impose sanctions, such as deduction of payment as provided for under the consultancy agreement, suspension from tendering in the future, or termination of consultancy agreement as the last resort.

1.9 PROCESSING PAYMENT APPLICATIONS

RECOMMENDED CONTROL MEASURES

Management

- Issue guidelines to the project team on the processing of application for payment to ensure consistency in practice and compliance with the conditions of payment in the consultancy agreement.

Project Team

- Make readily available to the management expenditure reports on the consultancy agreement, detailing the fees charged, interim payments made, and total amount paid, etc.
- Require the consultant to provide billing details for payment claims.
- Subject the reimbursable components of the consultant's fees to random sampling verifications.

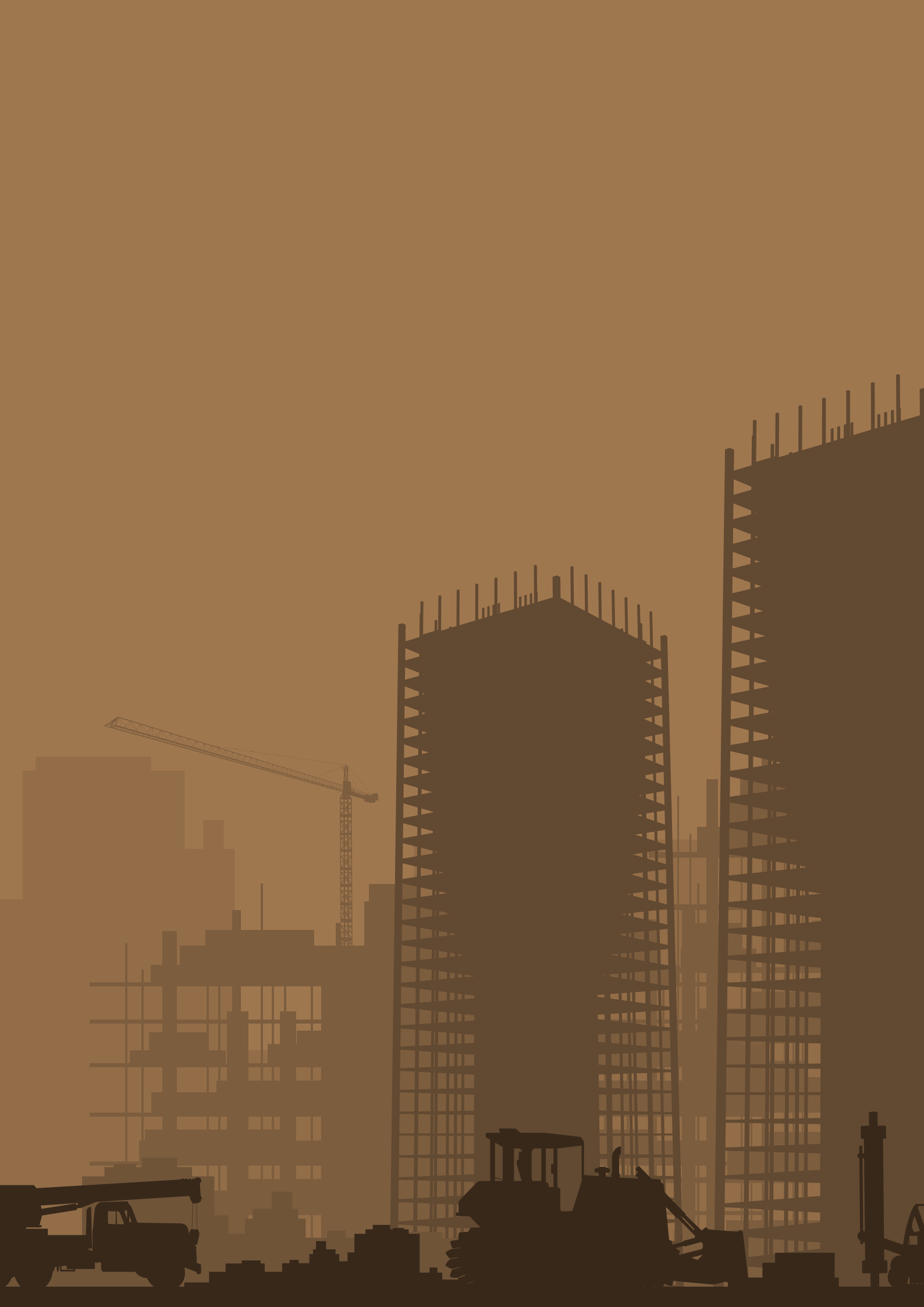
1.10 MONITORING VARIATIONS TO CONSULTANCY AGREEMENTS

RECOMMENDED CONTROL MEASURES

Management

- Specify the levels of authorities and their financial limits for approving variations to the scope of the consultancy agreement which involve additional cost.

NOTES



2 LETTING AND ADMINISTRATION OF WORKS CONTRACTS

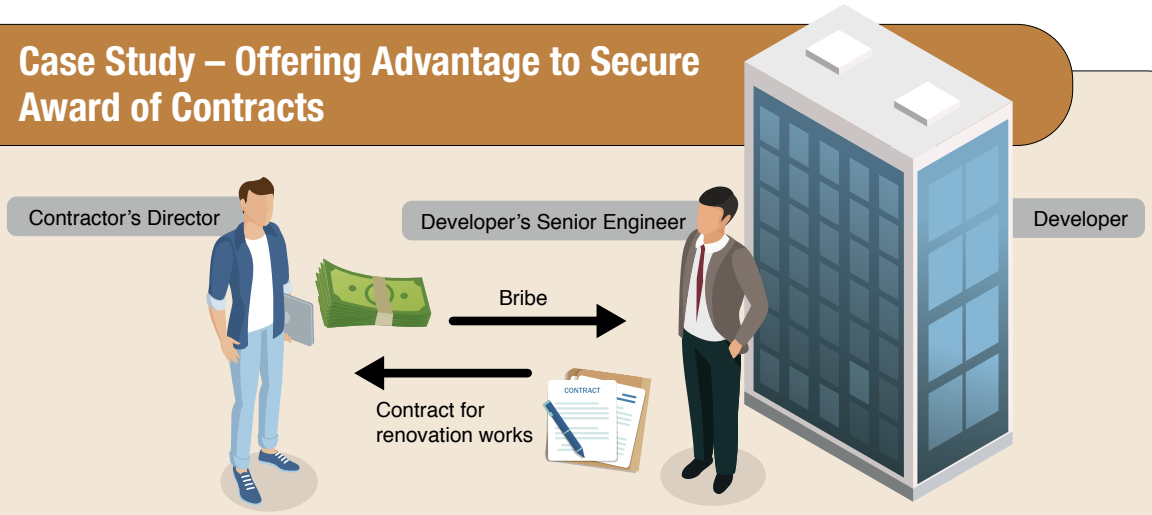
2 LETTING AND ADMINISTRATION OF WORKS CONTRACTS

Past corruption cases showed that the selection of contractors for works contracts is prone to corruption. Unscrupulous staff members may accept bribes from tenderers in return for information of the tenders submitted by other tenderers. There may also be corrupt collusion between the resident site staff of the consultant and the employees of the contractor, leading to covering up of substandard works or ordering of unnecessary works variations which would increase the cost of works. Below are recommendations on safeguards to reduce corruption risks.

2.1 CONTRACT LETTING

2.1.1 APPROVING PROJECT AND MANAGING PROJECT STAFF

Case Study – Offering Advantage to Secure Award of Contracts



1. A Senior Engineer of a developer was responsible for selection of a contractor to carry out renovation works in a private project.

2. He accepted bribes from a contractor's director as a reward for including his contractor in the list of tenderers and showing favour to it during tender assessment.

3. As a result, the contractor was awarded the contract.

Analysis and Points to Note

The Senior Engineer and the contractor's director respectively contravened Sections 9(1) and 9(2) of the Prevention of Bribery Ordinance (POBO, Cap. 201) **(Annex 1 of Appendix 1)**. From the corruption prevention perspective, relying on a single staff member to short-list bidders undermines checks and balances and creates loopholes for him to manipulate the letting process. Organisations/companies should form a project team to carry out the short-listing and tender/quotation exercise.

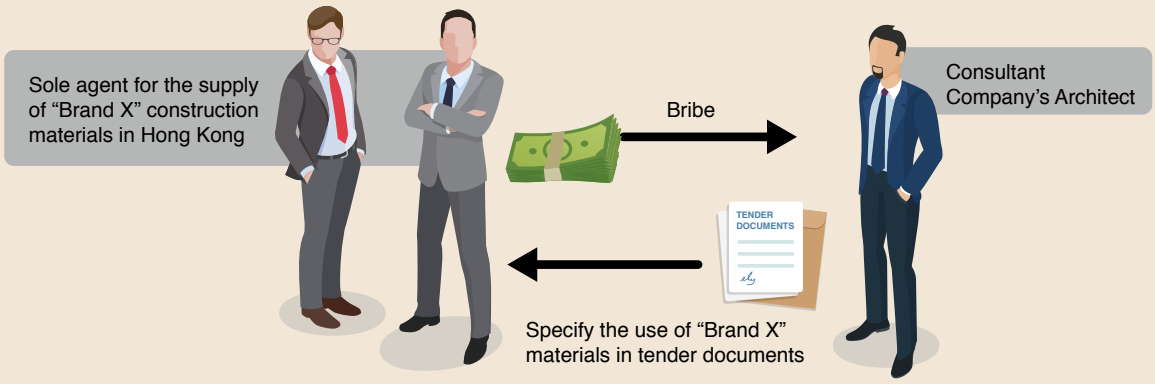
RECOMMENDED CONTROL MEASURES

Management

- Set up a project team comprising staff with the necessary expertise and technical knowledge to oversee contract letting and administration. Please refer to **Section 1.1** for other control measures.

2.1.2 PREPARING TENDER DOCUMENTS

Case Study – Acceptance of Advantage during Preparation of Specification



1 Company A was the sole agent for the supply of "Brand X" construction materials in Hong Kong.

2 Two partners of Company A bribed an architect of a consultant for him to specify the use of "Brand X" materials in the tender documents of a number of works projects.

3 As a result, the main contractors of the works projects had to procure the materials from Company A.

Analysis and Points to Note

The architect and the two partners respectively contravened Sections 9(1) and 9(2) of the POBO. In the above case, the consultant's architect abused his power to use restrictive or brand name specifications so that only the colluded supplier could supply the conforming materials. To reduce such risk, organisations should use functional specification instead and avoid including brand names in specification unless under justifiable grounds **(Section 2.1.2)**.

RECOMMENDED CONTROL MEASURES

Management

- Require members of the project team and employees of the consultant who are involved in preparation of tender documents and assessment of tenders to undertake in writing to:
  - Hold in strict confidence all tender information including the details of tenders received and any sensitive or confidential information relating to the tender exercise.
  - Refrain from making any unauthorised disclosure of sensitive or confidential information or using any tender information for personal gain.

Project Team / Consultant

Works Specifications

- Clearly define the scope and the standard of the works required (e.g. determine the schedules of finishes and accommodations), the work commencement and completion date, and the quality control requirements (e.g. testing frequencies).
- Avoid using brand name specifications unless there are justifiable grounds, and set up a panel to review any proposals to use brand name specifications for materials of high value or large quantity.

Probity and Anti-Collusion Clauses

- Include probity and anti-collusion clauses in the tender documents **(Appendix 2)**, and require tenderers to submit, as part of their tender submissions, a declaration undertaking compliance with the clauses **(Annex of Appendix 2)**.

Ethical Commitment

- Require the contractor to commit to ethical practices by issuing a code of conduct **(Section 4.1 and a sample at Appendix 1)** to its directors and staff members.

2.1.3 SHORT-LISTING CONTRACTORS

RECOMMENDED CONTROL MEASURES

Management

- Determine the way to short-list qualified contractors for invitation to tender (e.g. by way of a pre-qualification exercise for sizeable projects, or through sourcing of a list of contractors for small projects).
- Specify the minimum number of contractors to be short-listed for tender invitation to ensure there is adequate competitiveness, and require the project team or consultant to justify in case of non-compliance.

Project Team / Consultant

- For major projects, conduct a pre-qualification exercise by an open invitation of expression of interest.
- For small projects, compile a reasonably long list of contractors sourced through the project team's suggestions, user departments' nominations and search from the contractor lists posted on the websites of the relevant government departments (e.g. the List of Approved Contractors for Public Works maintained by the Development Bureau[5] and the General Building Contractors' Register maintained by the Buildings Department[6]).
- Pre-determine the pre-qualification criteria, such as experience, past performance if relevant and organisation structure etc. and invite those contractors which have expressed interest or those on the list to submit the required information for pre-qualification assessment.
- Select the qualified contractors for invitation to tender based on the laid down criteria.

[5] *The details of the List of Approved Contractors for Public Works are posted on the Development Bureau's website (https://www.devb.gov.hk).*

[6] *The details of the General Building Contractors' Register are posted on the Buildings Department's website (https://www.bd.gov.hk).*

Management

- Review and approve the short-list of pre-qualified contractors.

2.1.4 INVITING AND RECEIVING TENDERS

RECOMMENDED CONTROL MEASURES

Project Team / Consultant

Tender Briefing

- Conduct a briefing for all short-listed contractors on the same occasion, if necessary.
- Avoid hold briefing for individual contractors as this may give rise to allegation of favouritism.

Tender Information

- Provide all short-listed contractors with the same information, such as tender forms and tender submission deadline, etc.
- Ensure that answers to tender enquiries relevant to tendering are sent to all tenderers to ensure fairness.
- Include in the tender document the need for a presentation, if required, and provide all tenderers with an equal opportunity to make a presentation **(Section 2.1.5)**.
- Allow sufficient time for the tenderers to prepare tender proposals.

Tender Evaluation Method

- Adopt a two-envelope system[7] to select tenders if price is not the only consideration, and require tenderers to submit tenders in duplicate (copies should be kept for record to facilitate future audit).
- Pre-determine the evaluation criteria and their weightings and make them known in the tender documents to avoid tenderers having to obtain such information through improper means.

[7] *Under the two-envelope system, tenderers are required to submit in separately sealed envelopes a technical proposal (containing information such as a proposed project team, plans of project design and works, proposed schedule of works and materials, etc.), and a price proposal. Tenders are assessed using a marking scheme, and a weighting, e.g. 40:60, is given to the technical and price proposals.*

Tender Security

- Please refer to **Section 1.4 – Tender Security** for recommended control measures.

2.1.5 EVALUATING TENDERS

RECOMMENDED CONTROL MEASURES

Management

Tender Assessment Panel

- Set up a tender assessment panel, comprising members of the project team or employees of the consultant, with the required technical knowledge to assess the tenders and make recommendations.
- Invite an independent member from another department to sit on the panel (as far as practicable) to enhance checks and balances.

Tender Presentation

- Please refer to **Section 1.5 – Tender Presentation** for recommended control measures.

Tender Assessment

- Please refer to **Section 1.5 – Tender Evaluation** for recommended control measures.

2.1.6 CONDUCTING NEGOTIATIONS

RECOMMENDED CONTROL MEASURES

- Please refer to **Section 1.6 – Conducting Negotiations** for recommended control measures.

2.1.7 AWARDING CONTRACTS

RECOMMENDED CONTROL MEASURES

Project Team / Consultant

Probity Clauses in Conditions of Contract

- Include probity clauses **(Appendix 5)** in the conditions of contract to commit the contractor to ethical practices and require the contractor to submit, as part of the payment application **(Section 2.2.3)**, a declaration undertaking compliance with the clauses **(Annex of Appendix 5)**.

Contract Award

- Notify all successful and unsuccessful contractors of the results as soon as possible to avoid speculation.

Management

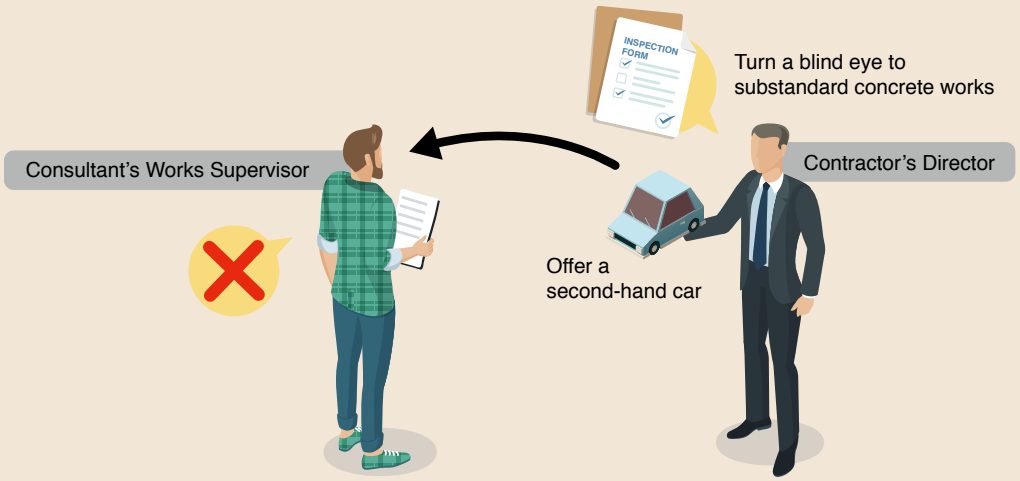
Term Contract

- Put in place the procedures, including the levels of authority, for the approval of works orders for issue to the contractor and conduct supervisory checks on the need to issue works orders.
- Lay down guidelines for the issue of urgent works orders and those orders for exceptional circumstances where the normal approval procedures cannot be followed.
- Adopt control measures to detect splitting of works orders into smaller values in order to circumvent the approval requirement (e.g. requiring the project team members to compile periodic management reports on the issue of works orders for checking of any similar works at the same location within a short period).

2.2 CONTRACT ADMINISTRATION

2.2.1 CONDUCTING SITE SUPERVISION

Case Study – Offering Advantage for Conniving at Substandard Works



1 A works supervisor of a consultant was responsible for supervising the works of a building project. During a site inspection, he noted that the grade of concrete used on site was lower than the requirement stipulated in the approved plan, and requested the contractor to rectify them.

2 Due to the substantial costs and delay that would be incurred for carrying out the rectification works, the contractor's director offered the works supervisor a second-hand car as a reward for turning a blind eye to the substandard works.

3 The works supervisor declined the offer and reported the case to ICAC.

Analysis and Points to Note

The contractor's director contravened Section 9(2) of the POBO for offering an advantage to the works supervisor for conniving at the substandard works. As rectification of non-conforming construction works is costly and could delay construction progress, some contractors may offer advantage to supervisory staff in return for their connivance. Organisations/companies should establish a channel for reporting irregularities and advise staff to promptly refer suspected corruption to ICAC **(Sections 4.4 & 5.4)**.

RECOMMENDED CONTROL MEASURES

Project Team / Consultant / Resident Site Staff

- Adopt the recommended control measures in the Corruption Prevention Guide on Works Supervision at **Appendix 6**.

Subcontractor Management Plan

- Limit the number of tiers of subcontracting, in particular for the safety critical construction activities such as piling works.
- Require the contractor to submit a Subcontractor Management Plan (SMP) upon commencement of the contract, and update the SMP, if necessary, at specified intervals. The SMP should include the following essential information:
  - The scope of the works to be subcontracted.
  - The criteria for selecting subcontractors.
  - The qualifications and responsibilities of the contractor's management staff responsible for the direct supervision and management of the subcontractors.
  - The proposed measures for monitoring and assessment of the works programme, quality, safety, and environmental performance of the subcontractors.
  - The particulars of the subcontractors at all tiers.

Resident Site Staff

Inspection of Works Adopting Modular Integrated Construction (MiC)

- Where MiC is adopted for construction, adopt the measures recommended in the Corruption Prevention Checklist for Building Projects Adopting MiC at **Appendix 7**.

Management Report

- Compile periodic management report on the progress and the quality of works, and any major irregularities or non-compliance by the contractor.

Management

- Consider taking disciplinary action against the contractor for major non-compliance with contract requirements **(Section 2.2.7)**.

2.2.2 CONTROLLING MATERIALS

Management

- Lay down procedural guidelines on the approval of construction materials submitted by the contractor. The guidelines should include the following essential information:
  - The delegated authority to approve different types of materials.
  - The time limit to process the material approval.

Project Team / Consultant / Resident Site Staff

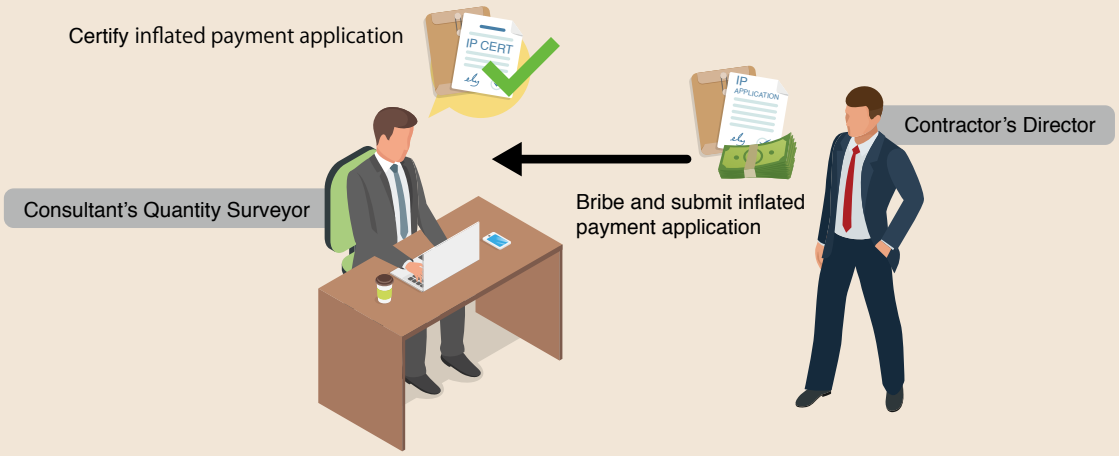
- Examine and approve the construction materials in accordance with the specifications and the laid down procedures.
- Compile periodic management reports on the long outstanding material approval cases with reasons and follow-up actions taken.
- Keep a sample of the approved materials on site as far as practicable for reference by resident site staff. Adopt security measure (e.g. signed by the approver on a label securely fastened to the samples) to ensure the security of the samples.

Resident Site Staff

- Take samples, whenever appropriate, from the materials delivered on site for quality control testing before use. For control measures relating to the quality control testing, please refer to **Section 3.4**.
- Carry out random checks on the authenticity of the make and origin of the delivered materials (e.g. checking with the suppliers or manufacturers).

2.2.3 PROCESSING PAYMENT APPLICATIONS

Case Study – Bribery when Handling Payment Application



1 A quantity surveyor of a consultant was responsible for vetting the payment applications submitted by a contractor of a building project.

2 During a site inspection, the contractor's director offered bribe to the consultant's quantity surveyor for accepting an inflated payment application. The quantity surveyor accepted the bribe and certified the payment.

3 In an audit conducted by the consultant, it was revealed that the work progress was overstated in the payment application. The consultant suspected corruption and reported the malpractice to ICAC.

Analysis and Points to Note

The quantity surveyor and the contractor respectively contravened Sections 9(1) and 9(2) of the POBO. Given the insidious nature of corruption and bribery, organisations/companies should regularly conduct internal audit on areas with high corruption risks (e.g. procurement and payment processing) in order to detect and deter malpractice. Recommended control measures on internal audits are at **Section 4.3**.

RECOMMENDED CONTROL MEASURES

Management

- Issue guidelines to the project team or the consultant on processing of payment applications to ensure consistency in practice between different project teams or consultants and compliance with the contract conditions on payment.
- Include the following essential information in the guidelines:
  - The delegated financial authority to certify payment to the contractor.
  - The time limit for processing of payment applications and for payment to the contractor after processing.
  - The method to assess the claimed quantity of works completed (e.g. by milestone payment or percentage of completed works) to avoid over-paying the contractor.

Consultant / Resident Site Staff

- Require the contractor to provide billing details for payment claims.
- Verify the contractor's claims for payment for the work done which should be subject to regular supervisory checks on site.

Project Team / Consultant

- Compile periodic expenditure reports under the contract, detailing the latest projection of final contract sum, interim payments made and the total amount paid, for the management information.

2.2.4 ISSUING CONTRACT VARIATIONS

RECOMMENDED CONTROL MEASURES

Management

- Designate the levels of authorities and their financial limits for approving contract variations.
- Issue guidelines to the project team or consultant on the valuation of contract variations, e.g. using pro-rata rate for works which are similar to the existing items in the contract or agreed rates for other works.
- If necessary, set up an independent committee to monitor the issue of major contract variations.

Project Team / Consultant

- Justify in writing the need to issue the variation orders.
- Record the valuation of the contract variations in details, e.g. reference made to other similar projects.
- Compile periodic management reports on the issue of contract variations covering the time and cost implications.

Management / Independent Committee

- Consider and approve contract variations with an estimated value exceeding a specified amount.

2.2.5 ASSESSING CONTRACT CLAIMS

RECOMMENDED CONTROL MEASURES

Management

- Lay down procedural guidelines on the assessment of contractual claims (e.g. extension of time).
- Designate the levels of authority and their financial limits to consider and approve the contractor's claims.
- Put in place a formal dispute resolution mechanism (e.g. mediation, arbitration and litigation) to settle dispute arising from the contract.

Project Team / Consultant

- Assess the contract claims in strict compliance with the conditions of contract and the laid down procedural guidelines.
- Document the details of assessment with supporting documents (e.g. subcontractor's invoices).
- Follow the pre-determined mechanism to resolve disputes and document the key decisions (e.g. appointment of mediator) with justifications for future audit.
- Seek the management or the project team's view on the assessment of contract claims which are handled by the consultant.

2.2.6 CERTIFYING WORK COMPLETION

RECOMMENDED CONTROL MEASURES

Management

- Designate the levels of authority to certify work completion.
- Specify the time limit for responding to the contractor's application for certification of work completion (i.e. to either certify completion or reject the works with reasons within the specified time limit).

Resident Site Staff

- Conduct a joint inspection to check for work completion with the representatives from the user department and the contractor.

Consultant

Works with Minor Defects

- Issue a certificate of work completion to the contractor, listing any minor defects found and the time allowed for the rectification which should be subject to verification.

Works with Major Defects

- Reject the contractor's application for work completion with justification, including in particular, the major defects or outstanding works which should be rectified prior to certification of work completion.

2.2.7 MONITORING CONTRACTORS' PERFORMANCE

RECOMMENDED CONTROL MEASURES

Management

- Set up a mechanism for regular reporting of the contractors' performance or for adverse reporting by the project team or the consultant.
- Lay down the procedures for taking action on unsatisfactory performance, such as issue of verbal advice, written notice or warning in case of persistent deficiencies.
- If applicable, maintain a database, containing the details of individual works contracts, their scope and records of the respective contractors' performance to facilitate future selection of contractors **(Sections 2.1.3 to 2.1.5)**.
- Require the project team or the consultant to make reference to the adverse performance records in future selection of contractors **(Sections 2.1.3 to 2.1.5)**.

Project Team / Consultant

- Prepare reports on project progress and the contractors' performance at suitable intervals and upon completion of the contract for management information, including any notices or warnings issued and suggesting sanctions as necessary.

Management

- Impose sanctions, such as suspension from invitation to bid for future contracts or termination of contract as the last resort.

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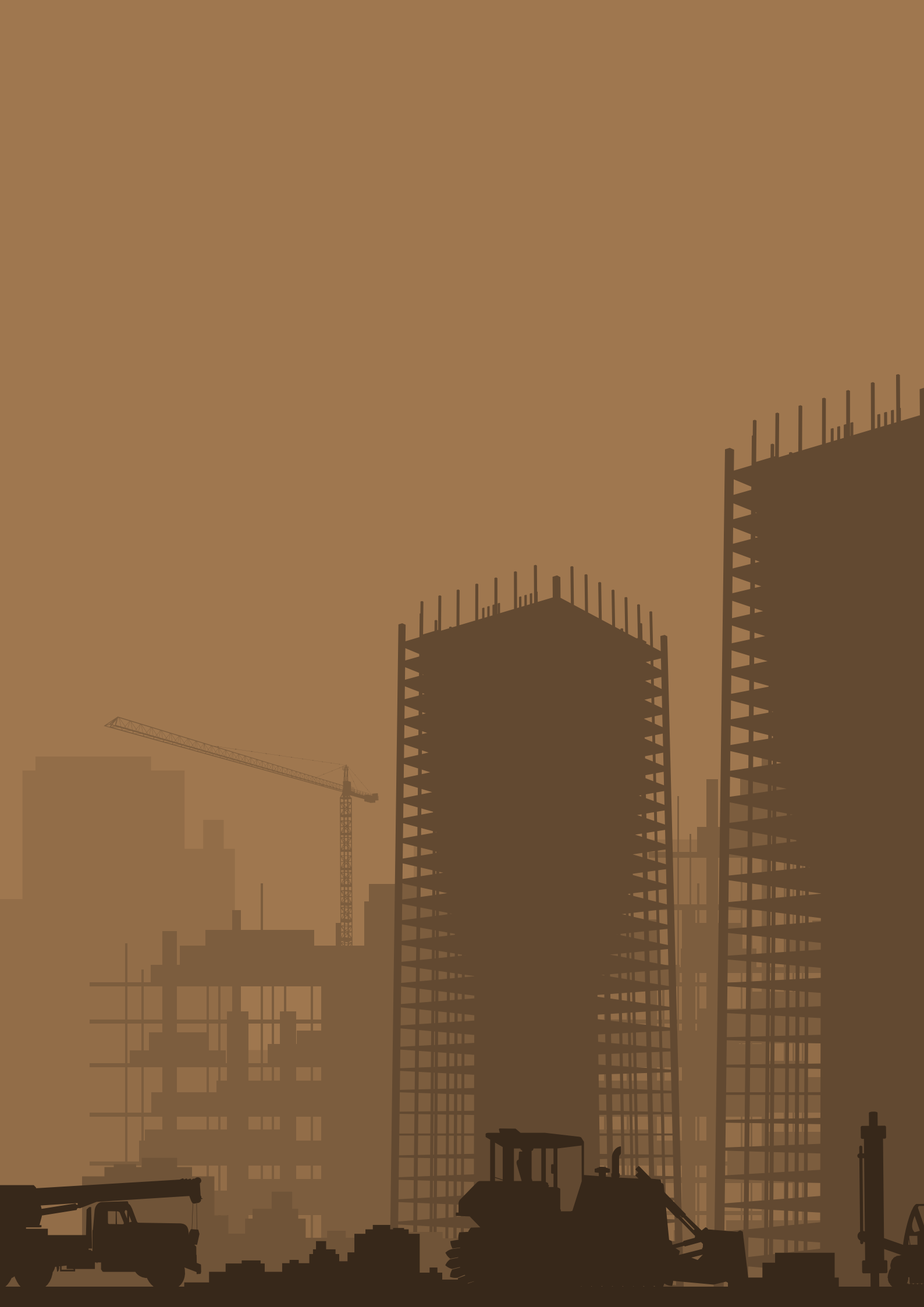


3 CONSTRUCTION QUALITY CONTROL TESTING

3 CONSTRUCTION QUALITY CONTROL TESTING

Corruption within the construction industry resulting in substandard works would not only affect the quality of buildings but also threaten public safety and damage the reputation of the industry.

Construction quality control involves testing and inspection of materials and works. The process is corruption prone because the cost of materials and workmanship is substantial in construction projects. Therefore, there is an incentive for unscrupulous contractors to cover up substandard materials or works through offering bribes to the site staff. Common malpractice revealed in past corruption cases includes manipulation in sampling of materials for testing, substitution of test samples, falsification of test reports, and false or selective reporting of field tests. Below are recommendations on safeguards to prevent abuse and corruption.

3.1 INTEGRITY REQUIREMENTS FOR TESTING LABORATORIES

RECOMMENDED CONTROL MEASURES

Project Team / Consultant

- Include in the contract with the appointed laboratories clauses requiring them to commit to ethical practices **(Appendix 5)** and require laboratories to submit, as part of the payment application, a declaration pledging compliance with relevant clauses **(Annex of Appendix 5)**.

3.2 SETTING UP QUALITY MANAGEMENT SYSTEM

RECOMMENDED CONTROL MEASURES

Project Team

- Appoint a Quality Manager (at a senior level) with adequate knowledge and experience in quality assurance in the construction field.

Quality Manager

- Select an accredited laboratory through competitive means and require the appointed laboratory to declare any conflict of interest with consultants or contractors involved in the project (the same should be required of the consultants if they are tasked to select a laboratory).
- Develop a Quality Management System and put in place effective measures to monitor compliance with the quality requirements by contractors.
- Conduct technical audits on the quality of works for safety critical processes on site as appropriate and compile Quality Audit Reports, highlighting any substandard materials / works, for management information.

Project Team

- Review the Quality Audit Reports and follow up on the recommendations for improvement, as necessary.

3.3 COMPONENTS OF QUALITY MANAGEMENT SYSTEM

RECOMMENDED CONTROL MEASURES

Project Team / Consultant

Independence of Testing Functions

- Directly engage testing laboratories to perform sampling and testing of materials under the contract and avoid allowing the contractor to hire testing laboratories as this would give rise to conflict of interest.

Accreditation

- Appoint laboratories to provide only those testing services accredited under the Hong Kong Laboratory Accreditation Scheme.

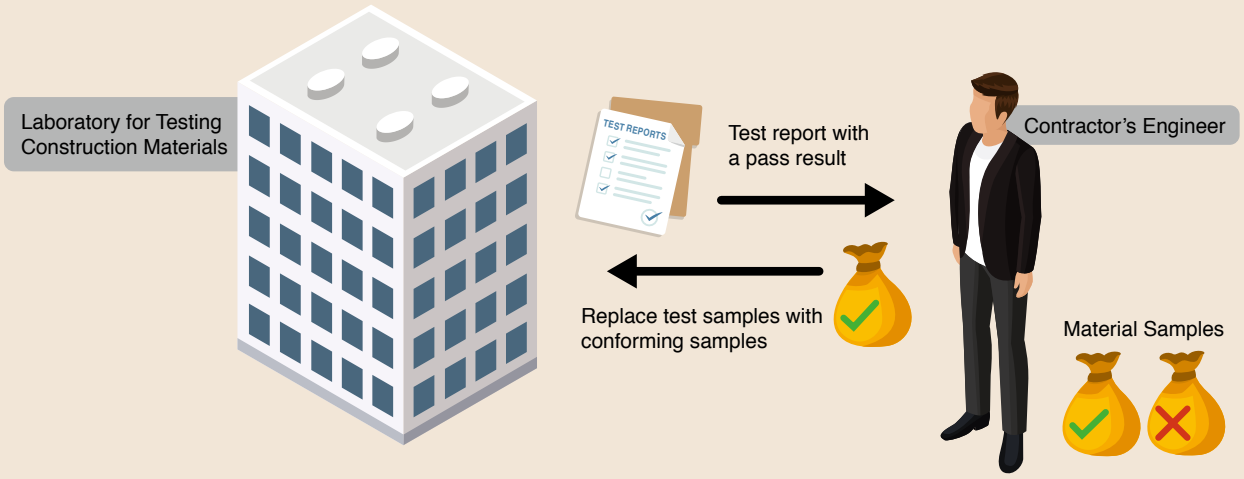
Service Requirements

- Define clearly in the works contract all quality requirements, testing standards and frequencies, and acceptance criteria for materials and completed works.
- Specify in the works contract and quality control testing contracts the independent role of the testing laboratories and the requirement of an arm's length working relationship between the contractor and the testing laboratories.

- Specify in the quality control testing contracts the requirement for the testing laboratories to protect the integrity of test samples and direct reporting of test results to owner's project team or consultant.

3.4 MANAGEMENT OF QUALITY CONTROL TESTS

Case Study – Replacing Test Samples



1 A contractor engaged a laboratory to conduct construction material compliance tests for its works project.

2 With a view to obtaining a compliant test result and concealing the use of substandard materials on site, the contractor's engineer replaced the test samples taken on site with conforming samples. The conforming samples were sent to the laboratory for testing, and compliant test reports were issued by the laboratory.

Analysis and Points to Note

The contractor's engineer committed the offence of defraud under Section 16A of the Theft Ordinance. To reduce the risk, owners organisations and/or consultants should send representatives to witness the sample collection process, and require its contractor/laboratory to put in place safeguards to prevent tampering of samples (e.g. use tamper-proof bags to contain the samples, affix unique identification tags/quick response (QR) codes to the samples).

RECOMMENDED CONTROL MEASURES

Consultant

Job Instructions

- Issue formal instructions to the testing laboratory for each test to be carried out.
- Obtain approval of the owner's project team for any variations to the method or scope of tests specified in the works contract, especially those with cost implications, with the justification recorded.

Sampling Procedures

- Ensure the sampling rate yields a representative sample that is statistically significant for the purpose of control.
- For critical structural elements, require 100% testing (e.g. radiography of critical welds) or 100% preparation for sampling tests with an actual lower percentage of sampling (e.g. sonic testing of large piles where only a proportion of the cast in tubes may be selected for testing).
- Bring in a degree of randomness in the sampling process.

Integrity of Samples / Components

- Prohibit contractors and subcontractors from taking samples or participating in the storage and transportation of samples except under supervision, and assign a person to keep all collected samples in safe custody throughout the process until handing over to the laboratory.
- Ensure proper documentation of hand-over of samples to the laboratory.
- Closely monitor site activities to prevent tampering of the component selected for testing (e.g. setting up a close-circuit television (CCTV) with remote access to monitor site activities at night) for site tests that require a few days to set up (e.g. loading test on piles).

Testing Laboratory

- Ensure that the sampling process is traceable until the stage of final testing and reporting if the laboratory is responsible for taking and transporting test samples.

Consultant / Testing Laboratory

- Ensure accurate identification and traceability of test components / samples together with the related test data, such as by using unique identifiers.

Project Team / Consultant

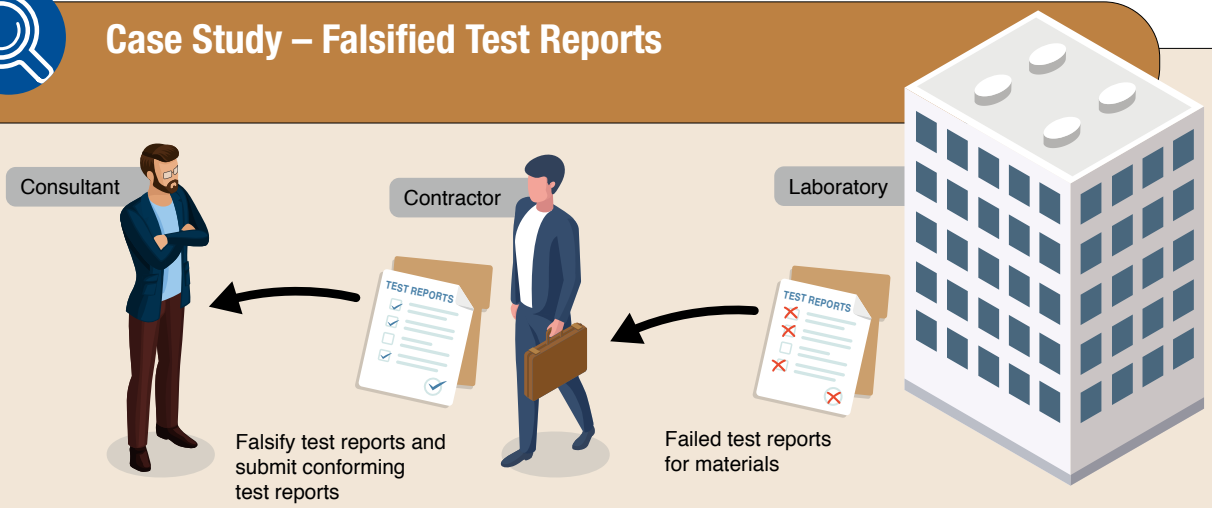
- Employ a second laboratory as necessary to conduct parallel testing of materials or works on a selective basis, having regard to the nature of works (e.g. complex and safety critical) and past testing performance of the first testing laboratory.

Consultant

- Depending on the nature of the required test, deploy site staff or representatives to supervise site test or sample taking for laboratory test, and provide logistical support for testing.

3.5 DOCUMENTATION OF TEST RESULTS

Case Study – Falsified Test Reports



1 A contractor received failed test reports from a laboratory for the re-testing of steel reinforcement bar delivered to site.

2 To avoid removing the materials from site and the subsequent delay to the project, the contractor falsified the test reports and submitted conforming test reports to the project consultant.

Analysis and Points to Note

The contractor committed the offence of fraud under Section 16A of the Theft Ordinance. If test reports are submitted to the project consultant through the contractor, there will be the risk of devious contractor tampering with or screening out failed test reports in order to evade re-testing or remedial work. As a good practice, owners organisations should require laboratories to send test reports to the owners organisations / consultants directly, or send parallel copies of the reports to contractor and the owners organisations / consultants concurrently.

RECOMMENDED CONTROL MEASURES

Testing Laboratory

- Produce valid or latest calibration certificates, test reports or test certificates for the testing equipment used for the field test.
- Report directly to the owner's project team or consultant in the specified manner (e.g. sealed packet delivery) without routing through any intermediaries.
- Keep securely the test reports and blank certificates during all stages of reporting.
- Standardise the test report format to ensure all necessary information is included for the proper interpretation of the test results.
- Incorporate in the test reports the following key features:
  - Unique identification of the certificate or report with serially numbered pages and total page number quoted.
  - The name, title and role of the independent witness attending the test.
  - Description and precise identification of sample, component or item tested, together with any distinguishing characteristics.
  - Reference to sampling procedures adopted, if relevant.
  - Measurements and derived results supported by sketches, tables, graphs, and photographs as appropriate, together with the description of any recognised failure modes.

- The name, signature and title of the person responsible for the test and content of the report.
- A statement requiring that the test certificate or report should not be copied or reproduced, in part or in full, without the written permission of the issuing laboratory and owners.

Consultant

- Reject the test reports and certificates if they have been altered or amended in any manner.
- Accept amendments to test reports and certificates only if amendments are submitted in the form of a separate amendment document, clearly identified as a supplement to the previous report and meeting all requirements for reporting (e.g. properly certified by a responsible staff member of the laboratory).

3.6 MONITORING TESTING LABORATORIES' PERFORMANCE

RECOMMENDED CONTROL MEASURES

Management

- Set up procedures for appraisal of the testing services provided at the end of a contract if the laboratory is engaged as a term contractor or for recording of adverse performance which should be taken into account in future appointment of laboratories **(Sections 3.1 and 3.3)**.
- Terminate the contract if the performance is consistently unsatisfactory.

3.7 STAFF ROTATION

RECOMMENDED CONTROL MEASURES

Consultant

- Rotate the staff in sensitive jobs, such as supervision of quality control tests on site, as far as practicable.

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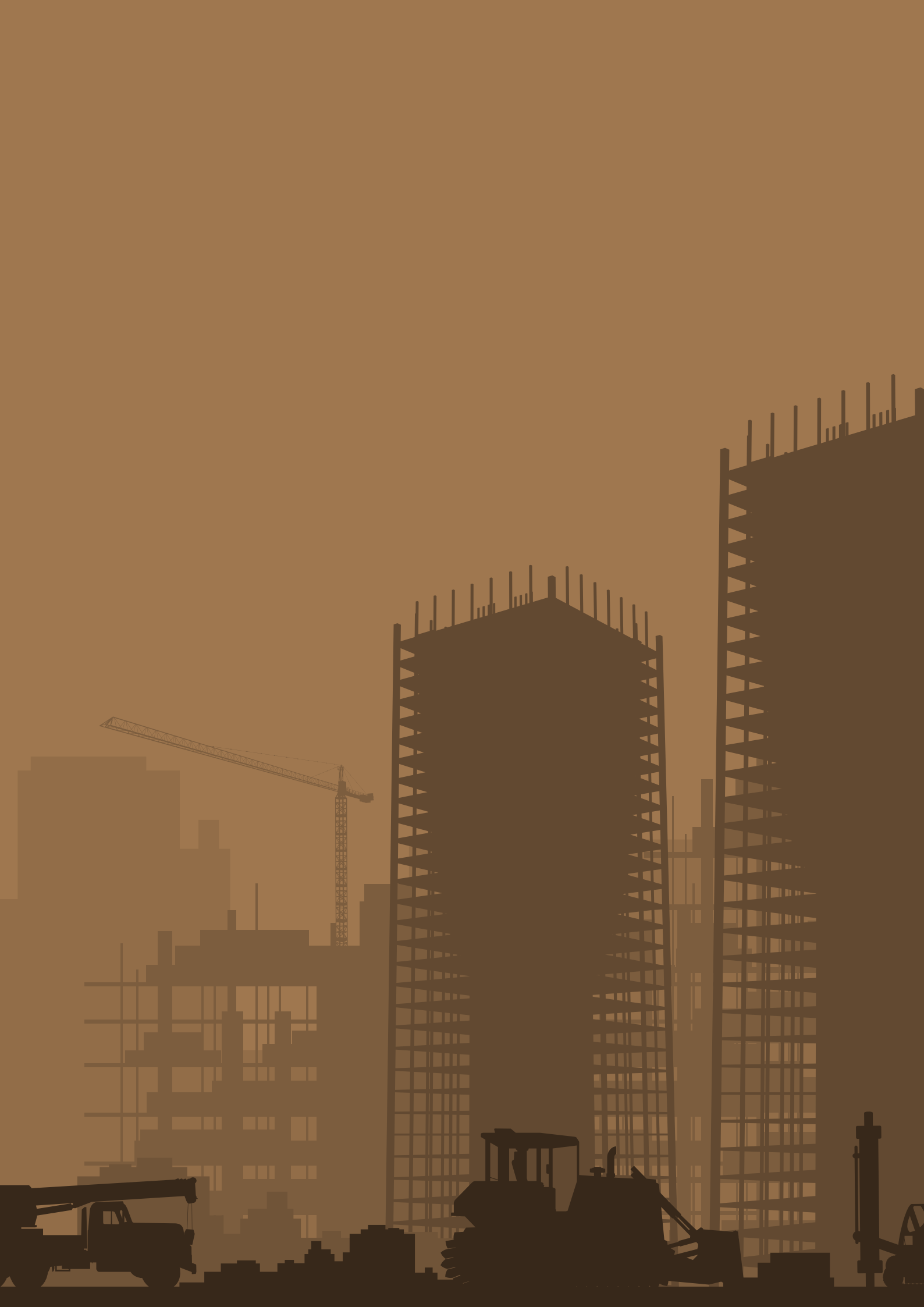

4 GOVERNANCE AND INTEGRITY MATTERS

4 GOVERNANCE AND INTEGRITY MATTERS

To demonstrate the management's commitment to ethical practices and assist managers / staff to uphold integrity in daily operations, the owner organisations / consultants / contractors should issue to managers / staff comprehensive integrity guidelines (e.g. by way of a code of conduct), so as to set out clearly the standard of behaviour expected of them. Here are some recommended control measures for different parties in relation to governance matters.

4.1 CODE OF CONDUCT

RECOMMENDED CONTROL MEASURES

Management / Consultant / Contractor / Testing Laboratory

- Require staff members to commit to ethical practices when dealing with works related to the project, by issuing a code of conduct **(Appendix 1)** or probity guidelines to them.
- Include in the code of conduct:
  - The organisation's or company's core values, mission statement if appropriate, and stance on anti-corruption.
  - The policy governing solicitation and acceptance of advantages and entertainment, with reference to the relevant provisions under the Prevention of Bribery Ordinance (POBO, **Annex 1 of Appendix 1**. Link of full text of the Ordinance *https://www.elegislation.gov.hk/hk/cap201*) and the procedures for handling acceptance.
  - Guidelines on reporting the gifts/advantages received **(Annex 2 of Appendix 1)**, declaration of conflict of interest and the procedures for management of declared conflicts **(Annex 3 of Appendix 1)**.

- The policy for staff members taking outside or part-time jobs and the procedures for approval, if applicable.
- Rules for protection and use of confidential or proprietary information.
- Rules for use of resources of the organisation or company such as vehicles and computers and their disposal.
- Mechanism for handling of reports of corruption and violations **(Section 4.4)**.

4.2 MANAGEMENT OF CONFLICT OF INTEREST

RECOMMENDED CONTROL MEASURES

Management / Consultant / Contractor / Testing Laboratory

- Require staff members to comply with requirements on declaration and management of conflict of interest.
- Adopt a "three-step mechanism" in declaration and management of conflict of interest:
  - ***Avoid*** - All staff members should remain alert to and avoid any actual, potential or perceived conflict of interest situation;
  - ***Declare*** - If the conflict is unavoidable, the staff members should report it to the designated approving authority once he becomes aware of the conflict; and
  - ***Mitigate*** - The designated approving authority, after assessing the impact of the conflict and the risk of impropriety, should take appropriate mitigating measure as early as possible. The mitigation to be taken would depend on the circumstances of individual cases and the level of mitigation should be commensurate with the severity of the conflict.
- Maintain proper documentation of the declaration, the rationale for the decisions made and the course of mitigating measures taken. A sample form for making the declaration, recording the decision made and the mitigating measures taken is at **Annex 3 of Appendix 1** for reference.

- Designate an office / a staff member of appropriate rank to keep the precedent cases in managing declared conflict of interest so as to enhance consistency and facilitate sound decisions in managing declared conflict in future.
- Depending on the operational needs and circumstances, organisation may require a staff member who participates in projects / exercises involving sensitive issues / information, or with great public concerns to declare if he has or does not have any conflict of interest (i.e. positive declaration) on the matter in order to protect the public interest and the interest of the organisation.

4.3 INTERNAL AUDITS

RECOMMENDED CONTROL MEASURES

Project Team / Consultant / Contractor / Testing Laboratory

- Maintain proper records for internal audits and prepare management reports, covering various aspects of works projects:
  - Selection and appointment of consultants and their monitoring;
  - Letting and administration of contractors (e.g. works supervision, claims handling);
  - Testing services.

Management

- Put in place an internal audit function to independently evaluate the effectiveness of risk management, control and governance processes.
- Carry out various types of audits, including:
  - ***Compliance audit*** – to verify whether the internal procedures of the organisation are complied with.
  - ***Management audit*** – to assess how well an organisation's management team formulates its strategies and procedures.
  - ***Technical audit*** – to examine whether reasonable and adequate professional skills and judgement are exercised on various technical aspects (e.g. whether it is justified for issuing contract variations).

- Ensure that the internal audit function:
  - is independent from operation under audit, sufficiently staffed by staff of appropriate qualification and training, has unfettered access to all records, assets, personnel and premises, and to obtain such information and explanations as and when considered necessary.
  - develops an audit programme setting out the auditing assignments to be performed and conducts regular review to the programme taking into account the risks of key business processes in relation to the management of works consultancies, works contracts and testing services.
  - reports directly to the Audit Committee, if established, or the senior management and draws their immediate attention to any significant irregularities detected in the course of audit review.
- Give due consideration to the opinions and findings of the internal audit function and take timely actions in response to its recommendations/ findings.

4.4 HANDLING OF REPORTS OF CORRUPTION AND VIOLATIONS

RECOMMENDED CONTROL MEASURES

Management / Consultant / Contractor / Testing Laboratory

- State the organisation's or company's anti-corruption policy and provide suitable channels for reporting corruption and violations of the policy.
- Require all personnel of the organisation to report promptly any corruption to the ICAC or through the reporting channels provided as appropriate.
- Encourage business partners (e.g. suppliers, contractors) to report corruption or corruption attempts by any of the organisation's personnel.
- Provide assurance of confidentiality, prompt handling and non-retaliation to the staff who make a report in good faith.
- Reiterate the zero-tolerance policy towards any corrupt behaviour detected, which will result in reporting to the relevant law enforcement agency and disciplinary action such as termination of employment (in the case of staff) or termination of contract and exclusion from future bidding (in the case of suppliers/contractors).

- Review regularly the reports received (e.g. number, type, handling of complaints).
- Render assistance to ICAC and other law enforcement agencies in the investigation of criminal offences.

All Parties

- Follow the anti-corruption policy of the organisation or the company to report corruption and violations promptly to the ICAC **(Section 5.4)** or through the reporting channels provided as appropriate.

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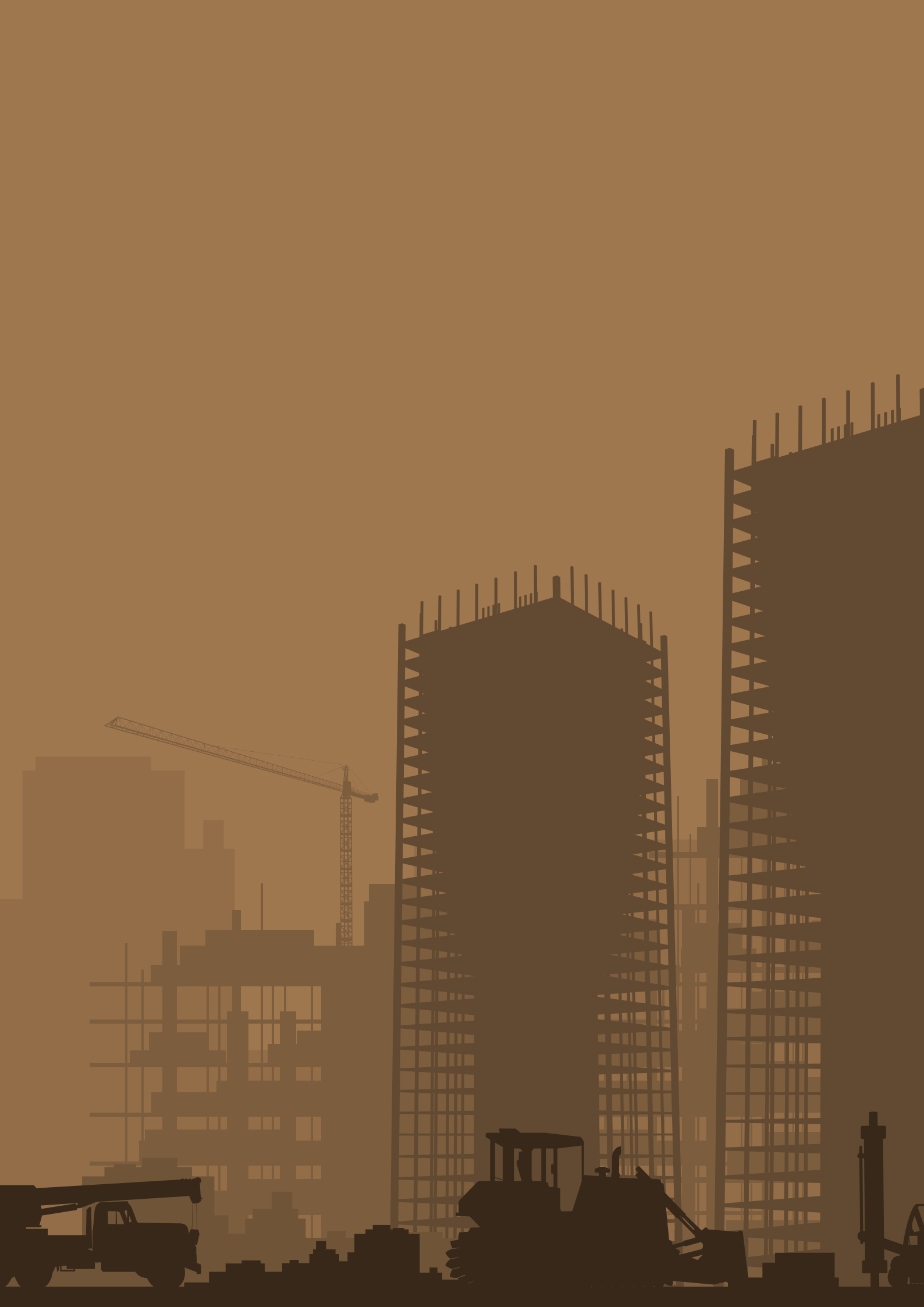


5 ICAC SERVICES

5 ICAC SERVICES

5.1 INTRODUCTION

The ICAC stands ready to help the construction industry (e.g. developers, consultants, construction companies and laboratories) establish, strengthen and continually improve their anti-corruption controls/programmes that cater for their operational needs. The channels for reporting cases of suspected corruption are also provided in the below paragraphs.

5.2 CORRUPTION PREVENTION ADVISORY SERVICES

The Corruption Prevention Advisory Service (CPAS) of the Corruption Prevention Department, ICAC which has compiled this Guide is a specialised unit that focuses on providing the following free professional corruption prevention advice and services to private organisations and business companies –

- providing confidential and tailor-made advice on anti-corruption management systems including the adoption of the recommended measures in the Guide and corruption prevention measures for specific business operations on request;
- offering assistance in drawing up a code of conduct for the directors and staff **(Section 4.1)** and other probity guidelines (e.g. corporate policy/guidelines on reporting corruption) that will help them comply with anti-corruption requirements as well as raise the company's integrity standard;
- organising corruption prevention training for the construction industry to raise their directors'/staff's awareness of corruption risks and corruption prevention measures specific to their business operations; and
- answering any enquiries about this Guide.

For further information, please contact the CPAS through the following channels –

Phone: 2526 6363
Fax: 2522 0505
E-mail: *cpas@cpd.icac.org.hk*
Website: *cpas.icac.hk*

5.3 EDUCATION SERVICES

The Hong Kong Business Ethics Development Centre (HKBEDC) of the ICAC's Community Relations Department strives to promote business and professional ethics in Hong Kong on a long-term basis. Its services for the construction industry include –

- offering anti-corruption and ethics training to construction companies to promote ethical corporate culture and good governance;
- collaborating with professional bodies in providing Continuing Professional Development courses for professionals, producing online training materials on anti-corruption laws and integrity management for the industry *(https://hkbedc.icac.hk/en/sector_industry/construction/28)*;
- organising seminars and workshops, also holding webinars on the BEDC Channel *(hkbedc.icac.hk/en/services/bedc_channel)* for contractors and site supervisors to enhance their knowledge of legal requirements;
- maintaining a Construction thematic webpage *(hkbedc.icac.hk/en/sector_industry/construction)* on the HKBEDC's website *(hkbedc.icac.hk)* to provide an online repository of education resources and training materials for use by construction practitioners; and
- providing posters, pamphlets and training videos for construction companies to widely publicise anti-corruption messages.

For further details, please contact the HKBEDC or visit its website –

Phone:	2826 3288
Fax:	2519 7762
E-mail:	*hkbedc@crd.icac.org.hk*
Website:	*hkbedc.icac.hk*
LinkedIn:	HKBEDC

5.4 REPORTING CORRUPTION

Reporting corruption in person is more direct and allows the ICAC to get more details of the corruption complaint. Complainant's identity and content of complaint are handled in strict confidence.

Full evidence is not required when lodging a complaint. One may report if he has reasonable doubt. Complainants only need to state the known facts of the suspected case and the ICAC will follow up according to the information provided.

Any person encountering corruption should make a report to the ICAC through any 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**[8] (opening hours: 9:00 a.m. - 7:00 p.m. Monday to Friday; closed on Saturdays, Sundays and public holidays)

[8] *The contact information of ICAC Regional Offices is posted on the ICAC's website (https://www.icac.org.hk/en/crd/struct/ro/index.html).*

NOTES

APPENDICES

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 members[1] of the Company at all times. This Code sets out the basic standard of conduct expected of all directors and staff members, 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 members 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 members 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**.)

Acceptance of Advantage

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

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

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 members in official functions are deemed as offers to the Company. The directors and staff members 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.

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 members are prohibited from offering advantages to any director, staff member or agent of another company or organisation, 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.

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

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 members 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.

Compliance with Laws of Hong Kong and in Other Jurisdictions

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

Conflict of Interest

11. Directors and staff members 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.

[3] *According to the POBO, "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 the provision of food or drink.*

[4] *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.*

(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.

Misuse of Official Position, Company Assets and Information

13. Directors and staff members 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 members 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. Unauthorised use, such as misuse for personal interest, is strictly prohibited.

15. Directors and staff members should not disclose any classified information of the Company without authorisation or misuse any Company information (e.g. unauthorised 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 unauthorised disclosure or misuse. Special care should also be taken in the use of any personal data, including directors', staff members' 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 members 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 members should not accept any loan from, or through the assistance of, any individual or organisation 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 members 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 company duties in or outside Hong Kong. Managers and supervisors should also ensure that the staff members 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 – Corrupt transactions with agents

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

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

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

shall be guilty of an offence.

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

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

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

shall be guilty of an offence.

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

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

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

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

shall be guilty of an offence.

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

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

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

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

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

Section 4 – Bribery

(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

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

(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 – Bribery of public servants by persons having dealings with public bodies

(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 – Interpretation

"**Advantage**" means –

(a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(b) any office, employment or contract;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

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

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

Section 19 – Custom not to be a defence

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

(Company Name)

REPORT ON GIFTS/ ADVANTAGES RECEIVED

Part A – To be completed by Receiving Staff Member

To : (*Approving Authority*)

Description of Offeror :

Name & Title of Offeror : _____

Company : _____

Relationship (Business / Personal) : _____

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

Description and (assessed) value of the gift / advantage : _____

Suggested Method of Disposal :	Remark
☐ Retain by the Receiving Staff Member	_____
☐ 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 Organisation	_____
☐ Return to Offeror	_____
☐ Others (please specify) :	_____

_____ _____

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

Part B – To be completed by Approving Authority

To : (*Name of Receiving Staff Member*)

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

_____ _____

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

* Delete as appropriate.

Annex 3
Form B

(Company Name)
DECLARATION OF CONFLICT OF INTEREST

Part A – Declaration *(To be completed by the Declarer)*

To : (*Approving Authority*)

☐ I have no conflict of interest, whether actual or potential, in discharging my official duties in relation to [*insert the name of the project / exercise requiring positive declaration by the Company*], and undertake to declare any such conflict immediately when I become aware of it#.

(# For use only when there is a requirement for positive declaration)

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

Person(s)/organisation(s) with whom/which I have official dealings and/or private interest
My relationship with the person(s)/organisation(s) (e.g. relative)
My contact with the person(s)/organisation(s) (Please state the frequency of contact and the usual occasions of contact, etc.)
Relationship of the person(s) / organisation(s) with the Company (e.g. supplier)
Brief description of my duties which involved the person(s)/organisation(s) (e.g. handling of tender exercise)
File reference, if any, of the mentioned duties

(Date)

(Name of the Declarer)
(Title)

* Potential conflict of interest refers to situation that may be developed into an actual conflict in the future.

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

To : (Declarer)

Part B(i) – In respect of the declaration in Part A of this form, it has been decided that:

☐ The declaration as described in Part A is noted. You are allowed to continue handling the work as described in Part A, provided that there is no change in the information declared above.

☐ You are restricted in the work as described in Part A (e.g. prohibit from handling the specific part/duty that you have conflict, withdraw from discussion on a specific issue/case).

Details: _____

_____

☐ You may continue to handle the work as described in Part A, but an independent person would be recruited to participate in, oversee or review part or all of the decision-making process (e.g. task another staff member with the required expertise to provide objective assessment on the matter).

Details: _____

_____

☐ You are relieved of your duty as described in Part A, which will be taken up by another person (e.g. staff member, expert) through redeployment.

Details: _____

_____

☐ You should relinquish the personal/private interest (e.g. cease to be a member of a club/association, divest the investments until the conflict situation described in Part A no longer exists).

Details: _____

_____

☐ Others (please specify) (e.g. you should not contact the person(s)/organisation(s) concerned until the conflict situation described in Part A no longer exists):

Details: _____

_____

Part B(ii) – The justification(s) for the measure(s) as described in Part B(i) above is/are:
(Factors of consideration including the materiality of the conflict, link between the conflict and the matter in question, and any possible negative public perception over the conflict/incident.)

_____

_____

_____

_____

In all cases, please be reminded that you should not disclose any privileged/internal information of the subject matter to the person(s)/organisation(s) concerned and should further report if there are changes in circumstances necessitating reporting.

_____ _____

(Date) (Name of the Approving Authority)
(Title)

Part C – Keeping of Records *(To be completed by the Declarer)*

To : (*Designated office/staff member for keeping the completed declaration form*)

Via: (*Approving Authority*)

I noted the decision in Part B. The completed form is for your retention please.

(Date)	(Name of the Declarer) (Title)

SAMPLE PROBITY AND ANTI-COLLUSION CLAUSES IN TENDER DOCUMENTS

Offering Gratuities

1. The tenderer shall not, and shall procure that his directors, employees, agents and sub-consultants/sub-contractors* shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance, Cap. 201 in connection with the tendering and execution of this contract.

2. Failure to so procure or any act of offering, soliciting or accepting advantage referred to in (1) above committed by the tenderer or by a director, an employee, agent or sub-consultant/sub-contractor* of the tenderer shall, without affecting the tenderer's liability for such failure and act, result in his tender being invalidated.

Anti-collusion

3. The tenderer shall not communicate to any person other than the Employer the amount of any tender, adjust the amount of any tender by arrangement with any other person, make any arrangement with any other person about whether or not he or that other person should or should not tender or otherwise collude with any other person in any manner whatsoever in the tendering process until the tenderer is notified by the Employer of the outcome of the tender exercise. Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer's liability for such breach or non-compliance, invalidate his tender.

4. Sub-clause (3) of this Clause shall have no application to the tenderer's communications in strict confidence with his own insurers or brokers to obtain an insurance quotation for computation of tender price and communications in strict confidence with his sub-consultants/subcontractors* to solicit their assistance in preparation of tender submission.

5. The tenderer shall, upon written request by the Employer, submit to the Employer a duly signed letter in the form set out below ***(Annex)***. The letter shall be signed by a person authorised to sign the contracts on the tenderer's behalf.

* Delete as appropriate.

Declaration Form on Compliance with Probity and Anti-Collusion Requirements

To: [Name of the Employer]

Dear Sir / Madam,

Contract No. [ ]
Confirmation Letter for Compliance with Probity and Anti-Collusion Clauses in Tender

[I/We][1], [(Name of the tenderer)[2] of (Address of the tenderer)[2] refer to [my/our][1] tender for the above Contract.

[I/We][1] confirm that as at the time of submission of this letter and other than the Excepted Communications referred to in the last paragraph of this letter [I/we][1] had not communicated to any person other than the [Name of the Employer] (hereafter referred to as the Employer) the amount of any tender, adjusted the amount of any tender by arrangement with any other person, made any arrangement with any other person about whether or not [I/we][1] or that other person should tender or otherwise colluded with any other person in any manner whatsoever and undertake that at any time thereafter in the tendering process for the above Contract until the tenderer is notified by the Employer of the outcome of the tender exercise and other than the Excepted Communications referred to in the last paragraph of this letter [I/we][1] will not communicate to any person other than the Employer the amount of any tender, adjust the amount of any tender by arrangement with any other person, make any arrangement with any other person about whether or not [I/we][1] or that other person should tender or otherwise collude with any other person in any manner whatsoever.

In this letter, the expression "Excepted Communications" means [my/our][1] communications in strict confidence with [my/our][1] own insurers or brokers to obtain an insurance quotation for computation of tender price and communications in strict confidence with [my/our][1] sub-consultants/sub-contractors[1] to solicit their assistance in preparation of tender submission.

_____

(Signed for and on behalf of the tenderer)[3]

[1] *Delete as appropriate.*

[2] *Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.*

[3] *Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorised to sign the contract on behalf of that person or as the case may be company.*

SAMPLE ETHICAL COMMITMENT CLAUSES FOR INCLUSION IN CONSULTANCY AGREEMENT

Confidentiality

(A) Except as necessary for the performance of the Services the Consultants shall not (except with the prior written consent or as instructed by the Employer) disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Employer in connection therewith, or any such or similar information generated or produced by the Consultants pursuant to this Agreement, to any person other than a person employed or engaged by the Consultants in carrying out this Assignment, an agent of the Consultants, any approved sub-consultant or the Consultants' accountants, insurers and legal advisers.

(B) Any disclosure to any person, agent, sub-consultant, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause 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 purposes of this Agreement.

(C) The Consultants shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents, sub-consultants, accountants, insurers and legal advisers as mentioned in sub-clause (A) are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Employer, the Consultants undertake to procure for and on behalf of the Employer a confidentiality agreement in a form to be prescribed by the Employer from any director, employee, agent, sub-consultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed.

(D) The Consultants shall not without the prior written consent of the Employer publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.

(E) The Consultants shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential arising out of or in connection with any breach by the Consultants or their directors, employees, agents, sub-consultants, accountants, insurers or legal advisers of this clause.

(F) The provision of this clause shall survive the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

Prevention of Bribery

(G) The Consultants shall prohibit their directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201. The Consultants shall also caution their directors, employees, agents and sub-consultants against soliciting or accepting any excessive entertainment which would impair their impartiality in relation to the Assignment. The Consultants shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants are aware of the aforesaid prohibition and will not solicit or accept any advantages, excessive entertainment, etc when conducting business in connection with this Agreement.

Declaration of Interest

(H) The Consultants shall require their directors, employees, agents and sub-consultants who are involved in this Agreement to declare in writing to the Consultants any conflict or potential conflict between their personal/financial interests and their duties in connection with this Agreement. In the event that such conflict or potential conflict is disclosed in a declaration, the Consultants shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

(I) The Consultants shall prohibit their directors, employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, 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 Agreement. The Consultants shall require their agents and sub-consultants to impose similar restriction on their employees by way of a contractual provision.

(J) The Consultants shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants who are involved in this Agreement are aware of the provisions under the aforesaid sub-clauses (G), (H) and (I).

Declaration of Ethical Commitment

(K) The Consultants shall submit a signed declaration in a form ***(Annex)*** prescribed or approved by the Employer to confirm compliance with the provisions in aforesaid sub-clauses (A) (B), (C), (D), (E), (F), (G), (H), (I) and (J) on confidentiality, prevention of bribery and declaration of interest. If the Consultants fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultants shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) on confidentiality, prevention of bribery and declaration of interest, the consultant and their sub-consultants employed for the performance of duties under this Agreement are required to deposit with the Employer a code of conduct issued to their staff.

Declaration Form by Consultants on Their Compliance with Ethical Commitment Requirements

To: [Name of the Employer]

Agreement No.:

Title:

In accordance with the Ethical Commitment clauses in the Consultancy Agreement :

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

(a) Prohibiting our directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Agreement;

(b) Requiring our employees, agents and sub-consultants who are involved in this Agreement to declare in writing to us any conflict or potential conflict between their personal/financial interests and their duties in connection with this Agreement. In the event that a conflict or potential conflict is disclosed, we will 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 employees who are involved in this Agreement from engaging in any work or employment (other than in the performance of this Agreement), 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 Agreement and requiring our sub-consultants to do the same;

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

(2) We further confirm that we have ensured that our accountants, insurers and legal advisers are aware of the provisions requiring us taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Agreement.

(Name of the Consultant)	(Name of the Signatory)	Position of the Signatory

(Date)

SAMPLE DEBARMENT CLAUSES IN CONSULTANCY AGREEMENT

(A) The Consultants shall not, and shall ensure that any of their associated companies, their associates or associated persons or any of their sub-consultants shall not, during the term of this Agreement and for [ ] months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this Agreement), which touches, concerns or affects the services under this Agreement or which may reasonably be seen to touch, concern or affect the services under this Agreement, except with the prior written approval of the Employer which approval shall not be unreasonably withheld.

(B) Without prejudice to the generality of clause (A), the Consultants shall not (whether on their own or through their associated companies, associates or associated persons or in joint venture with others), and shall ensure that any of their sub-consultants shall not,

(i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;

(ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the Employer for which the Consultants are providing a service arising out of or relating to this Agreement;

(iii) undertake any services for, including, without limitation, provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Employer.

In the event that the Consultants have advised on the preparation of the tender, including tender specifications and tender assessment, the Consultants undertake that under no circumstances will they bid, participate or be financially involved in that or related tender exercise.

The Consultants shall take all necessary steps to ensure that under no circumstances will their associated companies, associates, associated persons and sub-consultants participate or be financially involved in the tender exercise referred to in the preceding sub-paragraphs.

SAMPLE ETHICAL COMMITMENT CLAUSES IN CONDITIONS OF CONTRACT

Information not to be Divulged

(A) The Contractor / Testing Laboratory* shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer / Project Owner* in the Contract or in any subsequent correspondence or documentation. 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 / Testing Laboratory* shall take all necessary measures (including by way of a code of conduct 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 / Testing Laboratory* shall indemnify and keep indemnified the Employer / Project Owner* against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer / Project Owner* 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 / Testing Laboratory* or his directors, employees, agents or sub-contractors.

Prevention of Bribery

(B) The Contractor / Testing Laboratory* shall prohibit his directors, employees, agents, and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.

Declaration of Interest

(C) The Contractor / Testing Laboratory* shall require his directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to the Contractor / Testing Laboratory* 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 / Testing Laboratory* shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

(D) The Contractor / Testing Laboratory* shall prohibit his directors, 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 / Testing Laboratory* shall also require their sub-contractors and agents to impose similar restriction on their directors and employees by way of a contractual provision.

(E) The Contractor / Testing Laboratory* shall take all necessary measures (including by way of a code of conduct or contractual provisions and where appropriate) to ensure that his directors, employees, agents and sub-contractors are aware of the prohibitions in this clause.

Contractor's / Testing Laboratory's* Declaration

(F) The Contractor / Testing Laboratory* shall also submit a signed declaration in a form ***(Annex)*** prescribed or approved by the Employer / Project Owner* to confirm compliance with the provisions on ethical commitment as stated in the aforesaid sub-clauses (A), (B), (C), (D) and (E). If the Contractor / Testing Laboratory* fails to submit the declaration as required, the Employer / Project Owner* shall be entitled to withhold payment until such declaration is submitted and the Contractor / Testing Laboratory* shall not be entitled to interest. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D) and (E) on confidentiality, prevention of bribery, and declaration of interest, the Contractor / Testing Laboratory* and their sub-contractors employed for the performance of duties under this Contract are required to deposit with the Employer / Project Owner* a code of conduct issued to their directors and staff members.

* Delete as appropriate

Declaration Form by Contractors / Testing Laboratories* on Their Compliance with the Ethical Commitment Requirements

To: [Name of the Employer / Project Owner*]

Contract No.:

Title:

In accordance with the Ethical Commitment clauses of the Contract, we confirm that we have complied with the following provisions and have ensured that our directors, employees, sub-contractors, agents 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 when conducting business in connection with this Contract;

(b) Requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to us any conflict or potential conflict between their personal/ financial interests and their duties in connection with this Contract. In the event that a conflict or potential conflict is disclosed, we will 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 sub-contractors to do the same;

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

_____	_____	_____
(Name of the Contractor / Testing Laboratory*)	(Name of the Signatory)	Position of the Signatory

_____

(Date)

* Delete as appropriate.

Corruption Prevention Guide on Works Supervision

廉政公署
ICAC

CORRUPTION PREVENTION GUIDE ON
WORKS SUPERVISION

DISCLAIMER

Descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance (POBO, Cap. 201) 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 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 government department, public body or person.

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

TABLE OF CONTENTS

FOREWORD

To support the development of Hong Kong's economy and community, government departments and public bodies (including those with construction of works incidental to their core functions) (referred hereinafter to as "project clients") spend a large amount of public funds on building and infrastructure projects. Very often, these projects involve complicated works processes and use of numerous materials, the quality of which are of critical importance. Moreover, such materials and works are normally accepted, stored and carried out on site, with some fabricated in factories outside Hong Kong, rendering the relevant processes more difficult to control and supervise. Coupled with the pressure or incentives for contractors to cut cost and maximise profit or meet tight schedules, there is a significant risk of site supervisory staff being compromised to turn a blind eye to substandard works.

Corruption in site supervision could impair not only the quality but also the structural integrity of the works. More importantly, public trusts and confidence over the project clients and their works could be evaded. As such, an effective and robust works supervision system is vital in ensuring works quality of the projects and thus safeguarding public safety and interest.

To prevent corruption and other malpractices in works supervision, this Corruption Prevention Guide aims to provide a list of measures to help project clients strengthen their internal control in the supervision and acceptance of materials and works. Given the benefits of a digital works supervision system in enhancing the accountability and controls of works supervision, this Guide also provides some principles and corruption prevention measures for developing such system. The measures suggested in the Checklist for Corruption Prevention and principles set out in the Guide are by no means prescriptive or exhaustive. They are not intended to supersede any laws, departmental instructions / guidelines, or contractual, regulatory or professional standards, code of practices and requirements. Project clients are advised to appropriately adopt the recommended measures, having regards to their organisational structure, resource capability, operational needs, and risk exposures. They are also advised to read this Guide in conjunction with the relevant legislation and guidelines, codes, etc. issued by the Government and professional bodies as appropriate.

Other than project clients, developers and practitioners in the private sector may adapt the corruption prevention measures in the Guide where appropriate to strengthen the works supervision systems for their construction projects.

CHAPTER 1

LEGISLATION

1.1 Introduction

POBO criminalises bribery and corrupt transactions in both the public and private sectors. To avoid pitfalls of corruption and related offences in carrying out site supervision duties, it is advisable for the site supervisory staff of project clients and their consultants to understand the relevant legal requirements.

1.2 Legal Requirements

1.2.1 Prevention of Bribery Ordinance

1.2.1.1 Section 3
Soliciting or Accepting an Advantage

(a) Section 3 – It is an offence for a government officer[1] to, without the general or special permission of the Chief Executive, solicit or accept any advantage[2].

(b) The maximum penalty for an offence under Section 3 is a fine of $100,000 and imprisonment for one year.

(c) The Acceptance of Advantages (Chief Executive's Permission) Notice (AAN) gives general permission to government officers to solicit and / or accept all advantages under Section 3 of POBO, except four types of "restricted advantages", namely gifts (whether of money or otherwise), discounts, loans of money, and passages. It specifies the circumstances under which general permission is given for government officers to solicit and / or accept these four types of advantages. For circumstances not covered by the general permission under AAN, the government officer is required to seek special permission from the approving authority for accepting the advantage.

1.2.1.2 Section 4
Bribery

(a) Section 4(1) – It is an offence for any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant[3] as an inducement to or reward for his performing or abstaining from performing any act in his capacity as a public servant.

(b) Section 4(2) – It is an offence for any public servant who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for his performing or abstaining from performing any act in his capacity as a public servant.

(c) The maximum penalty for an offence under Sections 4(1) and 4(2) is a fine of $500,000 and imprisonment for seven years.

1 *The term in POBO is "prescribed officer" which generally includes, among others, any person holding an office of emolument, whether permanent or temporary, under the Government.*

2 *It generally refers to anything that is of value such as money, gift, discount, commission, loan, employment, service or favour (except entertainment).*

3 *Public servants generally refer to any government officers, employees and members of public bodies as defined in POBO.*

1.2.1.3 Section 8
Bribery of Public Servants by Persons Having Dealings with Public Bodies

(a) Section 8 – It is an offence for any person who, without lawful authority or reasonable excuse, while having dealings of any kind with a government department / office or a public body, offers any advantage to any government officer employed in that department / office or public servant employed by that public body.

(b) The maximum penalty for an offence under Section 8 is a fine of $500,000 and imprisonment for seven years.

1.2.1.4 Section 9
Corrupt Transactions with Agents

(a) Section 9(1) – It is an offence for any agent (e.g. an employee, a director, a consultant) to, without the permission of his principal (e.g. employer, who may include the Government, a public body, a private company, or an individual) or reasonable excuse, solicit or accept any advantage as an inducement to or reward for his doing or forbearing to do any act in relation to his principal's affairs or business.

(b) Section 9(2) – Any person who offers any advantage to an agent under the above circumstances also commits an offence.

(c) Section 9(3) – It is an offence for any agent to, with an intent to deceive his principal, use any receipt, account or other document which contains any statement which is misleading, false or defective in any material particular in respect of which the principal is interested.

(d) The maximum penalty for an offence under Sections 9(1), 9(2) and 9(3) is a fine of $500,000 and imprisonment for seven years.

1.2.1.5 Section 19
Custom not to be a Defence

(a) Section 19 – It is not a defence to claim that an advantage accepted or offered is customary in any profession, trade, vocation or calling.

An extract of POBO is at ***Annex 1***.

1.2.2 Misconduct in Public Office

Corrupt activities in the public sector have over the years evolved from mainly straight bribery to various malpractices involving abuse of public authority or other misconduct. Such malpractices may amount to the common law offence of misconduct in public office (MIPO) by the public servants. The Court of Final Appeal has provided the following key elements of the MIPO offence –

(a) a public official[4];

(b) in the course of or in relation to his public office;

(c) wilfully misconducts himself, by act or omission (e.g. by wilfully neglecting or failing to perform his duty);

(d) without reasonable excuse or justification; and

(e) where such misconduct is serious, not trivial, having regards to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

1.3 Integrity Requirements

In addition to the legal requirements, government officers are subject to stringent integrity requirements set out in Civil Service Regulations, Civil Service Bureau's circulars, Acceptance of Advantages (Chief Executive's Permission) Notice, etc., covering acceptance of advantage (e.g. lai see), declaration and management of conflict of interest, handling of confidential information, etc. For public servants who are members or employees of public bodies, they are governed by similar rules and guidelines laid down by individual public bodies. Likewise, employees working in private companies have to comply with the rules and guidelines (e.g. code of conduct[5]) issued by their companies. Any person who fails to comply with the integrity requirements may be liable to disciplinary action, and where criminal misconduct is involved, even prosecution under POBO.

Besides, to ensure that their business partners are also committed to ethical practices, the Government and some public bodies have set out integrity requirements in the tender documents (e.g. prohibit the offering of advantage to government officers with a view to influencing the award of the contract) and contract documents (e.g. prohibit the offering, solicitation and acceptance of advantage when conducting business in connection with the contract) for compliance by their consultants, contractors, suppliers, etc. Any non-compliance with such integrity requirements may lead to invalidation of the tenders submitted or termination of the contracts concerned, and subject to civil liabilities (e.g. indemnifying the Government against losses or costs arising from the non-compliance) and even sanctions of criminal offences (e.g. the POBO offences).

4 *For the purpose of MIPO, public official is a person who is vested with powers, duties, responsibilities or discretions which he is obliged to exercise or discharge for the benefit of the general public. Such a person may or may not be employed by the Government, and he may or may not be paid. Notwithstanding the above, the definition of public official is an area where the common law is still evolving and developing to meet the challenging and different forms of public responsibilities.*

5 *The ICAC has published various sample codes of conduct for reference by public bodies and private sector companies. The sample codes can be downloaded at the following website: https://cpas.icac.hk/EN/Info/Lib_Index?cate_id=3.*

CHAPTER 2

QUALITY CONTROL OF MATERIALS

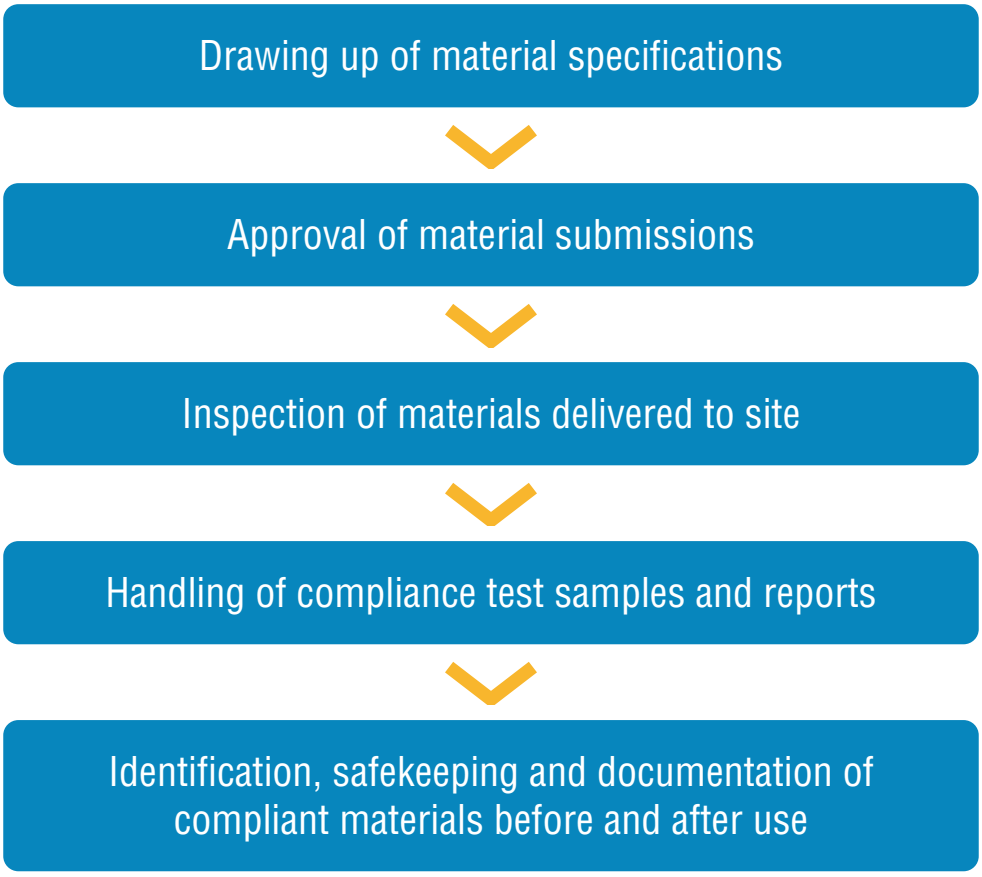
2.1 Introduction

An effective quality control system for construction materials is vital in ensuring the quality of works. The system usually involves the drawing up and approval of specifications, inspection, testing and safekeeping of materials on site. This Chapter highlights the major risks of corruption and malpractices and provides recommended measures for quality control of materials. In addition, case studies with lessons learnt and red flags (i.e. indicators of areas where more management oversight is required to safeguard against possible corruption and malpractices) are also provided.

To ensure that the quality control system can be effectively executed, the project client should set up a site supervision team with sufficient manpower and relevant expertise, deployed either in-house or from its consultant, if one is engaged. Having regards to the nature, scale and complexity of the project, the site supervision team should comprise professional and inspectorate staff of the appropriate disciplines and ranks. The project client should also subject all site supervisory staff to stringent integrity requirements and raise their corruption prevention capability and awareness through regular reminders and training.

2.2 Key Procedures

The following key procedures related to quality control of materials are covered in this Chapter –



2.3 Major Corruption Risks

Common risks of corruption and malpractices in quality control of materials include the following –

- **Specification of materials** – Specify materials with brand names / ambiguous requirements / unclear acceptance criteria.
- **Checking of material submissions** – Approval of substandard materials in the checking of material proposals.
- **Inspection of materials delivered to site** – Connivance at substandard materials, and absence of proper documentation on the results of inspections.
- **Approval of testing laboratories** – Acceptance of testing laboratories affiliated with the contractors / subcontractors in the project.
- **Handling of test samples and reports** – Biased selection of prefabricated item samples for compliance tests, and tampering with selected test samples during storage and transportation and with test reports.

2.4 Red Flags

The following are some examples of red flags in the quality control of materials where more management oversight is required to safeguard against possible corruption and malpractices.

Assessment of material proposals
There are frequent repeated rejections of contractors' material proposals without proper justifications and key information (e.g. expiry date) in the supporting test certificates is not provided or not legible.

Checking of materials delivered to site
The key information (e.g. brand name) of materials is not provided or not legible in delivery notes and the quantities of materials shown on delivery notes are substantially different from those required for the works.

Verification of the authenticity of materials
Manufacturers / suppliers cannot always be reached when verifying the authenticity of the materials supplied.

Selection of test samples
Test samples are often prepared or selected by contractors' staff without the presence of site supervisory staff; and contractors always confine the areas / locations using different means / excuses (e.g. restricted access) for selection of test samples by site supervisory staff.

Security of test samples
Particular site supervisory staff who are not involved in handling test samples visit sample store rooms frequently outside office hours.

Integrity of test results
The serial numbers of two test reports are identical or illogical (e.g. the serial number of an earlier test report is larger than that of a report issued at a later stage).

Security of compliant materials
Unusual movement of trucks entering or leaving the sites outside office hours; and the consumption of materials approved or stored on site is significantly disproportionate to the works progress.

2.5 Case Studies

Case One – Corrupt Connivance of Substandard Materials

A contractor was awarded a contract for the construction of seawalls using rock fills in a public works project. A consultant was appointed by the client to supervise the works including checking of rock fills delivered by the contractor on site. While checking the rock fills delivered to site, the consultant's inspector of works found that substandard materials / domestic waste were mixed with the rock fills. Knowing the incident, the contractor's foreman offered a $50,000 casino token to the inspector of works for turning a blind eye to the non-compliance. The foreman was guilty of offering an advantage to an agent, contrary to Section 9(2)(a) of POBO, and was sentenced to imprisonment.

Case in Perspective

Site supervisory staff are often exposed to risks of bribery when performing works supervision duties. Unlike the above case, site supervisory staff are at times offered advantage without being explicitly asked for reciprocal acts, but only as a sweetener. Therefore, to protect themselves from falling prey to bribery, it is advisable for site supervisory staff to decline advantage offered to them by contractors / subcontractors under their supervision, and report any suspected bribery to the ICAC immediately.

Case Two – Falsification of Materials Certificates

A government department appointed a contractor to build a temporary toilet and roadside seats in a public works project. The contract required that all timber used for the toilet and the seats should bear an authenticity certificate issued by an accredited organisation. In order to avoid delay in work progress, the department's technical officer colluded with an employee of the contractor to falsely represent that the timber with the required certificate was used for the project. In fact, another kind of timber without such certification was used. After the corruption investigation, the technical officer and the employee of the contractor were charged with and convicted of conspiracy to defraud[6].

Case in Perspective

While the technical officer in the above case did not receive any bribe and was not charged with an offence under POBO, his misconduct and favouring to the contractor has seriously breached the trust upon him by the Government and eroded public confidence on the quality of the works concerned. It is also advisable for site supervisory staff to note that it is never an excuse to commit any misconduct or deviate from laid down procedures to expedite works progress and not for personal gain, as this may not only render themselves liable to criminal offence / disciplinary actions, but also compromise the quality of works and hence put public safety at stake.

6 *This common law offence concerns two or more persons dishonestly agreeing to commit fraud against another person. According to Section 16A of the Theft Ordinance (Cap. 210), a fraud is committed by a person if he, by any deceit and with intent to defraud, induces another person to commit an act or make an omission which results in benefiting any person, or in prejudice or a substantial risk of prejudice to any person.*

2.6 Checklist for Corruption Prevention

2.6.1 Drawing up of Material Specifications

- Specify materials with clearly defined performance requirements and acceptance criteria in contract specifications.
- Avoid specifying materials by brand names or restrictive specifications, as far as practicable.
- Where it is unavoidable to specify materials by brand names, provide at least three brand names followed by the phrase “or equivalent”, and subject the justifications and proposed brand names to approval by a designated authority.
- Determine whether a performance specification is overly restrictive, assess whether the standard can be satisfied by more than one product in the market.

2.6.2 Approval of Material Submissions

- Check material proposals and supporting documents (e.g. test reports, catalogues) to ensure the related contract requirements are complied with, and subject the approval of material proposals to supervisory checks and proper records.
- Require contractors to provide justifications for using alternative materials and check if the alternative materials have equivalent performance.
- Require contractors to submit samples of safety / quality-critical materials for approval, adopt security measures to prevent the approved samples from being tampered with (e.g. use of unique and anti-tampering labels attached securely to the approved samples, keep the approved samples in a room securely locked and with access control).

2.6.3 Inspection of Materials Delivered to Site

- Inspect materials delivered to site against the approved material submissions and record on an inspection form the inspection results with supporting photographs and documents (e.g. original or certified true copies of delivery notes, copies of test reports and mill certificates).
- Include the following information on the inspection form –
  - Details of the material inspected (e.g. description and brand name of material).
  - The inspection time and results (e.g. whether the material complies with the contract requirements).
  - The identity and signature of the site supervisory staff.
- Subject the inspection results to regular / random supervisory checks and properly document the checks.
- Monitor the inspection forms submitted to ensure they cover all materials approved and delivered to site.
- Carry out random checks on the authenticity of (major) materials delivered through direct verification with manufacturers or suppliers and properly document the checks.

2.6.4 Handling of Compliance Test Samples and Reports

2.6.4.1 Appointment of Laboratories

- Appoint laboratories accredited under the Hong Kong Laboratory Accreditation Scheme and without affiliation with the contractor and its subcontractors for performing compliance tests on materials.

2.6.4.2 Selection of Test Samples

- Set out clearly the percentages of materials subject to laboratory tests and in-situ tests in contract specifications which should be adequate for quality control purpose.
- Ensure randomness in the selection of test samples, where practicable and with the aid of information technology, automate the random selection process for test samples.
- Record test samples selected on the inspection form (e.g. tests to be conducted, location where the test sample is selected), and subject the selection to random supervisory checks and properly document the checks.

2.6.4.3 Safekeeping of Test Samples

- Ensure the traceability and security of test samples through the use of anti-tampering security labels (e.g. Quick Response (QR) codes or Radio Frequency Identification (RFID) tags for concrete cubes, tamper-evident labels for steel reinforcing bars), and implement a control system to ensure the proper issue and usage of the security labels.
- Safeguard the security of selected test samples stored on site pending for delivery to the laboratory (e.g. require designated site supervisory staff to keep the key to the room storing the test samples or install a digital locks system to log the access information to the room, install closed-circuit television (CCTV) at strategic locations of the room).
- Ensure test samples are collected by or transported to the laboratory under the supervision of the site supervisory staff.
- Document the handover of test samples to the laboratory staff with a form showing the identities of the test samples, the site supervisory staff and the laboratory staff, etc.

2.6.4.4 Supervision of In-situ Tests

- Ensure the integrity of equipment used for in-situ tests (e.g. valid calibration certificates issued by an accredited laboratory, the serial number of the equipment tallies with that on the calibration certificate).
- Record the results of in-situ tests on an inspection form with supporting photographs and documents (e.g. calibration certificate).
- For in-situ tests involving continuous measurements over a long period of time (e.g. loading test on piles), monitor site activities to prevent tampering with the equipment and the test results (e.g. setting up CCTV with remote access to detect irregularities).
- Subject the results of in-situ tests to supervisory checks and proper documentation.

2.6.4.5 Handling of Test Reports

- Require laboratories to send test reports directly to the client / consultant in sealed envelopes or the client / consultant and the contractor in parallel.

2.6.4.6 Conduct of Parallel Tests

- Engage a separate laboratory as necessary to conduct parallel tests[7] of materials having regards to the nature of the materials (e.g. those are quality / safety-critical and used in large quantity) and past performance of the original laboratory.

2.6.5 Identification, Safekeeping and Documentation of Materials before / after Use

- Require the contractor to establish a stock control system on site for storage and distinguishing materials which are not yet tested, tested and compliant / non-compliant.
- Enhance the security measures to prevent swapping of non-compliant materials with compliant ones such as installing CCTV at strategic site locations / material storage areas.
- Ensure the timely removal of non-compliant materials and properly document the materials removed.
- Conduct regular inspections to ascertain that only compliant materials are stored on site and used for construction and properly document such inspections.
- Adopt information technology to record and manage information about the safety-critical materials stored / used on site (e.g. using Building Information Modelling (BIM) technology to systematically record their movements and use, including the locations where they are finally used / installed).

7 *Parallel tests are tests on the same batch of materials conducted by another laboratory to verify the test results of the original laboratory and hence the quality of the materials.*

CHAPTER 3

SITE SUPERVISION OF WORKS

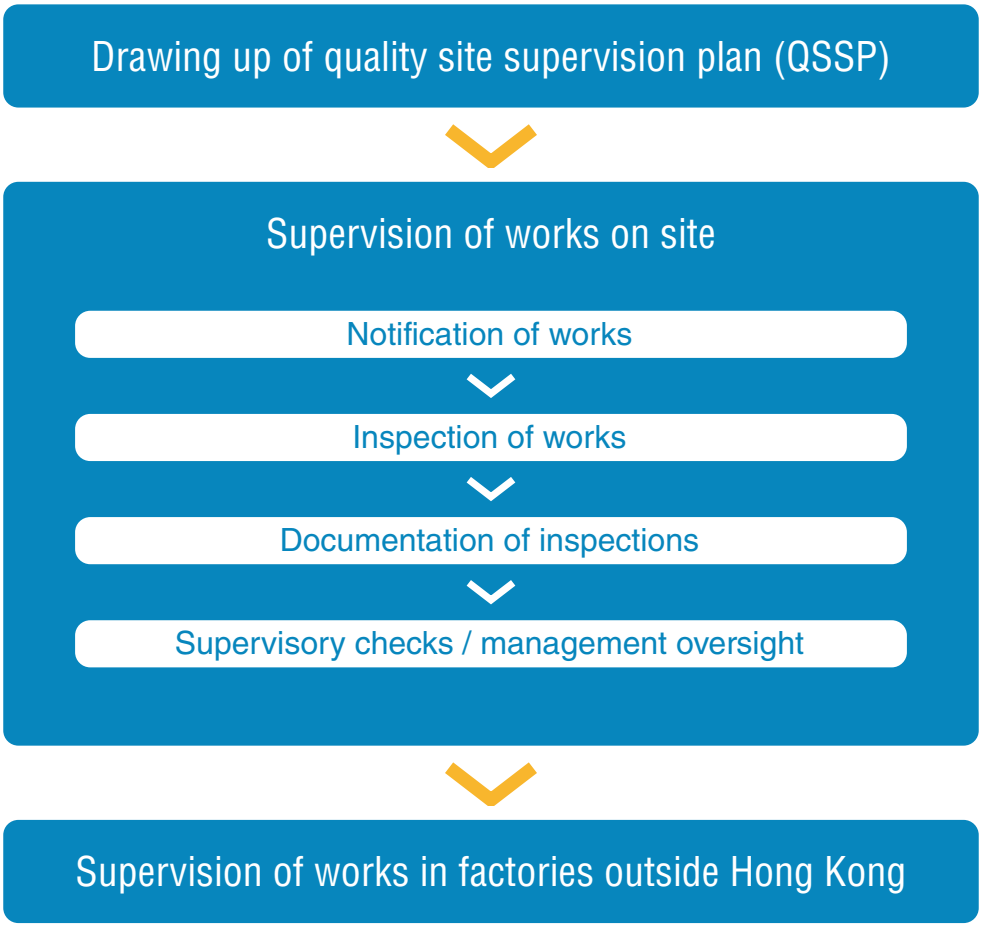
3.1 Introduction

Apart from quality control of materials, supervision of works processes on site or in factories outside Hong Kong is equally imperative to ensure the quality of works in construction projects. Major areas involved in a site supervision system include the drawing up of supervision plans, conduct of inspections and documentation and follow-up of the inspection results. This Chapter outlines the major corruption risks with a checklist of recommended measures for key areas related to site supervision of works. Case studies with lessons learnt and red flags are also provided in this Chapter.

Same as quality control of materials, it is essential for the project client to set up a team of site supervisory staff with sufficient manpower and relevant expertise, deployed either in-house or from its consultant, if one is engaged, to ensure that the supervision system for works on site or in factories outside Hong Kong is effectively executed. The site supervisory staff should also be subject to stringent integrity requirements and provided with regular reminders and training for enhancing their corruption prevention capability and awareness.

3.2 Key Procedures

The following key procedures related to site supervision of works are covered in this Chapter –



3.3 Major Corruption Risks

Common risks of corruption and malpractices in site supervision of works include the following –

- **Preparation of supervision requirements** – Ambiguous works supervision requirements resulting in exercising of undue discretion in accepting works, and lack of requirements on submission of inspection forms leading to works being covered up without inspection.
- **Conduct of works inspections** – Improper / absence of written records of inspection results undermining the accountability of the inspections.
- **Monitoring of inspections** – Lack of supervisory checks on the inspection results creating room for connivance at substandard works being undetected, and lax monitoring of the inspection forms submitted giving rise to risks of works being covered up without inspection.
- **Inspection of works in factories outside Hong Kong** – Acceptance of advantage or frequent / lavish entertainment by site supervisory staff while performing works supervision duties in factories outside Hong Kong, giving rise to risks or allegations of favouritism and lax supervision.

3.4 Red Flags

The following are some examples of warning signs in works supervision where the management should pay more attention to in order to safeguard against possible corruption and malpractices.

Integrity of site supervisory staff
Site supervisory staff have dubious relationship with staff of contractors / subcontractors (e.g. having frequent or lavish entertainment together after office hours).

Submission of inspection forms
Contractors submit a large number of inspection forms before a long holiday requesting for frequent inspections during the holiday when only a very small number of site supervisory staff are on site.

Inspection of works
There are frequent repeated rejections of contractors' works without proper and sound justifications; and inspections of particular quality or safety-critical works are always conducted after office hours despite that the works are not urgent.

Deployment of workers / equipment
Contractors suddenly deploy on site a large number of workers or equipment which are normally not necessary for the works during a long holiday.

Documentation of inspection results
Descriptions of works recorded in inspection forms do not match with those in QSSP; photographs used in inspection forms do not show clearly important details of the works constructed or if shown, photographs in different inspection forms are identical or very similar; and identities of site supervisory staff recorded in inspection forms could not be traced.

Safekeeping of inspection forms
There is a sudden loss of inspection forms for inspections conducted for a particular works and / or during a particular period of time.

Complaints against substandard works
Frequent complaints about the quality of certain works and extensive replacement or repair of works is required before or shortly after completion of the works.

3.5 Case Studies

Case One – Offering Advantage for Lax Supervision

A contractor was awarded a public works contract, part of which was sublet to a subcontractor. In order to "sweeten" the site manager of the contractor for lax supervision, two directors of the subcontractor agreed to offer a monthly amount of $30,000 to the site manager. Over a period of 33 months, the directors issued 33 cheques amounting to about $1 million to the site manager. The directors were found guilty of conspiracy to offer advantage to an agent, contrary to Section 9(2) of POBO, and were each sentenced to imprisonment.

Case in Perspective

Contractors / subcontractors undertaking public works contracts are usually subject to probity requirements prohibiting their staff from offering, soliciting and accepting advantage when performing duties in relation to the contracts. Non-compliance of their staff with the probity requirements may not only render the staff liable to criminal offences under POBO, the contractors / subcontractors concerned may also be subject to contractual sanctions and / or regulatory actions (e.g. debarred from bidding future public works contracts).

Case Two – Falsified Works Measurement Records

A subcontractor carried out steelworks for a public works contract. Under the contract, the steelworks were subject to stressing operations with the elongations of the steelworks measured and recorded, which had to comply with the specifications. On several occasions, an engineer of the subcontractor ignored the actual measurements of the steelworks reported by his subordinates and used false measurements instead to deceive the client to accept the steelworks, dispensing with the need to carry out rectification works. The engineer's malpractice was nevertheless discovered during a spot check conducted by the client's site supervisory staff. The engineer was found guilty of fraud and was sentenced for imprisonment.

Case in Perspective

Although the case did not involve solicitation or acceptance of advantage, the use of falsified measurement records to secure the acceptance of substandard works had put the integrity of the structure and public safety at stake. The case shows that an effective and sound supervision system comprising regular and / or random spot checks on site is essential to detect and deter malpractices and hence ensure the quality of works.

3.6 Checklist for Corruption Prevention

3.6.1 Quality Site Supervision Plan

- Project consultants should draw up a QSSP which contains a list of critical construction activities and structural elements and their supervision requirements, the level of supervision and the rank of site supervisory staff competent to perform the supervision and sign the inspection forms.
- For projects which are also subject to the Buildings Ordinance (BO, Cap. 123), the contractor is required to draw up a Supervision Plan (SP) complying with the requirements in BO including the Technical Memorandum for Site Supervision and the Code of Practice for Site Supervision.
- Regularly review and update QSSP / SP during the contract period with a view to incorporating any changes in the supervision requirements (e.g. change of Technically Competent Person in SP, contractor's construction methods).

3.6.2 Site Supervision of Works

3.6.2.1 Notification of Works

- Require the contractor to submit in advance an inspection form requesting for inspection of works for critical activities in QSSP / SP, and include in the inspection form essential information (e.g. details of the works to be inspected such as description and location of works, the proposed inspection time).

3.6.2.2 Inspection and Documentation of Works

- Assign competent site supervisory staff to inspect the works as required under QSSP / SP.
- Record the inspection results, time of inspection and the identity and signature of the inspecting officer on the inspection form, with supporting photographs.
- Establish a mechanism on reporting and following-up of both major and minor non-compliances / non-conformities identified during inspection.

3.6.3 Supervisory Checks / Management Oversight

- Subject the inspection results of site supervisory staff to regular / random supervisory checks and properly document the checks.
- Monitor the submission of inspection forms to ensure the contractor has submitted inspection forms for all critical activities in QSSP / SP and all critical activities have been inspected with results properly documented.
- Compile management reports to monitor the inspection progress and results.

3.6.4 Digitalisation of Works Supervision

To enhance the control and efficiency on quality of works, project clients and / or their consultants are advised to adopt digital works supervision system which may comprise a web-based portal for collecting construction works information and managing the workflows of site activities. In developing the digital works supervision system, project clients / consultants are advised to adopt the "SMART" principles (i.e. **S**implicity, **M**obility, **A**ccountability, **R**obustness, and **T**ransparency, ***Annex 2***) and make reference to the following key recommended measures.

3.6.4.1 Security of Works Supervision System

- Specify clear performance requirements (e.g. audit trail, automatic sending of notifications / alerts) of the system.
- Allow access to the system only by authorised users with unique user accounts and passwords.
- Equip the system with an audit trail function logging the creation of and any changes to the inspection results.
- Store the inspection results in a local server and a cloud-based system.
- Conduct user acceptance tests to ensure all performance requirements are complied with.

3.6.4.2 Digitalisation of Workflows

- Digitalise the workflows for submission of inspection forms, assignment of site supervisory staff, recording, countersigning and acknowledgement of inspection results.
- Allow the use of mobile devices for recording works inspections (e.g. identities of the site supervisory staff, date / time and results of inspections) and taking of photographs as attachment to support the inspections.
- Facilitate supervisors to conduct real-time checks / verification of inspection results with such checks documented in the system.
- Enable the generation of management reports to detect irregularities (e.g. an inspection form submitted for a long time without an inspection).

3.6.4.3 Automation of Site Supervision Processes

- Automate manual processes in site supervision as far as possible to avoid errors, inaccuracy or manipulation (e.g. allow selection of inspection items from a database, generate automatic notifications alerting the submission of inspection forms and the taking of timely actions against late submission of inspection forms).

3.6.4.4 Integration with Other Computer Systems

- Integrate with other computer systems (e.g. BIM) to form a common data platform through which useful information can be shared and utilised with one another to enhance effectiveness in detecting anomalies and deterring manipulations.

3.6.5 Supervision of Works in Factories Outside Hong Kong

In general, project clients and / or their consultants are advised to adopt the same standard of quality control of materials (⇒ *Sections 2.6.1-2.6.5*) and supervision of works (⇒ *Sections 3.6.1-3.6.4*) for construction activities both on site and in factories outside Hong Kong, and make reference to the following recommended measures for arrangements specific to works in factories outside Hong Kong.

3.6.5.1 Arrangement of Accommodation and Transportation for Site Supervisory Staff

- Specify in QSSP / SP supervision requirements for inspection of works in factories outside Hong Kong including the following requirements –
  - Keep the number of persons joining such inspections to the minimum necessary (e.g. two persons);
  - Require site supervisory staff to obtain prior approval from the appropriate authority before arranging such inspections;
  - Avoid requiring contractors to directly pay for the expenses incurred during the visits, and where this is unavoidable (e.g. it is a contract requirement for the contractors to bear such expenses), issue instructions to site supervisory staff specifying the standard of accommodation, transportation, etc. they are allowed to accept; and
  - Require site supervisory staff to declare the types of accommodation, transportation, etc. actually provided by the contractor after the visits if they are beyond the allowable standard.

3.6.5.2 Transportation and Acceptance of Prefabricated Components Delivered to Site

- Install tracking devices on trucks / barges delivering prefabricated components such as free-standing modules adopting Modular Integrated Construction from factories to construction sites with records of the delivery route and destination maintained which are subject to regular or random checks to ensure traceability and proper delivery.
- Require site supervisory staff on site to check the prefabricated components (e.g. size, dimensions) upon their delivery.

CHAPTER 4

ICAC SERVICES

4.1 Advisory Services

4.1.1 For Government Departments and Public Bodies

The Corruption Prevention Department (CPD) of the ICAC has the statutory duties to, among others, provide corruption prevention advice to government departments and public bodies on their work procedures and practices. Individual government departments / public bodies are welcome to contact CPD for corruption prevention advice on using this Guide or any other matters through the appointed liaison points of the respective Corruption Prevention Groups or Liaison Groups.

4.1.2 For Private Organisations and Individuals

The Corruption Prevention Advisory Service (CPAS) of CPD provides free, confidential and tailor-made corruption prevention advice to organisations and individuals, in particular those in the private sector. Individual government departments / public bodies are advised to encourage their business partners, consultants, contractors and service providers to seek CPAS services to help strengthen staff integrity management and corruption prevention system in site supervision and other business areas or functions, such as procurement, contract administration, stores management and staff administration. CPAS pledges to respond to a request for service within two working days, and can be contacted through the following channels –

- Telephone : 2526 6363
- Fax : 2522 0505
- Email : cpas@cpd.icac.org.hk
- Website : cpas.icac.hk

4.2 Reporting Corruption

Any person encountering corruption should make a report to the ICAC through the following channels –

- Telephone : 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[8]
  (opening hours: 9:00 a.m. - 7:00 p.m. Monday to Friday;
  closed on Saturdays, Sundays and public holidays)

8 *Contact information of the ICAC Regional Offices are available at http://www.icac.org.hk/en/crd/struct/ro/index.html.*

ANNEX 1

Extract of Prevention of Bribery Ordinance

Section 2 – Interpretation

"Advantage" means –

(a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(b) any office, employment or contract;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

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

"Agent" includes a public servant and any person employed by or acting for another.

"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.

"Prescribed Officer" means –

(a) any person holding an office of emolument, whether permanent or temporary, under the Government; and

(b) the following persons (to the extent that they are not persons included in paragraph (a)) –
  (i) any principal official of the Government appointed in accordance with the Basic Law;
  (ii) the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66) and any person appointed under section 5A(3) of that Ordinance;
  (iii) Chairman of the Public Service Commission;
  (iv) any member of the staff of the Independent Commission Against Corruption;
  (v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92) and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary.

"Principal" includes –

(a) an employer;

(b) a beneficiary under a trust;

(c) a trust estate as though it were a person;

(d) any person beneficially interested in the estate of a deceased person;

(e) the estate of a deceased person as though it were a person; and

(f) in the case of an employee of a public body, the public body.

"Public Body" means –

(a) the Government;

(b) the Executive Council;

(c) the Legislative Council;

(d) any District Council;

(e) any board, commission, committee or other body, whether paid or unpaid, appointed by or on behalf of the Chief Executive or the Chief Executive in Council; and

(f) any board, commission, committee or other body specified in Schedule 1.

"Public Servant" means any prescribed officer and also any employee of a public body and –

(a) in the case of a public body other than a body referred to in paragraph (aa), (b) or (c) of this definition, any member of the public body;

(aa) in the case of a public body specified in Schedule 2 –

(i) an office holder of the public body (other than an honorary office holder) ;

(ii) any member of any council, board, committee or other body of the public body which is vested with any responsibility for the conduct or management of the affairs of the public body;

(b) in the case of a public body which is a club or association, any member of the public body who –

(i) is an office holder of the body (other than an honorary office holder); or

(ii) is vested with any responsibility for the conduct or management of its affairs;

(c) in the case of a public body which is an educational institution established or continued in being by an Ordinance, any officer of the institution and, subject to subsection (3), any member of any council, board, committee or other body of the institution, which is itself a public body, or which –

(i) is established by or under the Ordinance relating to the institution;

(ii) is vested with any responsibility for the conduct or management of the affairs of the institution (not being affairs of a purely social, recreational or cultural nature); and

(iii) is not excluded under subsection (3),

whether the employee, officer or member is temporary or permanent and whether paid or unpaid, but –

(A) the holding of a share by a person in a company which is a public body; or

(B) the entitlement of a person to vote at meetings of a club or association which is a public body,

shall not of itself constitute that person a public servant.

Section 3 – Soliciting or accepting an advantage

Any prescribed officer who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offence.

Section 4 – Bribery

(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.

(2) Any public servant who, whether in Hong Kong or elsewhere, 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) 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 himself 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.

(4) For the purposes of subsection (3) permission shall be in writing and –

(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 (3), the public body shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 8 – Bribery of public servants by persons having dealings with public bodies

(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 9 – Corrupt transactions with agents

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

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

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

shall be guilty of an offence.

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

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

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

shall be guilty of an offence.

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

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

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

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

shall be guilty of an offence.

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

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

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

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

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

Section 19 – Custom not to be a defence

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

ANNEX 2

"SMART" Principles in Digital Works Supervision System

The "SMART" principles comprise **S**implicity, **M**obility, **A**ccountability, **R**obustness and **T**ransparency for the development of a digital works supervision system.

1. Simplicity

- To tackle the integrity risks brought about by the manual process and certain cumbersome procedures, a digital works supervision system should be more than just turning physical copy of the inspection form into a soft copy, but should also involve necessary process re-engineering with a view to simplifying and standardising the process while maintaining adequate safeguards in the computerised system.
- ***Standardisation*** could be achieved through developing digital templates (e.g. inspection forms, inspection checklists) and a set of standard coding system for various construction activities / inspection items / findings, etc. so as to facilitate easy recording, processing and retrieval of records.
- The works supervision system should include, but not limited to, the following workflows –
  - management of inspection forms and inspection records;
  - management of construction materials;
  - management of inspection, test and measuring equipment;
  - management of "minor" non-conformities; and
  - management of non-conformity reports.

2. Mobility

- Currently, the lack of hand-held devices and mobile technology hinders inspection team from making inspection records in a timely manner. Undoubtedly, the use of suitable mobile technology (e.g. hand-held devices) is an integral part of an effective works supervision system. The use of mobile technology facilitates ***real-time*** and ***on-the-spot*** data capture / transfer regarding the quality and conditions of works on-site, thereby enhancing monitoring. The relevant data / records should be made contemporaneously which help ensure the traceability of site records and facilitate compliance check instantly.
- For effective implementation, consideration should be given to issuing mobile phones and / or hololens installed with cloud-based apps to the inspection team to facilitate real-time capture and instant transfer of inspection findings to cloud for storage. Furthermore, technology (e.g. Augmented Reality) can be adopted to enable the inspection team to overlay the latest approved construction details on site environment for counter-checking with the as-built works in order to facilitate the easy identification of defects.

3. Accountability

- With the manual process and physical copy of inspection records, it is time-consuming and sometimes difficult to trace the site supervisory staff responsible for any irregularities detected. The responsibilities of different project stakeholders should be clearly defined in the digital system / platform, so that the "right" person is vested with the responsibilities, and followed by digital capture of their duty performance and actions. Thus their ***accountability*** for specified processes / decisions can be greatly enhanced. All electronic records in the digital system should be admissible in court in case there are any legal proceedings in future.
- Photographs / videos should be provided to support the inspection results to enhance accountability. Such can be taken by hand-held devices which are capable of capturing the date / time and location of the photographs / videos taken and uploading them to the works supervision system on a real-time basis.
- To enhance ***traceability*** of works inspected, wearable technology (e.g. smart helmet) can be used to enable the capture of the whereabouts of workers and which parts of works they are responsible for.
- For quality / safety-critical materials (e.g. steel reinforcing bars), consideration should be given to the use of information technology (e.g. BIM) to record and manage information about where the materials are manufactured, stored and used including the locations where they are finally used to enhance traceability of the materials.

4. Robustness

- The principle of "Robustness", from the corruption prevention and governance perspectives, mainly comprises the following two dimensions: system and data security; and the robustness and integrity of the processes. Harm caused by security threats could be financial, physical or reputational. The works supervision system should be built in with adequate security measures to guard against misuse, loss, leakage or unauthorised access and amendments of data.
- Technologies such as blockchain can be explored to enhance security and integrity of important information / records (e.g. inspection results, as-built plans), facilitate automation of manual processes (e.g. certification of payment, issue of completion certificates) to prevent errors and manipulation, preserve construction data (e.g. operation manual of equipment, warranty of waterproofing) to enhance traceability of parties responsible for defects, etc.
- The application of Internet of Things and Artificial Intelligence can also be explored to enable the continuous and real-time collection and analysis of data for monitoring.
- The feasibility of building in the works supervision system integrity risk indicators can be explored to enhance monitoring. For instance, video cameras can be installed at strategic locations to capture images for analysis to prevent "unauthorised works / process". Taking concreting as an example, if no inspection form has been received for concreting, the detection of a concrete truck on site should trigger an alert to the inspection team via the system.

5. Transparency

- Greater transparency exposes processes to monitoring / scrutiny by more stakeholders, thereby helping to deter corruption / malpractices, or facilitate their detection should there be any. An open, central and compatible platform fosters communication and collaboration among different stakeholders of a project. The system should provide a common data environment for keeping the information generated from different computer systems / programs.
- The workflows in the digital works supervision system and the respective action / reporting / approving parties in individual key stages should be clear, preset in the system, and made transparent to all relevant parties to help ensure compliance and detect irregularities.
- The system should enable auto-alerts generated to prompt and ensure actions required (e.g. submission of inspection forms and conduct of inspections) are carried out in a timely and proper manner.
- Moreover, the system should be capable of generating management reports showing the inspection status (e.g. time taken to complete inspections) to enhance monitoring by different stakeholders.
- All systems and records can be BIM-compatible to facilitate the access to and sharing of the information by all stakeholders in a common data environment / platform. All project details (e.g. design changes) with their status (pending approval or approved) can be uploaded to BIM to enhance transparency.

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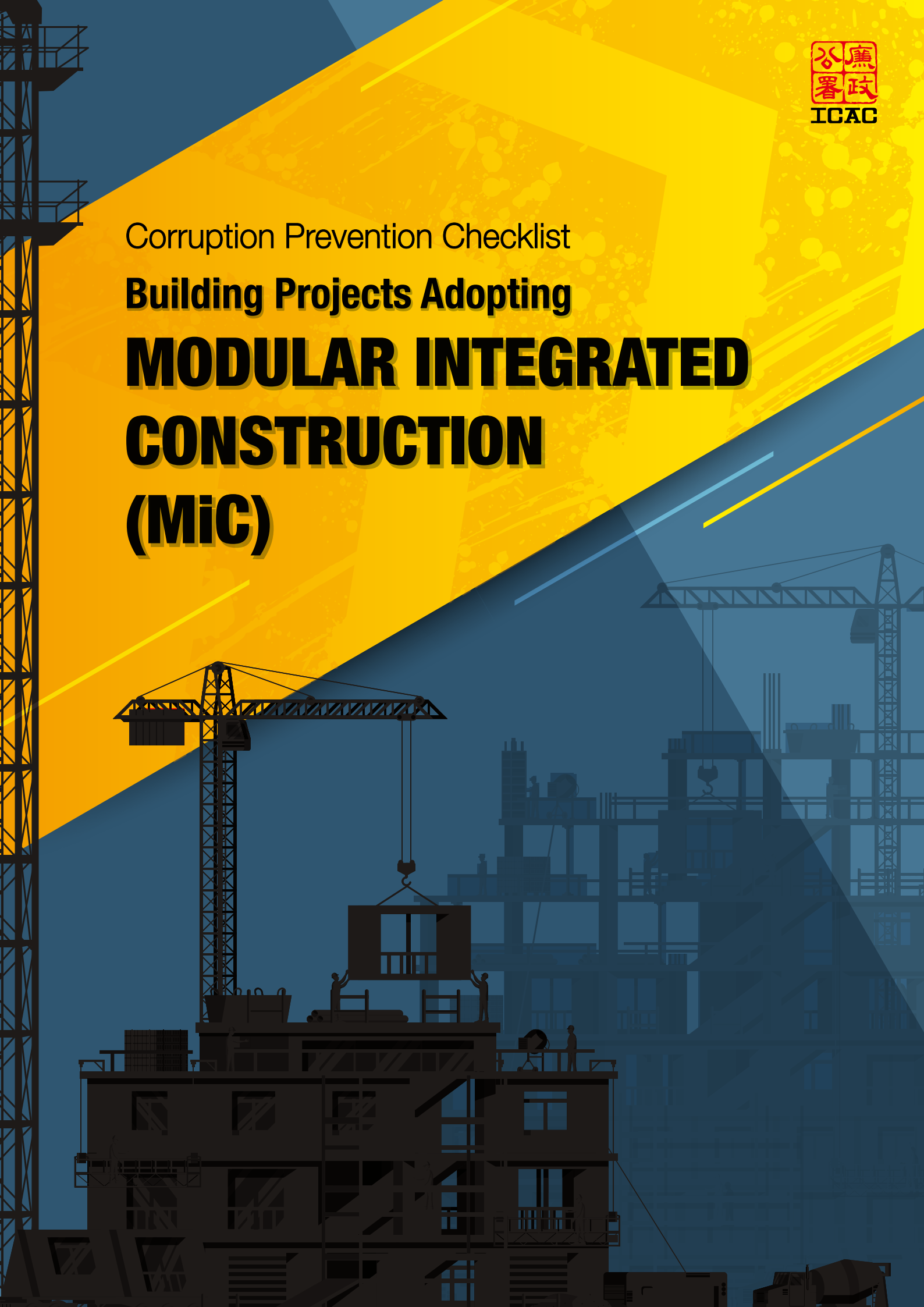
Corruption Prevention Checklist Building Projects Adopting Modular Integrated Construction (MiC)

廉政公署
ICAC

Corruption Prevention Checklist

Building Projects Adopting

MODULAR INTEGRATED CONSTRUCTION (MiC)



Introduction

MiC is an innovative construction method adopting the concept of "factory assembly followed by on-site installation". It involves construction and fabrication activities in factories, which are usually located outside Hong Kong. For an MiC project, the contractor may appoint an MiC factory as a subcontractor, subject to the vetting and approval of the project client and/or its consultant (if one is engaged). To ensure the quality of the MiC modules, the project client and/or its consultant may deploy inspecting staff stationed full time or on a need basis at the MiC factory to supervise the construction and fabrication activities in the factory.

Given the territorial constraint and the current COVID-19 pandemic hampering effective supervision of the inspecting staff stationed at the MiC factory, there is a higher risk of them being compromised and bribed for lax supervision and acceptance of substandard works. In addition, the modules accepted at the MiC factory are exposed to the risk of being tampered with and the expensive / safety critical fixtures in the modules, e.g. fire safety and building service installations, are subject to unauthorised replacement by substandard ones at storage areas or during transportation, with or without the corrupt connivance of compromised inspecting staff.

Corruption Prevention Checklist

In view of the above risks of corruption and malpractices and to assist project clients and/or their consultants in strengthening the corruption prevention measures in the integrity management of inspecting staff and the quality control of MiC modules in factories, the Corruption Prevention Department has prepared the following corruption prevention checklist for reference by project clients and/or their consultants when undertaking building projects adopting MiC.

(a) Integrity Management and Logistics Arrangement

(i) Inspecting Staff

- Issue a code of conduct or probity guidelines to all inspecting staff on, among other things, -
  - prohibition of offering, solicitation and acceptance of advantage and excessive/ lavish entertainment in relation to their inspection duties;
  - avoidance and declaration of any actual, potential or perceived conflict of interest with contractors and MiC factory operators, and provide procedures for handling declared conflict of interest;

- Avoid requiring contractors or MiC factory operators to arrange and bear the expenses of transportation, accommodation and hospitalities for inspecting staff. If there are operational needs to do so, -

  - require inspecting staff to seek prior approval of designated senior staff for accepting transportation, accommodation and hospitalities arranged by contractors or MiC factory operators;

  - specify the maximum standards of transportation, accommodation and hospitalities provided by contractors or MiC factory operators, and require inspecting staff to report any provisions exceeding the specified standards;

- Reimburse inspecting staff for any expenses incurred in relation to their inspection duties directly, and prohibit them from seeking reimbursement from contractors or MiC factory operators;

(ii) Contractors / MiC Factory Operators

- Include in contract/subcontract documents probity clauses to commit contractors, MiC factory operators as well as their directors, agents and employees to ethical practices covering, among other things -

  - prohibition of offering, solicitation and acceptance of advantage when conducting business in relation to the contracts/subcontracts;

  - avoidance and declaration of any actual, potential and perceived conflict of interest, and provide procedures for handling declared conflict of interest;

(b) Vetting and Approval of MiC Factories

- Lay down clear and objective criteria/requirements for the vetting and approval of MiC factories. The criteria/requirements may include -

  - implementing relevant quality assurance systems, e.g. ISO 9001, for key operations in factories, covering fabrication, inspection, testing, storage and handling of MiC modules and related installations and equipment;

  - maintaining effective security systems to guard against tampering with accepted MiC modules and related installations and equipment, e.g. designating different storage areas for accepted/tested modules and those pending inspection/testing; monitoring key operations in strategic locations of factories by closed-circuit televisions (CCTV);

- adopting effective monitoring systems to ensure the authenticity and traceability of completed MiC modules and related installations and equipment, e.g. using radio-frequency identification (RFID) systems to monitor and record the movement of completed MiC modules and related installations and equipment;

(c) Supervision of Works in MiC Factories

- Draw up a supervision plan for the construction of MiC modules and related installations and equipment in factories. The supervision plan should set out, inter alia, -
  - the critical activities subject to inspections, e.g. checking of materials / equipment delivered to MiC factories, fixing of reinforcing steel bars, selection of materials / equipment for compliance tests;
  - the frequencies of and the ranks of inspecting staff responsible for the inspections, e.g. full-time and continuous supervision on concreting, sample checks on non-safety critical building service installations;
  - the requirement on proper documentation of the inspection results, follow-up actions taken / to be taken, with supporting photos / videos and/or checklists containing all essential inspection items;
- Regularly monitor the implementation of the supervision plan to detect and deter non-compliance and, if necessary, review and update the plan to meet the changing operational needs;
- For high-value and/or safety critical installations and equipment in MiC modules, consider using anti-tampering tapes to identify and seal them after they are inspected and accepted with a view to protecting them against unauthorised tampering or replacement;
- Regularly reconcile the quantities of materials and equipment delivered to factories, tested and approved, and used/installed in completed MiC modules to detect and deter malpractices, e.g. use of untested materials in the fabrication process;
- If compliance tests on materials, installations and/or equipment are conducted outside Hong Kong, subject those tests to the same standards and requirements on tests conducted in Hong Kong, e.g. adopting the same sampling and testing standards, frequencies and methods;
- If compliance tests are conducted in Hong Kong, put in place effective security measures to prevent test samples from being tampered with during cross-border transportation, e.g. identification and storage of test samples using anti-tampering tapes and/or bags, transportation of test samples under the supervision of inspecting staff;

- With the aid of information technologies, conduct random and remote supervisory checks to ensure the proper conduct of works supervision by inspecting staff, e.g. conducting real-time supervisory checks through video-telephony or other instant communication software;

- For more corruption prevention measures / best practices on quality control of materials and supervision of works on site, please refer to the **Corruption Prevention Guide on Works Supervision**, which can be downloaded at the following website: -

https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=2565

(d) Safekeeping and Transportation of MiC Modules

- Through the use of built-in RFID tags or other security labels, assign a unique number or code to each completed MiC module to enhance its identification and traceability during storage and transportation;

- Keep completed and accepted MiC modules and related installations and equipment at designated areas which are subject to CCTV surveillance;

- Regularly review the CCTV footages to detect any suspicious activities or malpractice, e.g. tampering with material samples pending test or accepted modules pending delivery;

- Transport completed modules from MiC factories to construction sites by designated vessels/trucks equipped with global-positioning tracking devices to monitor and record the movement of the modules;

(e) Inspection and Acceptance of Modules on Site

- Upon delivery of completed modules to construction sites, ascertain the authenticity of the modules and high-value / safety critical installations and equipment by checking built-in RFID tags, security labels and/or anti-tampering tapes, etc;

- Draw up an acceptance plan / checklist to set out the essential items, installations and/or equipment of the modules for inspections, the ranks of site supervisory staff responsible and the documentation requirement for the inspection results and any follow-up actions taken / to be taken;

- Where necessary and practicable, conduct (non-destructive) compliance tests to verify the quality of the modules and related installations and equipment;

(f) Contract Payments and Related Procedures

- If contractors are allowed to apply for interim payments for completed MiC modules before they are delivered to construction sites, put in place measures to ensure that payments are processed and certified in a proper and accountable manner, such as -

  - Requiring contractors to provide supporting documents, e.g. work records in the factories, photos showing the modules being stored at the designated secured area with clear identification of the owner, for their payment applications;

  - Checking payment applications against inspection and testing records of MiC modules in factories maintained by inspecting staff;

  - Including provisions in contracts to ensure that the title to completed MiC modules passes to project clients upon payments, and require contractors to provide payment bond to cover the value of the modules.