

## Integrity is key: Hong Kong's new Corporate Governance Code mandates that issuers establish anti-corruption and whistleblowing policies

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In our earlier publication "*COVID-19 heightened corruption risks - A Hong Kong guide*"<sup>1</sup>, we forewarned that COVID-19 and the challenges it posed to enforcement authorities, organizations and their workforce would allow corruption to thrive. The 2020 annual report of the Independent Commission Against Corruption (the "ICAC") released in July 2021 and the enforcement actions taken in Hong Kong in the period following our last publication bears this out. While corruption complaints (for both private and public sectors) were down, there were still 1,454 pursuable complaints, and in the second half of 2021, over 85 individuals, including some involved in the listed sector, were charged by the ICAC for corruption related offences<sup>2</sup>.

It is therefore not surprising that following the public consultation on the Review of Corporate Governance Code and Related Listing Rules (the "**Consultation Paper**")<sup>3</sup> which commenced on 16 April 2021, the Hong Kong Exchanges and Clearing Ltd (the "**HKEX**") has mandated that all issuers establish anti-corruption and whistleblowing policies and procedures, or include relevant provisions in their code of conduct or other policies (together, the "**New Requirements**")<sup>4</sup>. These New Requirements are being implemented through the introduction of new code provisions under the Corporate Governance Code (the "**CG Code**") as set out in Appendix 14 to the Main Board Listing Rules and Appendix 15 to the GEM Listing Rules<sup>5</sup> (collectively, the "**Listing Rules**") that will come into effect on 1 January 2022.

In this publication, we consider the corruption complaints and enforcement actions in the second half of 2021, the New Requirements in the CG Code, and the new Corporate Governance Guide for Boards and Directors (the "**CG Guide**") published on 10 December 2021<sup>6</sup> to assist issuers' compliance with the New Requirements. As a guide to issuers and other organizations considering establishing and/or revising their policies and procedures, we set out additional steps that can be taken to ensure that the policies and procedures are fit for purpose and effectively implemented.

### Corruption cases for the second half of 2021

We highlight below a number of the enforcement actions that have resulted in sanctions against the individuals concerned, which illustrate the diverse nature of the offending and the risks they pose to organizations:

- ▶ A former manager of a government street cleansing company defrauded the company of salary payments totaling over HK\$240,000 by falsifying the accounting records of her son (who was a cleaning worker with the company) for two years. She was sentenced to 13 months' imprisonment after pleading guilty to one count of conspiracy to defraud contrary to common law.<sup>7</sup>

<sup>1</sup> [COVID-19 heightened corruption risks-A Hong Kong guide | LC Lawyers \(eylaw.com.hk\)](#)

<sup>2</sup> 2020 Annual Report: [www.icac.org.hk/icac/annual-report/2020/](http://www.icac.org.hk/icac/annual-report/2020/)

<sup>3</sup> Consultation Paper: [Paper on ESG \(hkex.com.hk\)](http://paper.on.esg(hkex.com.hk))

<sup>4</sup> Currently, it is a requirement under the ESG Guide to disclose anti-corruption and whistleblowing policies or information, implementation of relevant procedures and material incidents on a "comply or explain" basis.

<sup>5</sup> CG Code: Main Board: [appendix\\_14 \(hkex.com.hk\)](http://appendix_14(hkex.com.hk)); GEM Board: [Appendix 15 Corporate Governance Code and Corporate Governance Report | Rulebook \(hkex.com.hk\)](http://Appendix_15_Corporate_Governance_Code_and_Corporate_Governance_Report_Rulebook(hkex.com.hk))

<sup>6</sup> CG Guide: [HKEX\\_GFBD\\_EN\\_211210\\_v5](http://HKEX_GFBD_EN_211210_v5)

<sup>7</sup> [ICAC, HKSAR - Press Releases - Ex-manager of street cleansing contractor jailed for \\$240,000 salary fraud](#)

- ▶ A former director of a garment trading company solicited a bribe of RMB150,000 from a manufacturer and stole HK\$150,000 from his then employer. He was convicted of one count of soliciting a bribe contrary to section 9(1)(a) of the Prevention of Bribery Ordinance (Cap. 201) (“**POBO**”) and one count of theft contrary to section 9 of the Theft Ordinance (Cap. 210) (the “**Theft Ordinance**”) and was sentenced to 10 months’ imprisonment.<sup>8</sup>
- ▶ A director and an employee of an air-conditioning system supplier submitted false quotations in relation to the installation of an environmental-friendly air-conditioning system for a printing company. They were convicted on one count of conspiracy to defraud the government of HK\$290,000 of funding provided through the Cleaner Production Partnership Program launched by the Environmental Protection Department to encourage and facilitate Hong Kong-owned factories in Guangdong and Hong Kong to adopt clean production technologies and practices.<sup>9</sup>
- ▶ A former sourcing manager of a multinational retailer accepted over US\$615,000 (about HK\$4.8 million) in illegal rebate, loan and loan releases in the sum of about US\$45,000 (about HK\$350,000) from a supplier for placing toy orders totaling over US\$20 million (about HK\$156 million). The former manager was convicted on his guilty pleas to three charges - two of conspiracy by an agent to accept an advantage, both contrary to section 9(1)(a) of POBO and section 159A of the Crimes Ordinance (Cap. 200) (the “**Crimes Ordinance**”), and one of an agent accepting an advantage contrary to section 9(1)(a) of the POBO, and was sentenced to three years’ imprisonment.<sup>10</sup>
- ▶ A former teacher of a government-aided secondary school used copies of false instruments in deceiving the school of payments totaling HK\$5.3 million in relation to 14 school facility renovation projects. He was sentenced to 46 months’ imprisonment after pleading guilty to a total of 18 charges - 10 of an agent using a document with intent to deceive his principal contrary to section 9(3) of the POBO, five of theft contrary to section 9 of the Theft Ordinance, and three of using a copy of a false instrument contrary to section 74 of the Crimes Ordinance.<sup>11</sup>
- ▶ A former manager of a lighting product company concealed his wife’s interest in a trading company when handling transactions between the two companies involving sums of discount and subsidy totaling about HK\$12 million. He was convicted on his guilty plea to one count of fraud contrary to section 16A(1) of the Theft Ordinance and was sentenced to 56 months’ imprisonment.<sup>12</sup>
- ▶ A former manager of an aircraft maintenance company procured the company to place purchase orders with two contractors and pay HK\$1.5 million for toolings containing technical drawings that it already had and did not need. He was convicted on two counts of fraud contrary to section 16A(1) of the Theft Ordinance and was sentenced to 27 months’ imprisonment.<sup>13</sup>
- ▶ A director of a small and medium enterprise used copies of false audited reports and bank statements of the company to support its applications for banking facilities totaling HK\$19 million with two banks. He was convicted of five counts of using copies of false instruments contrary to section 74 of the Crimes Ordinance and was sentenced to six years’ imprisonment.<sup>14</sup>
- ▶ Two then employees of a sub-contractor of the Third Runway Project of the Hong Kong International Airport accepted illegal rebates totaling HK\$27,000 from five construction workers. One of them pleaded guilty to six charges - two of an agent accepting an advantage contrary to section 9(1)(a) of POBO, and four of conspiracy by an agent to accept advantages contrary to section 9(1)(a) of POBO and section 159A of the Crimes Ordinance. The other employee pleaded guilty to one of the above conspiracy charges. They were each sentenced to jail terms of up to six months.<sup>15</sup>

<sup>8</sup> [ICAC, HKSAR - Press Releases - Ex-director of garment trading company jailed for soliciting RMB150,000 bribe and stealing HK\\$150,000](#)

<sup>9</sup> [ICAC, HKSAR - Press Releases - Duo guilty of fraud over \\$290,000 government green funding](#)

<sup>10</sup> [ICAC, HKSAR - Press Releases - Ex-manager of groceries retailer gets three years’ jail for accepting bribes](#)

<sup>11</sup> [ICAC, HKSAR - Press Releases - Ex-secondary school teacher jailed for breaching anti-bribery law and theft involving \\$5.3m over renovation projects](#)

<sup>12</sup> [ICAC, HKSAR - Press Releases - Ex-manager of lighting product company charged by ICAC jailed for 56 months over \\$12m fraud](#)

<sup>13</sup> [ICAC, HKSAR - Press Releases - Ex-manager of aircraft maintenance company charged by ICAC jailed for \\$1.5m order fraud](#)

<sup>14</sup> [ICAC, HKSAR - Press Releases - SME director charged by ICAC jailed for \\$19m banking facilities fraud](#)

<sup>15</sup> [ICAC, HKSAR - Press Releases - Duo charged by ICAC jailed for accepting illegal rebates from construction workers over Third Runway Project jobs](#)

There were also a number of enforcement actions involving the listed sector, some of which are still pending:

- ▶ In July 2021, in an operation jointly mounted by the ICAC and the SFC, which involved searches of a listed company's offices and that of one of its underwriters in its initial public offering ("IPO"), the ICAC arrested a senior executive of a listed company who was suspected to have offered advantages to the staff of the underwriter concerned.<sup>16</sup>
- ▶ In August 2021, five individuals including a current senior executive and a former executive of a listed company were arrested in a joint operation of the ICAC and the SFC, which also involved searches of the listed company's offices and the premises of other related parties. The five arrestees allegedly conspired with others to accept advantages for granting substantial amounts of loans to a number of companies and renewing the loans. Some of the borrowers were controlled by senior executives of the listed companies or their associates, and repayments were defaulted on and largely unrecoverable by the listed company.<sup>17</sup>
- ▶ In October 2021, four people, including two former senior executives of a then listed company, were sentenced to jail terms of up to seven months for conspiracy to defraud the Stock Exchange of Hong Kong (the "SEHK"), the then listed company and its board of directors and shareholders over the placement of bonds issued by the listed company. On four occasions between July 2014 and January 2015, the then listed company engaged a company to be a placing agent of four bond placing exercises of the listed company. The four people conspired together to arrange for the placing agent to further engage another company as the sub-placing agent for the four bond placing exercises. The sub-placing agent subsequently received around HK\$49.6 million as sub-placing commission from the listed company, and HK\$1.2 million as bonus from the placing agent under the sub-placing arrangements. In fact, the placing agent did not place any bonds with any investor and the sub-placing agent was the actual placing agent.<sup>18</sup>
- ▶ In November 2021, three persons, including a then chairman and a then substantial shareholder of a listed company, a merchant, and an employee of the merchant were charged with conspiracy to defraud the SEHK, the listed company and its board of directors and shareholders by concealing a "backdoor listing" agreement when placing convertible notes to increase the share capital of the listed company and dealing with crime proceeds of HK\$42 million. The three persons jointly faced two counts of conspiracy to defraud contrary to common law. The merchant and the employee of the merchant also faced one count of dealing with property known or reasonably believed to represent proceeds of an indictable offence contrary to section 25(1) of the Organized and Serious Crimes Ordinance (Cap. 455).<sup>19</sup>
- ▶ In the same month, the ICAC arrested nine persons, including three certified public accountants ("CPA") and two audit staff of the CPA firm and its sister company. The five CPAs and auditing staff have allegedly accepted bribes totaling over HK\$1 million from the chairman of the construction firm for compiling a false accountants' report for the construction firms' submission to the HKEX in relation to its listing on the Main Board.<sup>20</sup>

As can be seen from the above sample cases, many of the enforcement actions for corruption related offences involved both senior and junior personnel from large as well as small organizations in diverse industries, including construction, education, finance, retail / trading and transportation. Additionally, the personnel concerned worked in different functional areas, such as finance, human resources, marketing, operations, strategy and technology and equipment. They were also allegedly involved in a variety of misconduct, including misconduct in public office and/or failing to declare conflicts of interests, obtaining advantage by deception, accepting bribes and illegal rebates from clients / employees, conspiracy to steal, using false documents to mislead / pervert the course of public justice, as well as fraud / conspiracy to defraud. Of particular concern is the alleged involvement of "gatekeepers", such as directors, senior management and professionals from underwriting and accounting firms involved in the listed sector, in the misconduct.

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<sup>16</sup> [ICAC, HKSAR - Press Releases - ICAC statement; SFC and ICAC search a listed company and an underwriter | Securities & Futures Commission of Hong Kong](#)

<sup>17</sup> [ICAC, HKSAR - Press Releases - ICAC statement; SFC and ICAC joint operation on listed company's suspicious money lending activities | Securities & Futures Commission of Hong Kong](#)

<sup>18</sup> [SFC-ICAC operation leads to conviction of Convoy Global's former senior executives | Securities & Futures Commission of Hong Kong; ICAC, HKSAR - Press Releases - Four charged by ICAC sentenced for conspiracy to defraud over bonds placement of listed company](#)

<sup>19</sup> [ICAC, HKSAR - Press Releases - Merchant further charged by ICAC with conspiracy to defraud over 'backdoor listing' of listed company and money laundering](#)

<sup>20</sup> [ICAC, HKSAR - Press Releases - Three accountants among nine arrested by ICAC for alleged bribery over listing of Macao construction firm](#)

## The New Requirements to establish anti-corruption and whistleblowing policies and procedures effective from 1 January 2022

The revised Listing Rules and CG Code with the New Requirements will come into effect on 1 January 2022, and will apply to corporate governance reports for the financial year commencing on or after 1 January 2022.

To assist compliance with the New Requirements, the HKEX published the CG Guide to provide guidance to issuers. The CG Guide should be read alongside the Listing Rules (including the CG Code), and is *“intended to stimulate the board’s thinking on how they can carry out their role most effectively, including how the principles in the CG Code are applied and reported on.”*<sup>21</sup>

As stated in the CG Guide, having anti-corruption and whistleblowing policies and procedures are core to establishing a healthy corporate culture and promoting high ethical standards. An effective whistleblowing system can help detect and deter misconduct or malpractice.

The key provisions in the CG Guide on establishing the anti-corruption and whistleblowing policies and procedures follow:-

	Anti-corruption Policies & Procedures	Whistleblowing Policies & Procedures
<b>Purpose of the policy</b>	The policy should demonstrate the issuer’s support for anti-corruption law and regulations, and promote an anti-corruption culture within the issuer.	The policy should enable employees and those who deal with the issuer, e.g. customers and suppliers, to voice concerns, in confidence and anonymity, with the audit committee (or a designated committee comprising a majority of independent non-executive directors) about possible improprieties in matters relating to the issuer.
<b>Scope of the policy</b>	<p>The policy should include:</p> <ul style="list-style-type: none"> <li>(a) the types of breaches and conduct issues to which the policy applies;</li> <li>(b) personnel to which the policy applies - this should cover employees at all levels, external parties doing business with the issuer and those acting in an agency / fiduciary capacity on behalf of the issuer (e.g. agents, consultants and contractors).</li> </ul>	<p>The policy should include:</p> <ul style="list-style-type: none"> <li>(a) the types of breaches and conduct issues to which the policy applies, with examples of the major and minor misconduct, and the level of substantiation that may justify or warrant reporting;</li> <li>(b) personnel to which the policy applies (including implicated parties and the reporting parties) - this should cover employees at all levels and other stakeholders who might be victims of staff misconduct, including business counterparties (e.g. suppliers);</li> <li>(c) relevant committee / department / personnel responsible for the day-to-day implementation and oversight of the policy, reviewing and investigation of reports, and consideration and approval of changes to the policy.</li> </ul>

<sup>21</sup> CG Guide: HKEX\_GFBD\_EN\_211210\_v5

<p><b>Matters that may be included in the policy</b></p>	<p>The policy may include the following:</p> <p><b>Culture / integrity requirement:</b></p> <ul style="list-style-type: none"> <li>(a) the issuer’s desired culture, with integrity, honesty, fairness, impartiality, and ethical business practices being stated as one of the core values of the issuer;</li> <li>(b) integrity and conduct requirements expected of the issuer’s personnel, including compliance with POBO, amongst other relevant laws of other countries / regions as appropriate.</li> </ul> <p><b>Conflicts of interest:</b></p> <ul style="list-style-type: none"> <li>(a) a statement of policy requiring directors and employees to avoid conflicts of interest in carrying out the issuer’s business and to declare any conflicts of interest as appropriate;</li> <li>(b) guidelines on handling of conflicts of interest.</li> </ul> <p><b>Top-level commitment:</b> an unequivocal statement of top-level commitment to adopt ethical and anti-corruption business practices, high standard of integrity and zero tolerance of corruption.</p> <p><b>Customer due diligence measures:</b> a requirement to include proper customer due diligence and record-keeping measures, policies or procedures taking into account factors including products and services offered, types of customers and geographical locations involved.</p> <p><b>Anti-corruption program:</b></p> <ul style="list-style-type: none"> <li>(a) description of the issuer’s anti-corruption program, including the mechanism for the identification and assessment of corruption risks and the controls in place to mitigate the risks;</li> <li>(b) appropriate policies and controls to manage risks and maintain records when offering or accepting gifts, entertainment or other advantages, and when engaging in charitable donations, political expenditure or recruitment;</li> <li>(c) restrictions on the acceptance of advantages from persons having business dealings with the issuer where no undue favour is involved;</li> <li>(d) proper training for management and employees likely to be exposed to bribery, corruption, money laundering, and terrorist financing.</li> </ul>	<p>The policy may include the following:</p> <p><b>Statement of intent / pledge:</b> a statement about the issuer’s commitment to high probity standards and ethical business practices, encouragement of reporting concerns and actual or suspected misconduct or malpractice by any staff and/or external parties in any matter related to the issuer.</p> <p><b>Protection against retaliation:</b> a statement pledging confidentiality, anonymity, timely handling of reports, assurance of fair treatment and protection from retaliation, and the relevant policy and measures.</p> <p><b>Whistleblowing program:</b></p> <ul style="list-style-type: none"> <li>(a) a description of the different means for making reports and the ways anonymous reports will be handled;</li> <li>(b) establishment of appropriate reporting channels with relevant mandates (as reports may be made against staff at different levels);</li> <li>(c) a requirement to centrally record all reports and the corresponding follow up actions to ensure accountability;</li> <li>(d) a requirement that an internal inquiry should not jeopardize any future investigation by a law enforcement agency (including the steps to ensure the appropriate handling of suspected criminal offences reported or revealed during the internal enquiry), and that a report should be made to appropriate law enforcement agency once there is reasonable suspicion of a criminal offence.</li> </ul> <p><b>Consequence of false reports:</b> a policy against knowingly / irresponsibly making false allegations or malicious allegations and its consequences.</p> <p><b>Disclosures:</b> a requirement to disclose the policy (or its summary) on the issuer’s websites and the reporting channels.</p> <p><b>Periodic review:</b> a requirement to review the whistleblowing mechanism periodically to improve its effectiveness and employee confidence in the process and to encourage a “speak up” culture across the issuer.</p>
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	<p><b>Disclosures:</b> a requirement to disclose the anti-corruption policy (or its summary) on the issuer’s website.</p> <p><b>Breaches of policy:</b></p> <ul style="list-style-type: none"> <li>(a) a statement of policy setting out the criminal and civil penalties and the reputational damage that may arise if the issuer is involved in any form of bribery / corruption, money laundering and financing of terrorism, whether in Hong Kong or elsewhere;</li> <li>(b) a requirement to report breaches of the policy to the appropriate person / body within the issuer, and to bring to the board’s attention material incidents relating to breaches of the policy;</li> <li>(c) disciplinary measures, including appropriate disciplinary action or referral to law enforcement agencies for serious breaches.</li> </ul> <p><b>Periodic review:</b> a requirement to periodically review and ensure the effectiveness of the policies, including making changes when and where required.</p>	
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## Key takeaways / recommendations

The CG Guide is a good starting point for issuers and organizations who are seeking to establish anti-corruption and/or whistleblowing policies and procedures, or to modify their existing policies and procedures. To ensure that the policies and procedures are fit for purpose and effectively implemented, issuers and organizations should also consider taking the following steps:

### *To ensure well designed policies and procedures*

1. ensure that the policies and procedures are designed around your organization’s risk profile - one size does not fit all;
2. ensure that the policies and procedures are clearly written, applicable, accessible and comprehensible to all employees;
3. ensure that there is periodic training of staff and mechanisms to measure the effectiveness of the policies and procedures;
4. ensure that the whistleblowing program provides a confidential and safe system for reporting suspected non-compliance, and is properly resourced;
5. ensure that there is a system for conducting proper risk based due diligence to identify and monitor dealings with all third parties and when assessing potential targets, including for corrupt activity;

***To ensure effective implementation***

6. ensure that the *“tone from the top”* / commitment to compliance is demonstrated across the whole organization; not just at senior management level;
7. ensure clear designation of properly qualified personnel with compliance responsibilities and allocation of sufficient resources to administer and support the anti-corruption and whistleblowing programs;
8. ensure that the anti-corruption and whistleblowing programs are properly enforced through clear and consistent disciplinary procedures and proper incentives for compliance;

***To ensure the program works in practice***

9. ensure periodic internal reviews are undertaken to evaluate compliance risks and effectiveness of the existing programs;
10. ensure timely, thorough and properly scoped investigations of suspected misconduct is undertaken by qualified personnel;
11. ensure that prompt analysis of root causes is conducted and remedial action is taken to address identified issues.

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