

Best Practice Checklist



Letting and Administration of Works Contracts



防止貪污處

Corruption Prevention Department

Introduction

Corruption in the construction industry resulting in sub-standard works would seriously threaten public safety and undermine public confidence. While the direct cost of construction-related corruption may be difficult to quantify, it has a corrosive impact, increasing operating and material costs, demoralizing staff, and damaging overall business performance.

Past corruption cases showed that the selection of contractors for works contracts is vulnerable to corruption. Unscrupulous staff 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 sub-standard works or ordering of undue work variation which would increase the cost of works.

This Best Practice Checklist aims at providing organizations with a user friendly and step-by-step procedural guide for the letting and administration of works contracts with recommendations on safeguards to minimize corruption risks. Organizations are expected to adapt the recommended safeguards to suit their organizational structure, resources, risk exposures, and any statutory requirements applicable to the contracts.

The Advisory Services Group of the Corruption Prevention Department of the Independent Commission Against Corruption provides free, confidential, and tailor-made corruption prevention service to private companies on request. The Group also stands ready to tender further advice on how to apply the recommended practices in this Best Practice Checklist to suit individual needs. For more information, please contact the Group at :





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How to Use This Best Practice Checklist

For quick and easy reference, users will find the following icons throughout this Best Practice Checklist. They serve to lead users to the information required :

	Reference Guideline – standard code of conduct, procedural guideline or work manual for quick reference
	Sample Form – samples forms for adoption where applicable
	Legislation – extracts of relevant ordinances
	Pointer – cross reference to other sections of the Checklist



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1 KEY PROCESSES

Listed below are the key processes in the letting and administration of works contracts. The recommended control measures for each process are provided in Chapter 2 (the relevant paragraphs are quoted below).



2 CHECKLIST OF RECOMMENDED PRACTICES

2.1 Approving the Project

Responsible Parties Recommended Control Measures

- | | |
|---------------------|---|
| Management | <input type="checkbox"/> Set up a project team comprising staff with the necessary expertise and technical knowledge to oversee contract letting and administration. |
| | <input type="checkbox"/> Require the project team members to declare any actual or potential conflict of interest in the processes of contract letting and administration. |
| Project Team | <input type="checkbox"/> Identify the need for the project and define the scope of the works required. |
| | <input type="checkbox"/> Assess and justify the need for engaging a consultant. |
| | <p>(For control measures relating to the selection and management of consultants, please refer to the <i>Best Practice Checklist on Management of Works Consultancies</i>.)</p> |
| Management | <input type="checkbox"/> Approve the project scope and the engagement of a consultant. |

2.2 Preparing Tender Documents

Responsible Parties Recommended Control Measures

Management Confidentiality Undertaking

- 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 unauthorized disclosure or using any tender information for personal gain.

Works Specifications

Project Team / Consultant

- 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.
- 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 anti-bribery and anti-collusion clauses in the tender documents (📄 *Appendix 1*), and require the tenderers to submit, as part of the tender submission, a declaration pledging compliance with the anti-collusion clause (📄 *Annex of Appendix 1*).

Ethical Commitment

- Require the contractor to commit to ethical practices by issuing a code of conduct (📄 *Appendix 2*) or probity guidelines to the employees.
- Include in the code of conduct:
 - The core values and a mission statement, if any, of the organization or company and its stance on anti-corruption.
 - The rules restricting offer, solicitation and acceptance of advantage and entertainment, with reference to the relevant provisions under the Prevention of Bribery Ordinance (📄 *Annex 1 of Appendix 2*).
 - The guidelines on reporting gifts received (📄 *Annex 2 of Appendix 2*), declaration of conflict of interest and the procedures for handling the declared conflicts (📄 *Annex 3 of Appendix 2*).
 - The policy for staff taking outside or part-time jobs and the approval procedures, if applicable.
 - The rules for protection and use of confidential or proprietary information.

- The rules for use of resources of the organization or company, such as vehicles and computers and their disposal.

2.3 Short-listing Contractors

Responsible Parties	Recommended Control Measures
Management	<ul style="list-style-type: none"> □ 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	<ul style="list-style-type: none"> □ For major projects, conduct a pre-qualification exercise by an open invitation of expression of interest. □ For minor 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 website of the relevant government departments (e.g. the List of Approved Contractors for Public Works maintained by the Development Bureau¹ and the General Building Contractors' Register maintained by the Buildings Department²). □ Pre-determine the pre-qualification criteria, such as experience, past performance if relevant and organization structure etc., and invite those contractors who 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.

¹ The details of the List of Approved Contractors for Public Works are posted on the Development Bureau's website (<http://www.devb.gov.hk/>).

² The details of the General Building Contractors' Register are posted on the Buildings Department's website (<http://www.bd.gov.hk/>).

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

2.4 Inviting and Receiving Tenders

Responsible Parties Recommended Control Measures

Tender Briefing

- Project Team / Consultant** 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 a 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 (→2.5).
- Allow sufficient time (at least two weeks), or a longer period if the project is complicated, for the tenderers to prepare tender proposals.

Tender Evaluation Method

- Adopt a two-envelope system³ to select tenders if price is not the only consideration, and require the 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.

³ 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 the 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.
- Make copies of the tenders if duplicate copies are not submitted for future audit.
- 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 on justifiable grounds.

2.5 Evaluating Tenders

Responsible Parties

Recommended Control Measures

Tender Assessment Panel

Management

- Set up a tender assessment panel, comprising members of the project team or the 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

Tender Assessment Panel

- Remind all tenderers that they are not allowed to take the opportunity to revise their technical proposals or to disclose their financial proposals at the presentation.
- Observe the rule prohibiting disclosure of information concerning the merits of other tender proposals at the presentation.

Tender Assessment

- Open the price proposals only after the technical proposals have been assessed if a two-envelope system is adopted.
- Independently evaluate the tenders according to the pre-determined criteria before calculating the total score.
- Recommend the highest total scoring tender or the lowest conforming tender as the case may be, and give justification in writing if this is not the case.
- Properly document and keep the assessment results for a specified period (say two years).

Management

- Consider all tender proposals and approve the recommendation made by the tender assessment panel.

2.6

Conducting Negotiation

Responsible Parties

Recommended Control Measures

Management

- Determine the need for negotiation after the selection of contractors and, if this is necessary, designate a negotiation team comprising at least two persons to conduct the negotiation.
- Determine whether negotiation should be conducted only with the selected contractor or other tenderers.
- 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 contractor.

Negotiation Team

- Conduct the negotiation in an official setting and within the defined parameters or baselines.
- Document the salient points of the negotiation to facilitate future audit.

- ❑ Require the contractors to submit in writing a best and final offer after negotiation to confirm their offers.

Tender Assessment Panel

- ❑ Evaluate and recommend the best offer for approval.

Management

- ❑ Consider and approve the best offer recommended by the tender assessment panel.

2.7 Awarding Contracts

Responsible Parties

Recommended Control Measures

Probity Clauses in the Conditions of Contract

Project Team / Consultant

- ❑ Include probity clauses (☞ *Appendix 3*) in the conditions of contract to commit the contractor to ethical practices and require the contractor to submit, as part of the payment application (➡ 2.9), a declaration pledging compliance with the clauses (📖 *Annex of Appendix 3*).

Contract Award

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

Term Contract

Management

- ❑ 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 and 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).

2.8 Conducting Site Supervision

Responsible Parties Recommended Control Measures

Resident Site Staff

- Management**
- Set up a team of resident site staff comprising in-house technical and professional staff with the relevant experience or the consultant's employees to carry out site supervision.

Quality Site Supervision Plan

- Put in place a quality site supervision plan which should include the following:
 - A list of the works items that require inspection.
 - The frequency of inspection (e.g. full supervision for safety critical activities, such as piling works, and periodic supervision for other works, such as finishing works).
 - The rank of the resident site staff who should carry out the inspection.
 - The time limit to carry out the inspection upon receipt of notification from the contractor.

Sub-contractor Management Plan

- Limit the number of tiers of sub-contracting, in particular for the safety critical construction activities such as piling works.
- Require the contractor to submit a Sub-contractor 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 sub-contracted.
 - The criteria for selecting sub-contractors.
 - The qualifications and responsibilities of the staff employed for the direct supervision and management of the sub-contractors.

- The proposed measures for monitoring and assessment of the works programme, quality, safety, and environmental performance of the sub-contractors.
- The particulars of the sub-contractors at all tiers.

Notification of Works

Resident Site Staff

- Require the contractor to submit advance notification (e.g. a Request for Inspection form) to the resident site staff.

Inspection Records

- Record the details of the inspection using an inspection checklist which should include the following essential information:
 - The time of the inspection.
 - The location and description of the works inspected.
 - The result of inspection, including any irregularities and defective works observed.
 - The instruction issued to the contractor to rectify any defective works.
 - The name and signature of the responsible officer who carried out the inspection.
- Maintain sufficient photo records to substantiate the observations made during the inspection.

Supervisory Checks

- Conduct supervisory checks on the inspections carried out by the junior resident site staff.

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 (➡ 2.14).

2.9 Controlling Materials

Responsible Parties Recommended Control Measures

Material Approval

- | | |
|---|--|
| Management | <ul style="list-style-type: none"> □ Lay down procedural guidelines on the approval of construction materials submitted by the contractor. The guidelines should include the following essential information: <ul style="list-style-type: none"> • The delegated authority to approve different types of the architectural materials (e.g. tiles) and structural materials (e.g. concrete mixes). • The time limit to process the material approval. |
| Project Team / Consultant/ Resident Site Staff | <ul style="list-style-type: none"> □ 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 the resident site staff. |

Material Delivery

- | | |
|----------------------------|---|
| Resident Site Staff | <ul style="list-style-type: none"> □ 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 the <i>Best Practice Checklist on Construction Quality Control Testing</i>.) □ Carry out random checks on the authenticity of the make and origin of the delivered materials (e.g. checking with the suppliers or manufacturers). |
|----------------------------|---|

2.10 Processing Payment Applications

Responsible Parties	Recommended Control Measures
Management	<ul style="list-style-type: none"> □ 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 conditions of payment in the contract. □ The guidelines should include the following essential information: <ul style="list-style-type: none"> • 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), in particular in processing applications for interim payment, to avoid over-paying the contractor.
Resident Site Staff	<ul style="list-style-type: none"> □ Require the contractor to provide billing details for payment claims. □ Verify the contractor's claims for payment for the work done.
	Expenditure Report
Project Team / Consultant	<ul style="list-style-type: none"> □ Compile periodic expenditure reports under the contract, detailing the latest project cost estimate, interim payments made and the total amount paid, for the management's information.

2.11 Issuing Contract Variations

Responsible Parties	Recommended Control Measures
Management	<ul style="list-style-type: none"> □ Put in place the procedures and designate the levels of authorities and their financial limits for approving contract variations.

- Issue guidelines to the project team or the consultant on the valuation of contract variations, e.g. using pro-rata rate for works 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 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, including the time and cost implications.

Management / Independent Committee

- Consider and approve contract variations with an estimated value exceeding a specified amount, e.g. \$300,000.

2.12 Assessing Contract Claims

Responsible Parties

Recommended Control Measures

Management

- Lay down procedural guidelines on the assessment of claims arising from the contract (e.g. Extension of Time Claims, Loss or Expenses Claims).
- Designate the levels of authority and their financial limits to assess 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.
- Record in writing the details of assessment with justifications.

- ❑ Follow the pre-determined mechanism to resolve disputes and document the process for future audit.
- ❑ Seek the management or the project team's view on the assessment of contract claims which are handled by the consultant.

2.13 Certifying Work Completion

Responsible Parties Recommended Control Measures

- | | |
|----------------------------|---|
| Management | <ul style="list-style-type: none"> ❑ 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 work with reason within the specified time limit). |
| Resident Site Staff | <ul style="list-style-type: none"> ❑ Conduct a joint inspection with the representatives from the user department and the contractor upon notification of work completion. |

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.

Works with Major Defects

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

2.14 Monitoring Contractors' Performance

Responsible Parties	Recommended Control Measures
Management	<ul style="list-style-type: none"> ❑ 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 (➡ 2.3 to 2.5). ❑ Require the project team or the consultant to make reference to the adverse performance records in future selection of contractors (➡ 2.3 to 2.5).
Project Team / Consultant	<ul style="list-style-type: none"> ❑ 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	<ul style="list-style-type: none"> ❑ Impose sanctions, such as suspension from invitation to bid for future contracts or termination of contract as the last resort.

SAMPLE PROBITY AND ANTI-COLLUSION CLAUSES IN THE CONDITIONS OF TENDER

Offering Gratuities

- (1) The tenderer shall not, and shall procure that his employees, agents and 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 an employee, agent or 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 [*name of employer*] (hereafter referred to as 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 consultants / sub-contractors to solicit their assistance in preparation of tender submission.
- (5) The tenderer shall submit to the Employer a duly signed letter in the form set out in Annex. The letter shall be signed by a person authorised to sign the contract on the tenderer's behalf.

To: [*Name of Employer*]

Dear Sir/Madam,

Contract No. []
Confirmation Letter for Compliance with
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*] (hereinafter 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 consultants or sub-contractors 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 authorized to sign the contract on behalf of that person or as the case may be company.*

SAMPLE CODE OF CONDUCT

Introduction

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 staff¹ of the Company at all times. This Code sets out the basic standard of conduct expected of all directors and staff, and the Company's policy on acceptance of advantage and handling of conflict of interest when dealing with the Company's business.

Prevention of Bribery

Prevention of Bribery Ordinance

2. Under the Prevention of Bribery Ordinance (the Ordinance), any director or staff member who, without the permission of his employer or principal (i.e. the Company), solicits or accepts an advantage as a reward or inducement for doing any act or showing favour in relation to the latter's business, commits an offence. The person offering the advantage also commits an offence.

(The relevant provisions of Section 9 of the Ordinance and the definition of "advantage" are detailed at Annex I.)

Acceptance of Advantage

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

- (a) advertising or promotional gifts or souvenirs of a nominal value; or
- (b) gifts given on festive or special occasions, subject to a maximum limit of \$_____ in value; or

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

- (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; or
- (d) gifts or souvenirs of nominal value presented to them in official functions.

No director or staff member should accept any advantage from a subordinate, except those mentioned in paragraphs (a) and (b) above.

4. Gifts or souvenirs described in paragraph 3(d) above 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.

Offer of Advantage

7. Directors and staff are prohibited from offering advantages to any director or staff of another company or organization, for the purpose of influencing such person or company in any dealings, or any public official, whether directly or indirectly through a third party, when conducting the Company's business.

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

Entertainment

8. As defined in Section 2 of the Ordinance, “entertainment” refers to food or drink provided for immediate consumption on the occasion, and any other entertainment provided at the same time. Although entertainment is an acceptable form of business and social behaviour, a director or staff member should avoid accepting overly lavish or frequent entertainment from persons with whom the Company has business dealings (e.g. suppliers or contractors) or from his/her subordinates to avoid placing himself/herself in a position of obligation.

Records, Accounts and Other Documents

9. Directors and staff should ensure that all records, receipts, accounts or other documents they submit to the Company, give a true representation of the 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 Ordinance.

Compliance with Laws of Hong Kong and in Other Jurisdictions

10. Directors or staff must comply with all local laws and regulations when conducting the Company’s business, and also those in other jurisdictions when conducting business there.

Conflict of Interest

11. Directors and staff should avoid any conflict of interest situation (i.e. situation where their private interest conflicts with the interest of the Company) or the perception of such conflicts. They should not misuse their position or authority in the Company to pursue their own private interests which include both financial or personal interests and those of their family members, relatives or close personal friends. When actual or potential conflict of interest arises, the director or staff member should make a declaration to the management through the reporting channel using Form B (*Annex 3*).

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

- (a) a staff member involved in a procurement exercise is closely related to or has financial interest in the business of a supplier who is being considered for selection by the Company.
- (b) one of the candidates under consideration in a recruitment or promotion exercise is a family member, a relative or a close personal friend of the staff member involved in the process.
- (c) a director of the Company has financial interest in a company whose quotation or tender is under consideration by the Board.
- (d) a staff member (full-time or part-time) undertaking part-time work with a contractor whom he is responsible for monitoring.

Use of Company Assets

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

Confidentiality of Information

14. Directors and staff should not disclose any classified information of the Company without authorization or misuse any Company information (e.g. unauthorized sale of the information). Those who have access to or are in control of such information, including information in the Company's computer system, should at all times protect the information from unauthorized disclosure or misuse. Special care should also be taken in the use of any personal data, including directors', staff's and customers' personal data, to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486).

Outside Employment

15. Any full time staff who wish to take up employment outside the Company, 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's duties or the interest of the Company.

Relationship with Suppliers, Contractors and Customers

Gambling

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

Loans

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

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

Compliance with the Code

18. 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 under their supervision understand well and comply with this Code.

19. Any director or staff member in breach of this Code will be subject to disciplinary action, including termination of appointment. In cases of suspected corruption a report should be made to the ICAC and other criminal offences, to the appropriate authority.

20. Any enquiries about this Code or reports of possible breaches of this Code should be made to (post of designated senior staff).

(Name of Company)

Date :

Extracts of the Prevention of Bribery Ordinance

Section 9

- (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,shall be guilty of an offence.
- (2) Any person, who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's –
 - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
 - (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,shall be guilty of an offence.
- (3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document –
 - (a) in respect of which the principal is interested; and
 - (b) which contains any statement which is false or erroneous or defective in any material particular; and
 - (c) which to his knowledge is intended to mislead the principal,shall be guilty of an offence.

- (4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).
- (5) For the purpose 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 purpose of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 2

‘Advantage’ means –

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

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

‘Entertainment’ means –

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

Section 19

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

(Company Name)
REPORT ON GIFTS RECEIVED

Part A – To be completed by Receiving Staff

To : (Approving Authority)

Description of Offeror :

Name & Title of Offeror : _____

Company : _____

Relationship (Business / Personal) : _____

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

Description and (assessed) value of the gift : _____

Suggested Method of Disposal :

Remark

- | | |
|---|--|
| <input type="checkbox"/> Retain by the Receiving Staff | |
| <input type="checkbox"/> Retain for Display / as a Souvenir in the Office | |
| <input type="checkbox"/> Share among the Office | |
| <input type="checkbox"/> Reserve as Lucky Draw Prize at Staff Function | |
| <input type="checkbox"/> Donate to a Charitable Organization | |
| <input type="checkbox"/> Return to Offeror | |
| <input type="checkbox"/> Others (please specify) : | |
| | |

(Name of Receiving Staff)

(Title)

(Date)

Part B – To be completed by Approving Authority

To : (Name of Receiving Staff)

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

(Name of Approving Authority)

(Title)

(Date)

* Delete as appropriate.

(Company Name)

DECLARATION OF CONFLICT OF INTEREST**Part A – Declaration** *(To be completed by Declaring Staff)*To : (Approving Authority) via (Supervisor of the Declaring Staff)

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

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

(Date)

 (Name of Declaring Staff)
 (Title / Department)

Part B – Acknowledgement *(To be completed by Approving Authority)*To : (Declaring Staff) via (supervisor of the Declaring Staff)**Acknowledgement of Declaration**

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

- You should refrain from performing or getting involved in performing the work, as described in Part A, which may give rise to a conflict.
- You may continue to handle the work as described in Part A, provided that there is no change in the information declared above, and you must uphold the Company's interest without being influenced by your private interest.
- Others (please specify) : _____

(Date)

 (Name of Approving Authority)
 (Title / Department)

* Delete as appropriate.

Information not to be Divulged

- (A) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer 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 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 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 of the aforesaid non-disclosure provision by the Contractor or his employees, agents or sub-contractors.

Prevention of Bribery

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

- (D) The Contractor shall prohibit his employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/ financial interests and their duties in connection with this Contract. The Contractor shall also require their sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.
- (E) The Contractor shall take all necessary measures (including by way of a code of conduct or contractual provisions and where appropriate) to ensure that his employees, agents and sub-contractors are aware of the prohibitions in this clause.

Contractor's Declaration

- (F) The Contractor shall also submit a signed declaration in a form (*Annex*) prescribed or approved by the Employer 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 fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor 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 and their sub-contractors employed for the performance of duties under this Contract are required to deposit with the Employer a code of conduct issued to their staff.

**Declaration Form by Contractors
on Their Compliance with the Ethical Commitments Requirements**

To: [Name of the Employer]

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 from being divulged to a third party other than those allowed in this Contract.

(Name of the Contractor)

(Name of the Signatory)

(Position of the Signatory)

(Date)



Corruption Prevention Department

Independent Commission Against Corruption

303 Java Road, North Point, Hong Kong