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Hong Kong, SAR: Law & Practice and Trends & Developments

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HONG KONG SAR, CHINA

Law and Practice

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Contents

1. Legal Framework for Offences p.6
1.1 International Conventions p.6
1.2 National Legislation p.6
1.3 Guidelines for the Interpretation and Enforcement of National Legislation p.7
1.4 Recent Key Amendments to National Legislation p.7

2. Classification and Constituent Elements p.7
2.1 Bribery p.7
2.2 Influence-Peddling p.10
2.3 Financial Record-Keeping p.10
2.4 Public Officials p.11
2.5 Intermediaries p.11

3. Scope p.11
3.1 Limitation Period p.11
3.2 Geographical Reach of Applicable Legislation p.12
3.3 Corporate Liability p.12

4. Defences and Exceptions p.12
4.1 Defences p.12
4.2 Exceptions p.13
4.3 De Minimis Exceptions p.13
4.4 Exempt Sectors/Industries p.13
4.5 Safe Harbour or Amnesty Programme p.13

5. Penalties p.14
5.1 Penalties on Conviction p.14
5.2 Guidelines Applicable to the Assessment of Penalties p.15

6. Compliance and Disclosure p.15
6.1 National Legislation and Duties to Prevent Corruption p.15
6.2 Regulation of Lobbying Activities p.16
6.3 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions p.16
6.4 Protection Afforded to Whistle-Blowers p.16
6.5 Incentives for Whistle-Blowers p.16
6.6 Location of Relevant Provisions Regarding Whistle-Blowing p.16

7. Enforcement p.17
7.1 Enforcement of Anti-bribery and Anti-corruption Laws p.17
7.2 Enforcement Body p.17
7.3 Process of Application for Documentation p.18
7.4 Discretion for Mitigation p.18
7.5 Jurisdictional Reach of the Body/Bodies p.18
7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption p.18
7.7 Level of Sanctions Imposed p.19

8. Review p.19
8.1 Assessment of the Applicable Enforced Legislation p.19
8.2 Likely Changes to the Applicable Legislation of the Enforcement Body p.19

Debevoise & Plimpton assists its clients with developing compliance programmes, managing corruption risks in transactions, internal investigations, and in dealings with regulators. Its market-leading white collar and anti-corruption practice draws on the firm's global resources to represent clients in Asia, representing a wide range of institutions – multinational companies and boards of directors with operations in Asia, Asian companies dealing with foreign regulators and regulations, as well as individuals across the globe. The firm's experience covers virtually every major industry, including consumer products and services, energy and extractive industries, financial institutions, insurance, manufacturing, media, pharmaceuticals and medical devices, retail and specialty goods, technology and transportation, among others. The firm works with clients on compliance matters and in all types of adversarial proceedings, ranging from contentious regulatory examinations to administrative enforcement actions to civil and criminal litigation.

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1. Legal Framework for Offences

1.1 International Conventions

As a special administrative region of China, China's ratifications of the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime apply to Hong Kong. Separately, Hong Kong has been a member of the Financial Action Task Force since 1991.

Hong Kong's primary law enforcement agency responsible for preventing corruption, the Independent Commission against Corruption (ICAC), is a member of various international anti-corruption bodies, including the International Association of Anti-Corruption Authorities, the APEC Anti-Corruption and Transparency Experts' Working group, the ADB/OECD Anti-Corruption Initiative for Asia-Pacific and the Economic Crime Agencies Network.

1.2 National Legislation

The Prevention of Bribery Ordinance (Cap. 201) (POBO) is the primary anti-corruption legislation in Hong Kong. It regulates corrupt conduct in both the public and private sectors. The main offences are set out in Part II of POBO. In addition to prohibiting the offering/giving or soliciting/receiving of bribes, POBO contains an unexplained wealth offence, prohibiting the Chief Executive or a "prescribed officer" (certain civil servants) from maintaining a standard of living or being in control of pecuniary resources or property disproportionate to their present or past official emoluments without satisfactory explanation.

- There are also other anti-corruption provisions that apply to specific sectors. For instance:
  - the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) prohibits corrupt conduct at elections and regulates political contributions; and
  - the Banking Ordinance (Cap. 155) makes it an offence for a director or employee of a licensed bank or deposit-taking company to ask for or receive, or consent or agree to receive, any property or thing of value in exchange for providing or endeavouring to provide certain improper advantages.

In terms of regulatory consequences, failure by financial institutions licenced by the Hong Kong Monetary Authority (HKMA) or the Securities and Futures Commission (SFC) to comply with applicable anti-corruption requirements may result in breach of the relevant codes of conduct, leading to disciplinary action. For civil servants, the Civil Service Code prohibits the soliciting or accepting of any advantage or gift that would, or might reasonably be seen to, compromise their integrity or judgment or influence the discharge or non-discharge of their duties and responsibilities. Even where the solicitation or acceptance of an advantage or gift does not constitute a breach of POBO, a civil servant could still be liable to disciplinary action if such solicitation or acceptance has or could have led to a conflict between his private interest and official duties.

From a reporting perspective, the Organized and Serious Crimes Ordinance (Cap. 455) (OSCO) requires any person who knows or suspects that any property represents any person's proceeds of, or was used or is intended to be used in connection with, an indictable offence to report that knowledge or suspicion as soon as reasonably practicable. Financial institutions regulated by the HKMA and the SFC are also subject to self-reporting requirements under the Supervisory Policy Manual and the Code of Conduct

for Persons Licensed by or Registered with the Securities and Futures Commission (the "SFC Code of Conduct"), respectively.

1.3 Guidelines for the Interpretation and Enforcement of National Legislation

One of the ICAC's missions is public education about corruption. In addition to advertisements, films and other public education materials, the ICAC has published, through the Corruption Prevention Advisory Service, a specialised unit in its Corruption Prevention Department, various sector-specific guides and tools for corruption prevention, including the following:

- Integrity and Corruption Prevention Guide on Managing Relationship with Public Servants;
- Sample Code of Conduct (for Members/ Employees) of Public Bodies;
- Good Governance and Internal Control in Public Organizations;
- Sample Code of Conduct for Board Members & Staff of NGOs in Social Welfare Sector;
- Sample Code of Conduct for the Private Sector;
- Corruption Prevention Guide for Banks;
- Corruption Prevention Guide for Insurance Companies; and
- Corruption Prevention Guide for Construction Industry.

1.4 Recent Key Amendments to National Legislation

No key amendments have been made to POBO in 2023.

2. Classification and Constituent Elements

2.1 Bribery

The term "bribe" is not defined in POBO, nor does it form part of the operative wording of any of the offences under POBO. Instead, POBO generally prohibits the offering, soliciting or acceptance of any "advantage" for the purpose of inducing someone to, or rewarding someone for, doing or not doing an act or showing favour or disfavour.

A person offering an advantage commits an offence even if the recipient did not in fact have the ability to deliver the benefit for which the advantage was given, as long as he, in offering the advantage, believed or suspected that recipient had the ability to deliver the benefit. Similarly, a person accepting an advantage commits an offence even if he did not, in fact, have the ability to deliver the benefit for which the advantage was given, as long as he, in accepting the advantage, believed or suspected that the advantage was given for the purpose of securing a benefit.

Bribery of Public Officials

"Public servants" are defined in POBO as including prescribed officers, employees of public bodies and non-honorary office holders, as well as other individuals involved in the conduct or management of the affairs, of certain public bodies.

- "Prescribed officers" are a class of public servants subject to more stringent requirements. Section 3 of POBO imposes a general prohibition on all prescribed officers, making it an offence for them to solicit or accept any advantage without permission from the Chief Executive. Contravention of this section does

not require any corrupt motive. "Prescribed officers" include:

- any person holding an office of emolument, whether permanent or temporary, under the government;
- any principal official of the government appointed under the Basic Law;
- the HKMA;
- the Chairman of the Public Service Commission;
- any member of the staff of the ICAC; and

any judicial officer and a member of the staff of the Judiciary.

To soften the impact of Section 3, the Chief Executive has issued the Acceptance of Advantages (Chief Executive's Permission) Notice, which gives prescribed officers general permission to accept advantages that fall outside the four restricted categories of gift, discount, loan of money and passage, as well as permission to accept advantages that fall within the restricted categories in limited circumstances.

- With regard to "public servants" who are not "prescribed officers", Section 4 of POBO imposes criminal liability on any public servant who, whether in Hong Kong or elsewhere, solicits or accepts without lawful authority or reasonable excuse any advantage as an inducement to or reward for or otherwise on account of their:
- performing or abstaining from performing any act in their capacity as the Chief Executive or a public servant;
- expediting, delaying, hindering or preventing the performance of an act, whether by themself or by any other public servant in their or that other public servant's capacity as the Chief Executive or a public servant; or
- assisting, favouring, hindering or delaying any person in the transaction of any business with a public body;
- collectively, the "Stipulated Acts".

It is also an offence for any person, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, to offer any advantage to the Chief Executive or any public servant as an inducement to or reward for or otherwise on account of the Chief Executive or public servant (as applicable) doing any of the Stipulated Acts.

The exception is where the recipient of the advantage is a public servant (not being a prescribed officer) who had written permission to solicit or accept the advantage, granted by the public body that employs them, prior to the advantage being offered, solicited or accepted or as soon as reasonably possible after offer or acceptance of the advantage.

There is no exception for "facilitation payments", generally understood to mean payments made to secure or speed up performance by a public official of a duty that he was in any event obliged to perform unless the recipient is duly authorised to accept the payment.

- Sections 5 to 8 of POBO set out other public-sector offences. Under these sections, it is an offence if, without lawful authority or reasonable excuse:
- any person offers any advantage to the Chief Executive or any public servant, or the Chief Executive or any public servant solicits or accepts any advantage, as an inducement to or reward for or otherwise on account of the Chief Executive or the public servant (as applicable) assisting or influencing (i) the promotion, execution or procuring of any contract or subcontract to conduct work for

a public body; or (ii) the payment of moneys under any such contract or subcontract (Section 5);
- any person offers, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body (Section 6);
- any person offers, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of the person receiving the advantage refraining from bidding at any auction conducted by or on behalf of any public body (Section 7); and

any person who, while having dealings with the government, offers any advantage to any prescribed officer employed in the relevant department, office or establishment of the government; or while having dealings with any other public body, offers any advantage to any public servant employed by that public body (Section 8).

Further, Section 10 of POBO makes it an offence for any person, who is or has been the Chief Executive or a prescribed officer, to maintain a standard of living or be in control of pecuniary resources or property above that which is commensurate with their present or past official emoluments, unless that person is able to provide a satisfactory explanation for the disparity.

Bribery Between Private Parties

Section 9 of POBO is the main provision in POBO that applies to private-sector bribery. Under this section, it is an offence if, without lawful authority or reasonable excuse, any person offers any advantage to any agent, or any agent solicits or accepts any advantage, as an inducement to or reward for or otherwise on account of the agent doing or not doing any act, or favouring or disfavouring any person, or having engaged in such conduct, in relation to his principal's affairs or business. The exception to this is where the agent has permission from the principal to solicit or accept the advantage, and the permission was given before the advantage was offered, solicited or accepted or as soon as reasonably possible after offer or acceptance of the advantage.

Due to its wide ambit, Section 9 also operates as a catch-all and can cover public sector conduct that falls outside Sections 3 to 8.

Hospitality Expenditures, Gifts and Promotional Expenditures

"Advantage" is very widely defined and includes:

- any gift, loan, fee, reward or commission consisting of money, valuable security, other property or interest in property of any description;
- any office, employment or contract;
- any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- any other service or favour, 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;
- the exercise or forbearance from the exercise of any right, power or duty; and
- any offer, undertaking or promise, whether conditional or unconditional, or any advantage referred to above.

POBO does not provide any de minimis defence. Hospitality expenditures, gifts and promotional expenditures are therefore likely to be regarded as "advantages". However, "entertainment", defined as "the provision of food or drink, for consumption on the occasion when it is provid-

ed, and of other entertainment connected with, provided at the same time as, such provisions", is not regarded as an "advantage" under POBO. A frequent point of contention in relation to this exception is whether the "entertainment" offered was solely for consumption "on the occasion when it was provided".

- In light of the above, offering, giving, soliciting or accepting gifts, travel, hospitality, etc are likely to contravene POBO unless:
- the recipient is duly authorised to accept the advantage;
- the advantage falls within the "entertainment" exception; and/or
- the advantage is given in a private or personal context and not for the purpose of securing any benefit or facilitating any process.

Bribery of Foreign Public Officials

POBO does not contain any provision that specifically governs bribery of foreign public officials. Further, as a "public servant" is not defined in POBO to include foreign public officials, the provisions that apply to bribery of public officials in Hong Kong do not apply in the context of bribery of foreign public officials.

However, it was held by the Hong Kong Court of Final Appeal in B v Commissioner of the Independent Commission Against Corruption [2010] 3 HKC 118 that the definition of the term "agent" used in Section 9 of POBO is non-exhaustive and could cover foreign public officials. In the circumstances, Section 9 can apply to the bribery of public foreign officials, but only if "a substantial measure of the activities constituting a crime" takes place in Hong Kong, as (unlike Section 4) Section 9 does not expressly apply to acts done "whether in Hong Kong or elsewhere" and therefore does not have extraterritorial effect: HKSAR v Krieger [2014] 3 HKLRD 404.

2.2 Influence-Peddling

As explained in **2.1 Bribery**, the term "advantage" is adopted in all the relevant provisions in POBO. Whether any particular conduct constitutes an offence under these provisions depends on whether an "advantage" was offered, solicited or accepted. An "advantage" is widely defined as including "any other service or favour" and "the exercise or forbearance from the exercise of any right or any power or duty", which is likely to cover any exercise of influence on decision-making. Therefore, influence-peddling for the purpose of obtaining a benefit from a public servant or private party in Hong Kong is likely to constitute an offence under POBO.

Influence-peddling for the purpose of obtaining a benefit from foreign public officials could constitute an offence under Section 9 of POBO, depending on whether the influence-peddling occurred in Hong Kong (see **2.1 Bribery**, "Bribery of Foreign Public Officials").

2.3 Financial Record-Keeping

POBO does not contain any requirement for the retention of books and records. However, Section 9 of POBO includes a separate offence (Section 9(3)) prohibiting an agent from using any receipt, account or other document that contains any statement that is materially false, erroneous or defective with intent to deceive their principal.

Although not found in POBO, there are broad books and records requirements and offences elsewhere in Hong Kong law.

- The Companies Ordinance (Cap. 622) (CO) imposes various record-keeping obligations on Hong Kong companies. For instance, Section 373 of the CO imposes an obligation on Hong Kong companies to keep accounting

records that are sufficient for the following purposes:

- to show and explain the company's transactions;
- to disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and

to enable the directors to ensure that the statements comply with the CO.

In particular, the accounting records must contain daily entries of all sums of money received and expended by the company and the matters to which they relate and a record of the company's assets and liabilities.

Further, Section 51C of the Inland Revenue Ordinance (Cap. 112) requires every person and company carrying on a trade, profession or business in Hong Kong to keep sufficient records of their income and expenditure for not less than seven years after completion of the relevant transaction, act or operation to enable the assessable profits of the trade, profession or business to be ascertained.

In addition, there is the offence of false accounting under Section 19 of the Theft Ordinance (Cap. 210), which provides that a person who dishonestly, with a view to gain for themself or another or with intent to cause loss to another (i) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or (ii) in furnishing information for any purpose, produces or makes use of any account, or any record or document made or required for any accounting purpose, which they know is or may be materially misleading, false or deceptive, shall be guilty of an offence.

2.4 Public Officials

There are no specific offences under POBO to cover any act of misappropriation of public funds, unlawful taking of interest, embezzlement of public funds or favouritism by a public official. However, such acts may constitute theft under Sections 2 and 9 of the Theft Ordinance (Cap. 210) if the public official dishonestly appropriates property belonging to another with the intention to permanently deprive the other of it.

A public official is also subject to the common-law offence of misconduct in public office, which targets all forms of serious wilful misconduct by the public official in the course of or in relation to their public office, even if no bribery is involved. Such misconduct includes the situation where the public official uses their discretionary power improperly or they show favour to a particular contractor for personal interest.

2.5 Intermediaries

Pursuant to Section 2(2) of POBO, a person offers, solicits or accepts an advantage if they themself, or "any other person acting on [their] behalf", engage in the relevant conduct. Therefore, a person who offers, solicits or accepts an advantage through a third party or intermediary would still be exposed to liability under the bribery offences outlined in **2.1 Bribery**. The intermediary, on the other hand, would only be liable if they aided, abetted, counselled or procured the offence, or conspired with the person who offered, gave, solicited or accepted the bribe.

3. Scope

3.1 Limitation Period

Under Hong Kong law, criminal offences are triable:

• only on indictment;
• only summarily; and
either way.

Broadly speaking, "summary offences" are less serious than "indictable offences" (ie, offences that may or must be tried on indictment).

There is no limitation period for indictable offences. For offences that may only be prosecuted summarily, prosecution should generally be brought within six months from the time when the underlying events occurred. However, the time limit for summary prosecution of Section 3 of POBO is extended to two years from the time when the underlying events occurred. Further, in relation to the financial record-keeping offences referred to in **2.3 Financial Record-Keeping**, the time limit for offences under the CO that can only be prosecuted summarily is extended to (i) within three years after the commission of the offence; and (ii) within 12 months after the date on which the supporting evidence came to the Secretary for Justice's knowledge.

3.2 Geographical Reach of Applicable Legislation

Section 4 of POBO, relating to bribery of Hong Kong civil servants, is the only provision in the ordinance that has extraterritorial effect, as it imposes criminal liability regardless of whether the operative conduct takes place "in Hong Kong or elsewhere". Thus, the offering of any advantage to a public servant, or the soliciting or accepting of such advantage by the public servant, as inducement or reward for doing or not doing an act or showing favour or disfavour, is an offence under Section 4 of POBO, even if the offering, soliciting or accepting occurs outside Hong Kong.

On the other hand, although Section 9 of POBO does not have extraterritorial effect, as explained in **2.1 Bribery**, bribery of a foreign public official can be caught by Section 9 in circumstances where "a substantial measure of the activities constituting a crime" takes place in Hong Kong.

3.3 Corporate Liability

A "person" is defined under Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) as including "any public body and any body of persons, corporate or unincorporate". The bribery offences under POBO therefore apply to individuals and companies alike. However, in practice, it is rare for companies to be prosecuted for bribery offences. Therefore, although it is technically possible for a successor entity to be held liable for offences under POBO committed by the predecessor entity prior to a merger or acquisition, it is the individuals involved who are typically prosecuted.

4. Defences and Exceptions

4.1 Defences

For bribery offences under Sections 4 to 9 of POBO, it shall be a defence for the accused to show that they had lawful authority or reasonable excuse to offer, solicit or accept the advantage in question. Pursuant to Section 24 of POBO, the accused shall bear the burden of proving a defence of lawful authority or reasonable excuse. Further, specifically in relation to Sections 4 and 9 of POBO (dealing with bribery of civil servants and the catch-all offence), it shall also be a defence for the accused to show that they have written permission from the relevant public body or their principal (as applicable) to solicit or accept the advantage, granted prior to the advantage being offered, solicited or accept-

ed or as soon as reasonably possible after offer or acceptance of the advantage.

For the bribery offence under Section 3 of POBO (dealing with prescribed officers), a common-law defence of honest and reasonable mistake of fact is available such that a defendant will not be liable if they can show, on the balance of probabilities, that they honestly and reasonably, but mistakenly, believed that they had the general or special permission of the Chief Executive to accept the advantage in question.

For an offence under Section 10 of POBO (unexplained wealth), it is a defence for the accused to provide a satisfactory explanation as to how they were able to maintain the relevant standard of living or how the relevant pecuniary resources or property came under their control.

In relation to the obligation to keep accounting records pursuant to Section 373 of CO, a director of the company in question may be liable for failing to take all reasonable steps to secure compliance with such obligation, but it is a defence for the director to establish that they had reasonable grounds to, and did in fact, believe that a competent and reliable person was charged with the duty of ensuring compliance and was in a position to discharge that duty.

4.2 Exceptions

There are no exceptions to the defences outlined in **4.1 Defences**.

4.3 De Minimis Exceptions

POBO does not contain any de minimis exception. However, according to the Prosecution Code of the Department of Justice (the "Prosecution Code"), which is a set of statements and instructions to guide prosecutors in conducting prosecutions, in deciding whether to prosecute, consideration will be given to factors such as "the seriousness of the offence" and "whether or not the offence is trivial". Therefore, in practice, prosecution may not be brought for a bribery offence that involves a bribe of a very low or nominal level, but that is not to say this would never occur. In 2009, a director of a construction company was successfully prosecuted for bribing police officers with 15 boxes of mooncakes, a relatively low-value gift that is customarily given to relatives, friends and clients during the Mid-Autumn Festival in Hong Kong.

4.4 Exempt Sectors/Industries

No sector or industry is exempt from the bribery offences under POBO. Further, Section 19 of POBO specifically states that it shall not be a defence for a bribery offence under POBO to show that the advantage in question is customary in any profession, trade, vocation or calling.

4.5 Safe Harbour or Amnesty Programme

There is no safe harbour or amnesty programme for bribery offences under POBO based on self-reporting, adequate compliance procedures or remediation efforts. In practice, self-reporting and voluntary co-operation with the authorities are significant mitigating factors, which could lead to a decision not to prosecute. If the decision is made to prosecute and the person is convicted, they could rely on such conduct in mitigation to seek a reduced sentence.

Further, pursuant to the Prosecution Code, in exceptional circumstances, a witness or informer may be granted immunity from prosecution. Ordinarily, this would require that the evidence given by the witness or informer be necessary to secure the conviction of a person with a higher level of involvement in the relevant offence (as compared with the witness or informer), and such evidence is not available elsewhere.

Finally, Section 23 of POBO stipulates the circumstances in which a suspect of a corruption offence may be granted immunity from prosecution. Where a written request is made by the Secretary for Justice, the court may inform any person accused or suspected of a corruption offence that if they give full and true evidence or are lawfully examined in such proceedings, they will not be prosecuted for the offence disclosed by their evidence.

5. Penalties

5.1 Penalties on Conviction

Penalties Under POBO

For bribery offences under POBO:

- an offence under any of Sections 3 to 9 is punishable on summary conviction by a maximum fine of HKD100,000 and imprisonment for up to one year. A person convicted under Section 3 may also be ordered to pay the amount or value of the advantage received by them (or any part of that advantage that the Court may specify);
- an offence under Section 10 is punishable on summary conviction by a maximum fine of HKD500,000 and imprisonment for up to three years;
- an offence under any of Sections 4, 7, 8 and 9 is punishable on conviction upon indictment by a maximum fine of HKD500,000 and imprisonment for up to seven years;
- an offence under any of Sections 5 and 6 is punishable on conviction upon indictment by a maximum fine of HKD500,000 and imprisonment for up to ten years; and

an offence under Section 10 is punishable on conviction upon indictment by a maximum fine of HKD1 million and imprisonment for up to ten years.

Where a person has been convicted under Section 10 of POBO on the basis that they are in control of pecuniary resources or property disproportionate to their present or past official emoluments, they may, in addition to receiving the penalty referred to above, be ordered to pay to the government, or be subject to an order for confiscation of, a sum not exceeding the amount of the pecuniary resources or the value of the property for which they do not have a satisfactory explanation.

Anyone convicted of a bribery offence under POBO may be prohibited for a period of up to seven years from taking up or continuing employment as either a professional, a self-employed businessperson or a manager of a corporation or public body (Section 33A of POBO).

Penalties for Non-bribery Offences Applicable to Public Servants

Where a public servant misappropriates or embezzles public funds or engages in any other conduct that constitutes theft under Sections 2 and 9 of the Theft Ordinance, they shall be liable on conviction upon indictment to imprisonment for ten years.

A public servant who is convicted of the common-law offence of misconduct in public office is liable to a maximum penalty of seven years' imprisonment and a fine.

Penalties Under CO

In relation to the obligation to keep accounting records pursuant to Section 373 of CO:

- where a director of the company in question fails to take all reasonable steps to secure compliance with such obligation, they shall be liable on conviction to a maximum fine of HKD300,000; or

- where a director of the company in question wilfully fails to take all reasonable steps to secure compliance with such obligation, they shall be liable on conviction to a maximum fine of HKD300,000 and to imprisonment for up to 12 months.

Other Penalties

A person who, without reasonable excuse, fails to comply with the requirements of Section 51C of the Inland Revenue Ordinance to keep sufficient records of income and expenditure is liable on conviction to a maximum fine of HKD100,000. The Court may further order the person to do the act that they failed to do within a specified period of time.

The offence of false accounting under Section 19 of the Theft Ordinance is punishable on conviction upon indictment to imprisonment for up to ten years.

Regulatory Consequences

Where any person regulated by the SFC commits any of the above offences, such person is likely to be regarded as having engaged in misconduct and/or viewed by the SFC as being not a fit and proper person to be or to remain a regulated person, which may result in the SFC taking the following disciplinary action:

- revocation of licence;
- suspension of licence;
- revocation of approval granted to act as Responsible Officer;
- public or private reprimand;
- prohibition to apply to be licensed/registered or to be a Responsible Officer; and/or
- pecuniary penalty of up to HKD10 million or three times the amount of profit gained or loss avoided as a result of the misconduct.

5.2 Guidelines Applicable to the Assessment of Penalties

When imposing a sentence on a person convicted of bribery or corruption under POBO, Hong Kong courts are generally guided by the following sentencing principles derived from case law.

- To distinguish between the culpability of offenders and to award discounts where they are warranted, having regard to the maximum penalty.
- To treat the giver and receiver of bribe as equally culpable in ordinary cases unless the circumstances justify different treatments.
- No distinction in principle between the culpability of private- and public-sector corruption.
- It is a norm to impose immediate custodial sentence unless there are special circumstances for imposing some alternative sentence.
- For minor cases of corruption, the starting point is 12 months' imprisonment, which can be reduced on mitigation.
- Suspension of a custodial sentence and the making of a community service order are alternatives to a sentence of immediate imprisonment, and they will only be imposed in a corruption case if exceptional circumstances exist.
- Higher sentences may be imposed for multiple or repeated offences.

6. Compliance and Disclosure

6.1 National Legislation and Duties to Prevent Corruption

POBO does not impose any statutory duty to set up a compliance programme to prevent corruption, and failure to prevent corruption is not a crime in Hong Kong.

However, financial institutions may be required under applicable regulations or codes of conduct to have in place adequate internal controls and resources to prevent corruption. For instance, any person regulated by the SFC is required to have internal control procedures and financial and operational capabilities that can be reasonably expected to protect its operations, clients and other licensed or registered persons from financial loss arising from theft, fraud and any other dishonest act, which would include corruption. Failure to comply may result in disciplinary action being taken against the regulated person.

6.2 Regulation of Lobbying Activities

Lobbying activities are not regulated by POBO.

6.3 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions

There is no general legal duty to disclose or report known or suspected corruption or bribery to law enforcement bodies in Hong Kong. However, financial institutions and their directors, staff and auditors may be required under particular local legislation or regulations to disclose corrupt activities to the relevant regulators.

Further, under Section 25A of the OSCO, any person who knows or suspects that any property, in whole or in part, directly or indirectly represents any person's proceeds of, or was used or is intended to be used in connection with, an indictable offence is required report that knowledge or suspicion as soon as reasonably practicable to a police officer or the Customs and Excise Department. In practice, "suspicious transaction reports", or STRs, are made to the Joint Financial Intelligence Unit (JFIU), which is jointly run by the Hong Kong Police Force and the Customs and Excise Department. The timely making of an STR triggers a defence to money laundering. A person who makes an STR before dealing in the property in question with the consent of the JFIU, or makes an STR voluntarily as soon as reasonable after dealing in the property, shall not be liable for the offence of dealing in crime proceeds under Section 25 of the OSCO.

6.4 Protection Afforded to Whistle-Blowers

In Hong Kong, there is no legislation that specifically protects whistle-blowers. However, Section 30A of POBO prevents any witness in civil and criminal proceedings from being compelled to disclose, or answer any question that may lead to the discovery of, an informer's name or address and also requires the redaction of any document in such proceedings that may lead to disclosure of the informer's identity. In addition, ICAC informers whose personal safety or well-being might be at risk may receive witness protection under the Witness Protection Ordinance (Cap. 564).

6.5 Incentives for Whistle-Blowers

There is no statutory framework for rewarding whistle-blowers. However, self-reporting and co-operation with the authorities are mitigating factors that could result in a more lenient sentence after conviction. Although not guaranteed, this could also influence the prosecutor's decision on whether to grant immunity from prosecution. For details, see **4.5 Safe Harbour or Amnesty Programme**.

6.6 Location of Relevant Provisions Regarding Whistle-Blowing

While there is no statutory whistle-blower framework, listed companies are required under paragraph D.2.6 of the Code on Corporate Governance Practices in the Main Board Listing Rules to establish a whistle-blowing policy and system for employees and those who deal with the listed

company to raise concerns, in confidence and anonymity, with the audit committee about possible improprieties in any matter related to the listed company, which would include suspected corruption.

7. Enforcement

7.1 Enforcement of Anti-bribery and Anti-corruption Laws

Bribery offences under POBO are prosecuted criminally, resulting, upon conviction, in the penalties outlined in **5.1 Penalties on Conviction**.

7.2 Enforcement Body

The ICAC is the law enforcement agency responsible for preventing and investigating corruption in Hong Kong. Under the Independent Commission Against Corruption Ordinance (Cap. 204) (ICACO) and POBO, the ICAC has wide-ranging powers to investigate corruption, including the following:

- the power to arrest without warrant any person who is reasonably suspected of committing an offence under POBO and to enter and search any premises for the purpose of effecting such arrest if there is reason to believe that the person to be arrested is on the relevant premises;
- the power to search (without warrant in certain circumstances) any person reasonably suspected of committing any offence under POBO and any premises in which such person was (or to be) arrested or that is otherwise reasonably believed to contain evidence of the offence and seize or detain anything that is reasonably believed to be or to contain evidence of the offence;
- the power to require (with leave of the court) the production of documents and disclosure of information, where there is reasonable cause to believe that the documents and information are likely to be relevant to the investigation of, or proceedings relating to, an offence under POBO;
- the power to apply to the court for a restraining order, requiring any person being investigated or prosecuted for an offence under POBO or any other person holding property on behalf of such person to refrain from disposing or dealing with any property in their possession except in accordance with the conditions imposed by the court; and

the power to apply to the court for a written notice, requiring any person who is being investigated for any offence under POBO reasonably suspected to have been committed by them to surrender any travel documents in their possession.

Following investigation, pursuant to Section 31(1) of POBO, the consent of the Secretary for Justice is required for prosecuting bribery offences under POBO.

The ICAC also works with other law enforcement agencies in Hong Kong to combat corruption in specific sectors. For instance, the ICAC signed a Memorandum of Understanding with the SFC in 2019 to strengthen their co-operation in combating illegal activities, including corruption, which damage the integrity of Hong Kong's securities and future markets. Such co-operation enables the ICAC to benefit from the investigative fruits of the other law enforcement agency. This is particularly significant in the case of the SFC, as a person interviewed by the SFC for a suspected breach or contravention of the Securities and Futures Ordinance (Cap. 571) does not have the right to remain silent. Although the use of the compelled information as evidence in criminal

proceedings against the interviewee is prohibited, such evidence may be used against others, and use of information derived from the compelled information against the interviewee and others is also permitted.

7.3 Process of Application for Documentation

The ICAC has the power to search any person reasonably suspected of having committed an offence under POBO and the premises in which such person was arrested or to be arrested (in the case of evasion of arrest).

- The ICAC may also make an ex parte application to the court under the ICACO and/or POBO for:
- the issue of a warrant to enter and search any premises that is reasonably believed to contain evidence of an offence under POBO;
- leave to require any person to produce any documents or information that are likely to be relevant for the purpose of an investigation of an offence under POBO; and
- production of or access to documents and information held by the Commissioner of Inland Revenue.

7.4 Discretion for Mitigation

Mitigating factors, such as self-reporting and voluntary co-operation with the authorities, if significant, could lead to a decision by the ICAC or the Secretary for Justice not to prosecute. If the decision is made to prosecute, such conduct is likely to result in the court imposing a reduced sentence.

Further, as stated in **4.5 Safe Harbour or Amnesty Programme**, a witness or informer may under certain circumstances be granted immunity from prosecution.

7.5 Jurisdictional Reach of the Body/Bodies

The jurisdictional reach of the ICAC is defined by the scope of the bribery offences under POBO. For details, see **3.2 Geographical Reach of Applicable Legislation**.

7.6 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

Over the past two years, the ICAC has taken a series of enforcement actions to tackle bribery related to the Third Runway Project of the Hong Kong International Airport, which involved the paying of bribes by sub-contractors and construction workers to secure work on the project. One of the most notable chapters of this sequel involved two individuals, a senior executive of the Hong Kong Airport Authority and a director of the sub-contractor Carol Engineering Limited, charged with accepting and offering bribes totalling HKD3.8 million. As at 10 November 2023, the ICAC had charged 26 people in connection with the case.

In January 2023, the ICAC commenced operation "Fire Net", raiding more than 100 places and arresting 49 people for suspected manipulation of property management companies and the bidding process of ten building maintenance projects across Hong Kong worth over HKD500 million. In September 2023, the ICAC pressed charges against 23 of those arrested for conspiracy to offer and accept bribes exceeding HKD6.5 million and conspiracy to defraud.

In October 2023, the ICAC conducted a joint operation with the SFC and the Accounting and Financial Reporting Council against a syndicate for operating ramp-and-dump schemes, which involved the "ramping up" of the share price of two Hong Kong-listed companies, then "dumping" the shares to other investors at an artificially

high price. To date, the regulators have raided a total of 16 premises and arrested three people in connection with the case.

Elsewhere, in the insurance sector, the past year has seen numerous cases involving insurance agents being charged for committing fraud. For instance, an insurance agent was charged with defrauding an insurer of commissions totalling about HKD1.5 million by falsely representing that 20 clients had taken out various insurance policies.

7.7 Level of Sanctions Imposed

Out of the 26 people charged by the ICAC as at 10 November 2023 in connection with the Third Runway Project, 20 have pleaded or been found guilty, receiving sentences of up to 16 months in jail.

As for the insurance sector cases, the more serious ones have been transferred to the senior courts and are awaiting trial. The insurance agent charged with defrauding the insurer of commissions totalling HKD1.5 million pleaded guilty and was sentenced to 11 months' imprisonment.

The criminal proceedings commenced as a result of operation "Fire Net" are still ongoing, and the ramp-and-dump incident is still under investigation. Therefore, no sanctions have been imposed on the individuals involved to date.

8. Review

8.1 Assessment of the Applicable Enforced Legislation

In February 2012, the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests (IRC) was set up to conduct a review of the regulatory framework for the prevention and handling of potential conflicts of interests concerning the Chief Executive of Hong Kong, members of the Executive Council and politically appointed officials, and to make recommendations including appropriate changes to the regulatory regime.

In its report submitted to the Hong Kong government in May 2012, the IRC identified a major loophole in POBO in that the Chief Executive of Hong Kong was not subject to Section 3 (which criminalises the solicitation and acceptance of advantages by "prescribed officers" with the Chief's Executive's permission) and Section 8 (which criminalises the offering of advantages to public servants while having dealings with the government department or the public body in which the public servant is employed) of POBO.

- The IRC, therefore, recommended that legislation be enacted to render it a criminal offence:
- for the Chief Executive to solicit or accept any advantage without the general or special permission of a statutory Independent Committee; and
- for any person to offer any advantage to the Chief Executive, without lawful authority or reasonable excuse, where the person has any dealings with the government.

8.2 Likely Changes to the Applicable Legislation of the Enforcement Body

Following the IRC's submission of its report in May 2012, efforts made to implement the suggested changes have failed to gain traction. Although the government confirmed in 2019 that "[it] [had] been actively following up on the IRC's recommendations, with a view to enhancing the robustness of the system concerned to effectively prevent and properly deal with potential

conflicts of interests involving public officials", the comment made in 2020 by Mrs Carrie Lam, then Chief Executive of Hong Kong, that implementing the suggested changes might violate the constitutional position of the Chief Executive has cast doubt over the prospect of such changes being made. However, Mrs Carrie Lam also indicated that the government may look into the issue again if there are ways to address the concerns identified by the IRC without violating the constitutional position of the Chief Executive, so the door remains open for changes to be made to POBO in this respect.

Trends and Developments

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Debevoise & Plimpton assists its clients with developing compliance programmes, managing corruption risks in transactions, internal investigations, and in dealings with regulators. Its market-leading white collar and anti-corruption practice draws on the firm's global resources to represent clients in Asia, representing a wide range of institutions – multinational companies and boards of directors with operations in Asia, Asian companies dealing with foreign regulators and regulations, as well as individuals across the globe. The firm's experience covers virtually every major industry, including consumer products and services, energy and extractive industries, financial institutions, insurance, manufacturing, media, pharmaceuticals and medical devices, retail and specialty goods, technology and transportation, among others. The firm works with clients on compliance matters and in all types of adversarial proceedings, ranging from contentious regulatory examinations to administrative enforcement actions to civil and criminal litigation.

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Introduction

As one of the leading international financial centres, Hong Kong has a robust anti-corruption regime. Established in 1974, the Independent Commission Against Corruption (ICAC) is the regulator that combats corruption and enforces anti-bribery laws in Hong Kong. In approaching its 50th anniversary, the ICAC has launched a number of initiatives to strengthen its three-pronged strategy of combining enforcement, prevention and education in tackling corruption.

This chapter will provide an overview of the latest corruption statistics in Hong Kong, discuss landmark ICAC investigations in 2023, examine the new industry-specific anti-corruption guidelines and conclude with suggestions regarding future developments in the anti-corruption regime in Hong Kong.

Ranking and Statistics

Hong Kong is frequently ranked by corruption-related international agencies, including the Corruption Perceptions Index (CPI), which is considered the most widely used global corruption ranking published annually by a non-governmental organisation.

According to the 2022 CPI published in January 2023, which ranks countries and territories around the world by their perceived levels of public-sector corruption, Hong Kong, with a score of 76 out of 100, ranked the 12th least corrupt place among 180 territories and is the second least corrupt place in Asia. Since the launch of the CPI Index in 1995, Hong Kong has consistently been ranked as one of the top 20 territories globally with a very low level of corruption.

Corruption complaints are an important source of information that often lead to corruption investigations and, ultimately, prosecutions. In the first nine months of 2023, the ICAC received a total of 1,553 corruption complaints (excluding election-related corruption complaints), representing an increase of 14% from 1,367 complaints in the same period in 2022. Of the 1,553 complaints received, approximately 72% target private sector corruption, and approximately 23% target the government sector and the remaining 5% target public bodies. Notably, the complaints involving the private sector have increased by 28% from 871 to 1,113 compared to the same period in 2022, whereas there is a decline of 13% and 1% respectively in the number of corruption complaints involving the government sector and public bodies compared to the same period in the preceding year. As demonstrated in "Landmark ICAC Investigations" below, one of the complaints the ICAC received from the public triggered the largest-ever investigation involving the building management sector, which resulted in the largest prosecution in such sector in the history of the ICAC.

On the other hand, a total of 173 persons were prosecuted in 84 non-election corruption offences in the first nine months of 2023, whereas 148 persons were prosecuted in 75 cases in the same period in 2022, representing an increase of approximately 17%. In the first six months of 2023, there was a significant increase of 61% conviction compared to the same period in 2022.

Overall, the statistics from the past decade suggest that the corruption trend in Hong Kong has remained steady, with approximately 2,000 corruption reports received by the ICAC every year, of which around two-thirds concern the private sector.

In the private sector, the building management industry and the finance and insurance industry

are on top of the list of corruption complaints received by the ICAC, with a recorded increase from 307 to 419 and from 77 to 109, respectively. In order to assist the relevant stakeholders in effective corruption prevention and risk management, a number of new guidelines that are specific to these industries were issued by the ICAC in 2023, details of which are discussed in "New Industry-Specific Guidelines on Corruption Prevention".

Landmark ICAC Investigations

Operation "Fire Net": the largest investigation and prosecution in relation to building management and maintenance in ICAC's history

In Hong Kong, buildings aged 30 years or above are subject to a mandatory building scheme. This requires property owners to engage professionals to carry out inspection of their buildings once every ten years to ensure the safety of the buildings. Given the extensive nature of the scheme and the potentially high project fees involved, building maintenance is an area that is prone to corruption.

In January 2023, the ICAC mounted operation "Fire Net", which is its largest-ever operation against building management bribery. In this operation, the ICAC raided more than 100 places and arrested 49 people for suspected manipulation of property management companies and the bidding process involving ten building maintenance projects for housing estates, commercial buildings and industrial buildings across Hong Kong worth over HKD500 million.

The persons arrested in the operation included engineering consultants, contractors and middlemen. They were recruited through bribery by the mastermind who was the owner of a construction company. The syndicate would infiltrate the targeted building maintenance projects, manipulate the tendering process and pay bribes to secure the building maintenance work at exaggerated sums. In one case, a bribe of HKD1.2 million was paid to three employees of a property management company to influence property owners to pursue maintenance work at an inflated amount of HKD20 million. In another case, bribes exceeding HKD1.5 million were paid to a number of property management company staff for lax supervision of a HKD200 million maintenance contract for a private housing estate that had been awarded to the syndicate.

In September 2023, the ICAC pressed charges against 23 of the arrestees with conspiracy to offer and accept bribes exceeding HKD6.5 million and conspiracy to defraud. This case also marked the largest prosecution in relation to building management and maintenance in ICAC's history. Although criminal proceedings are ongoing, it is believed that the ICAC had successfully neutralised the syndicate and prevented further corruption and loss to property owners, as eight out of the ten building maintenance projects involved have yet to commence.

Given that building management has topped the private sector with the highest volume of corruption reports, combating corruption in this sector will undoubtedly remain one of the ICAC's top enforcement priorities going forward.

Joint operation with local regulators against ramp-and-dump schemes

The ICAC often collaborates with local regulators to combat corruption and financial crimes in Hong Kong.

This is best illustrated in the first tripartite joint operation conducted in October 2023 by the ICAC, the Securities and Futures Commission

(SFC) (an independent statutory body regulating Hong Kong's financial market) and the Accounting and Financial Reporting Council (AFRC) (an independent regulator of the accounting profession) against a sophisticated syndicate in a ramp-and-dump scheme involving two Hong Kong-listed companies for suspected falsification of corporate transactions totalling HKD193 million.

In this tripartite operation, the regulators raided a total of 16 premises and arrested three people for suspected offences of an agent using documents with intent to deceive his principal under the Prevention of Bribery Ordinance (Cap. 201) (POBO).

The SFC and the AFRC were involved because apart from suspected corruption investigations also revealed other malpractices, such as suspected corporate fraud and misconduct and auditors' misconduct concerning the fictitious transactions. Senior executives of Hong Kong-listed companies, SFC-licensed persons and qualified accountants were among the persons arrested.

The suspected fictitious transactions in this tripartite operation only came to light as a result of the joint SFC-ICAC operation conducted in November 2022 against the suspected ramp-and-dump scheme, in which the fraudsters had used different means to "ramp" up the share price of a listed company and then "dump" the shares to other investors at an artificially high price.

One would expect further collaboration between the ICAC and other financial regulators in the future in taking enforcement actions against corrupt practices to protect market integrity and enhance corporate governance.

New Industry-Specific Guidelines on Corruption Prevention

As part of its efforts to fight corruption, the ICAC publishes guides and codes from time to time to provide practical advice and guidance on corruption prevention.

In 2023, the ICAC published a number of industry-specific guidelines to offer advice and recommendations to relevant stakeholders to reduce corruption risks in specific sectors that are known to attract high corruption reports, including construction, finance and insurance.

Corruption Prevention Guide for Construction Industry (CPGCI)

In recent years, the ICAC has stepped up its efforts to promote a culture of integrity in the construction industry. In September 2021, the ICAC launched an Integrity Charter for the construction industry to encourage construction companies to self-regulate and implement an integrity management system. A year later, the Construction Industry Integrity Charter 2.0 was introduced to cover construction consulting firms to promote the management culture of integrity.

In September 2023, the ICAC published the CPGCI to further its efforts in helping the construction industry minimise corruption risks. The CPGCI is intended to be a user-friendly guide and provides organisations with advice and recommendations to strengthen their corruption-prevention capabilities.

The topics covered in the CPGCI include management of consultancies, administration of contracts and construction quality-control testing. It illustrates the legal requirements and corruption risks through hypothetical case scenarios and gives recommendations on control measures to

address and mitigate the corruption risks identified in those scenarios. Even though the case scenarios are meant to be hypothetical, some of the fact patterns and the corruption risks involved are similar to those in the corruption cases the ICAC has investigated or prosecuted in real life. The CPGCI, therefore, serves as a practical and step-by-step procedural guidance to organisations on best practice to avoid and manage corruption risks.

The CPGCI also annexes sample codes of conduct, declaration forms and sample clauses in agreements that private companies in the construction industry may adapt to their internal manuals. The CPGCI has no legal force, but organisations are encouraged to adapt the recommended safeguards and control measures that best suit their operational needs.

Corruption Prevention Guide for Banks (CPGB)

The CPGB was released by the ICAC in March 2023 with the support of the Hong Kong Monetary Authority (HKMA) and the banking industry. The CPGB aims to assist banks in effective corruption prevention and risk management. It provides practical guidance to senior management of banks on various areas of core business. Apart from the core corruption prevention measures, the CPGB also includes an analysis of the corruption risks that arise in hypothetical case studies and offers anti-corruption control measures that financial institutions are expected to maintain.

Procurement and staff administration is one of the topics covered in the CPGB, as it is an area vulnerable to corrupt manipulation and malpractice. Major corruption risks and red flags include the offering of job opportunities in return for business advantage. This corruption risk was highlighted in the "sons and daughters" programme, which attracted significant media attention several years ago when allegations were made against JP Morgan for awarding employment opportunities to unqualified individuals, being children or relatives of Chinese government officials, to win business. This led to a major investigation in the United States for violation of the Foreign Corrupt Practices Act, which was settled in 2016 upon the payment of a fine exceeding USD260 million by JP Morgan.

In Hong Kong, similar allegations were made against a former vice chairwoman of JP Morgan's Asia-Pacific investment banking business for offering a job to the son of the chairman of Kerry Logistics to win a mandate for an initial public offering. She was charged with bribery offences of offering an advantage to an agent but was acquitted after trial in February 2021 on the grounds that it was not certain whether she intended to win an IPO mandate through a job offer to the candidate in question and that she was not the person to make the final hiring decision.

Memorandum of Understanding between ICAC and Insurance Authority (MoU)

Throughout 2023, a number of insurance agents were charged by the ICAC for corruption, fraud or money laundering offences involving commissions fraud and fraudulent insurance claims.

In an effort to further strengthen collaboration in fighting against corruption, the ICAC and the Insurance Authority (IA) signed the MoU on 26 October 2023, which outlines a new framework for addressing corruption crimes within the insurance industry. The MoU aims to enhance co-operation between the ICAC and the IA on various aspects, including referral of cases, joint investigations, information sharing and provision

of expert assistance. The collaboration under the MoU also covers the promotion of public education and professional training to foster an ethical culture to combat corruption and maintain the integrity of the insurance market in Hong Kong.

The new mechanism introduced by the MoU is a welcome development to promote co-operation and co-ordination between the ICAC and the IA, which will in turn facilitate future corruption investigations and enforcement in the insurance sector.

Future Developments

Suggestions to strengthen anti-corruption regime in Hong Kong

Prompted by the corruption investigation against the former Chief Executive Donald Tsang in 2012 (which resulted in his conviction in 2017 for the common-law offence of misconduct in public office), the question of whether the Chief Executive of Hong Kong should be brought within the ambit of public sector bribery offences under Sections 3 and 8 of POBO has become a matter of public concern. At present, these sections only apply to public officials under the political appointment system and civil servants in Hong Kong.

In February 2012, the Hong Kong government set up an independent committee to consider this issue in the context of its review of the regulatory systems for the prevention of conflicts of interests concerning the Chief Executive, members of the Executive Council and politically appointed officials (IRC). In its report on Prevention and Handling of Potential Conflicts of Interests submitted to the Hong Kong government in May 2012, the IRC recommended that amendments be made to POBO to extend the application of Sections 3 and 8 to the Chief Executive such that the Chief Executive is required to obtain permission from a specialised independent committee prior to soliciting or accepting advantages.

However, given the unique constitutional status of the Chief Executive, it is the view of the Hong Kong government that the regime that grants permission to the Chief Executive for soliciting and accepting advantages will give rise to constitutional and legal implications if, as per the IRC's recommendation, the independent committee comprises members jointly appointed by the Chief Justice and the President of the Legislative Council. In view of this, no amendments have been made to POBO to date.

Unless and until POBO is amended to extend the application of the public sector bribery offences to include the Chief Executive, the likely basis for any prosecution against the Chief Executive for soliciting or accepting any advantage is the common-law offence of misconduct in public office, which requires the prosecution to prove beyond reasonable doubt an abuse by the Chief Executive of the powers or discretions conferred by virtue of their official position.

Meanwhile, the only other high-ranking government official who was prosecuted for corruption in recent years is Wilson Fung, who, at the material time, was the deputy secretary of the Economic Development and Labour Bureau responsible for air service negotiations and air traffic rights. He was accused of failing to disclose a conflict of interest when he accepted HKD510,000 from a Macau businesswoman who was a director of an aviation company that was applying for air traffic rights from the Hong Kong government. In September 2019, Wilson Fung was convicted of misconduct in public office and was sentenced to nine months' imprisonment. Since that time, there has been no prosecution

of a high-ranking government official or politician for bribery-related offences in Hong Kong.

- There is also room to strengthen the current anti-corruption law to align Hong Kong with the position of various other common-law jurisdictions, such as the following.
- To follow the practice in the United Kingdom and Australia and create an offence of bribery of a foreign public official. If there is an express provision in POBO prohibiting bribery of a foreign public official (which is currently lacking under POBO), the prosecution can dispense with the need to invoke the private sector bribery offences under POBO to prove that the foreign public official is acting as an "agent" in relation to his principal's affairs.
- To introduce a corporate offence for failure to prevent bribery, which has recently been introduced or proposed in India, Australia and Malaysia.
- To adopt deferred prosecution agreements that are currently available in jurisdictions including the United Kingdom and Singapore. This regime allows the making of a voluntary agreement between a prosecutor and a corporate defendant to defer prosecution for the alleged offences in return for full co-operation from the corporate defendant and its agreement to fulfil specific conditions.

To introduce a comprehensive whistle-blowing regime, as this is evidently one of the most effective ways to detect corruption. Since the existing requirements only cover the protection of anonymity and the personal safety of ICAC informers under Section 30A of POBO and the Witness Protection Ordinance, any new whistle-blowing framework (if introduced) should impose a positive obligation on employers to implement a whistle-blowing policy to encourage whistle-blowing, facilitate anonymous reporting, protect the confidentiality of whistle-blowing reports and prevent retaliation against whistle-blowers.

To maintain Hong Kong's status as a leading international financial centre, the Hong Kong government should begin to consider proposing appropriate changes to POBO to modernise its anti-corruption law to further strengthen its efforts to uphold the probity culture of Hong Kong.

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