

Anti-Corruption Compliance Essentials for Consulting Engineers

The Association of Consulting Engineers of Hong Kong

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Today

- How international anti-corruption laws such as UK Bribery Act impact businesses in HK and Asia Pac
- Corruption risks in infrastructure projects in the region
- Spotting bribes and hypothetical scenarios
- The importance of compliance

OVERVIEW OF THE UK BRIBERY ACT: AN INTERNATIONAL GOLD STANDARD?

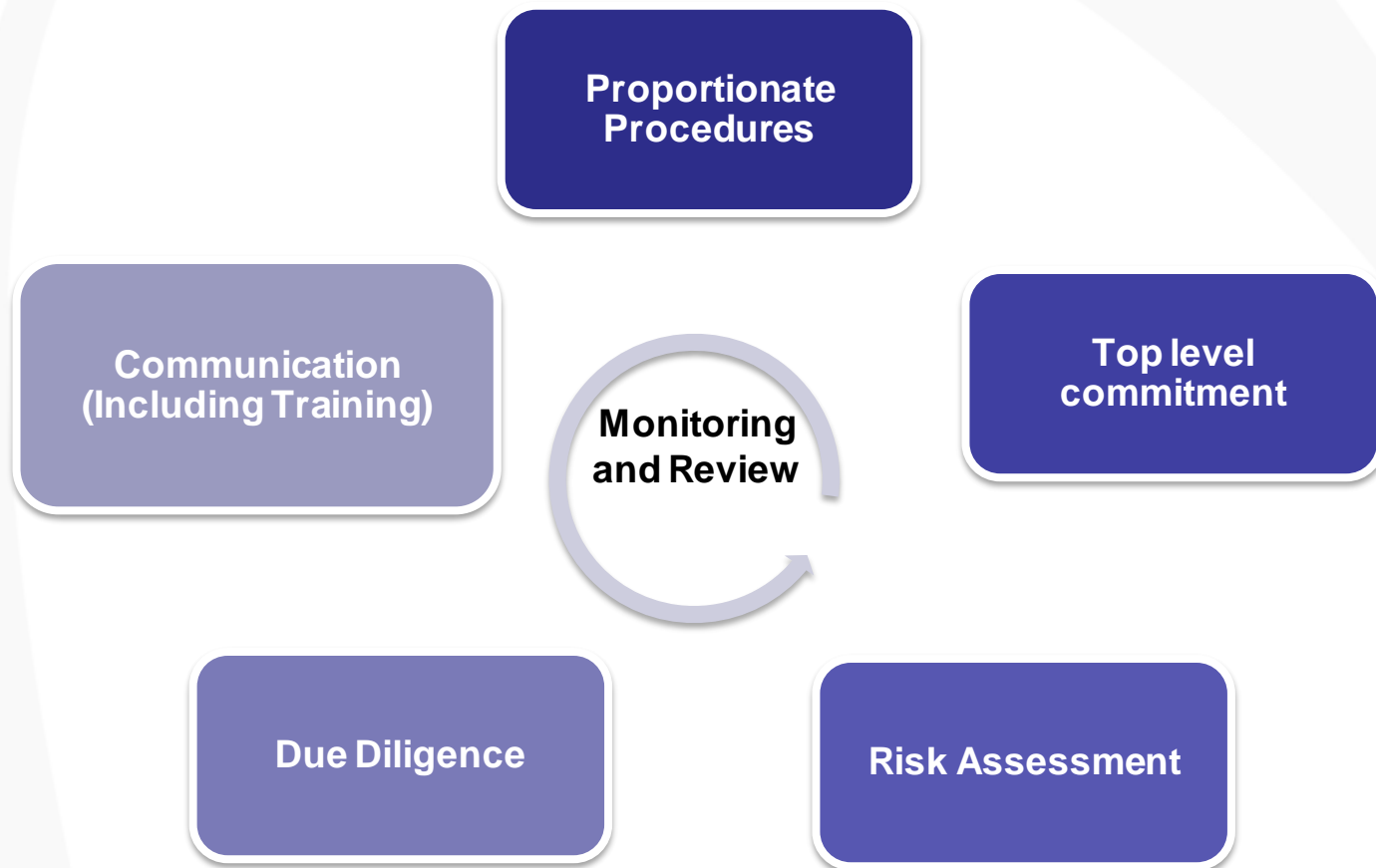
UK Bribery Act 2010 on a page

- Corporate offence of failure to prevent bribery (section 7)
- Defence of 'adequate procedures'
- 3 other offences replaced previous UK corruption laws:
 - Bribing another person (section 1)
 - Being bribed (section 2)
 - Bribing a foreign public official (section 6)
- Directors' and senior officers' separate criminal liabilities (section 14)
- Extraterritorial effect

The UK Bribery Act Corporate Offence... and Defence

- A **'commercial organisation'** (includes a UK incorporated company or one carrying on part of a business in the UK) is guilty of the offence if:
 - an 'associated person' bribes another person **anywhere in the world**, and
 - associated person intends to obtain/retain business or business advantage for commercial organisation
- **'Associated person'** is anyone who performs services for or on behalf of the organisation in whatever capacity
 - Who are your associated persons?
- **Defence** of having in place 'adequate procedures' = an effective compliance programme

Anti-Corruption Compliance... UK Guidance



... And US FCPA Guidance:

1. Commitment from senior management and a clearly articulated policy against corruption
2. Code of conduct and compliance policies and procedures
3. Oversight, autonomy, and resources
4. Risk Assessment
5. Training and continuing advice;
6. Incentives and disciplinary measures;
7. Third-party due diligence and payments;
8. Confidential reporting and internal investigation;
9. Continuous improvement: periodic testing and review; and
10. M&A: Pre-acquisition due-diligence and post-acquisition integration

Some compliance myths

It was only \$50 each time we obtained a permit.

It should be fine. The contract with the local sub-contractor had a clause in where they promised on their mother's life not to pay bribes.

The other party is very sophisticated with compliance... they even have their own anti-corruption policy that they got off the internet.

It's all pretty low risk. We have a local agent who helps us with our bids to the Ministry of Infrastructure

Anti-corruption training example

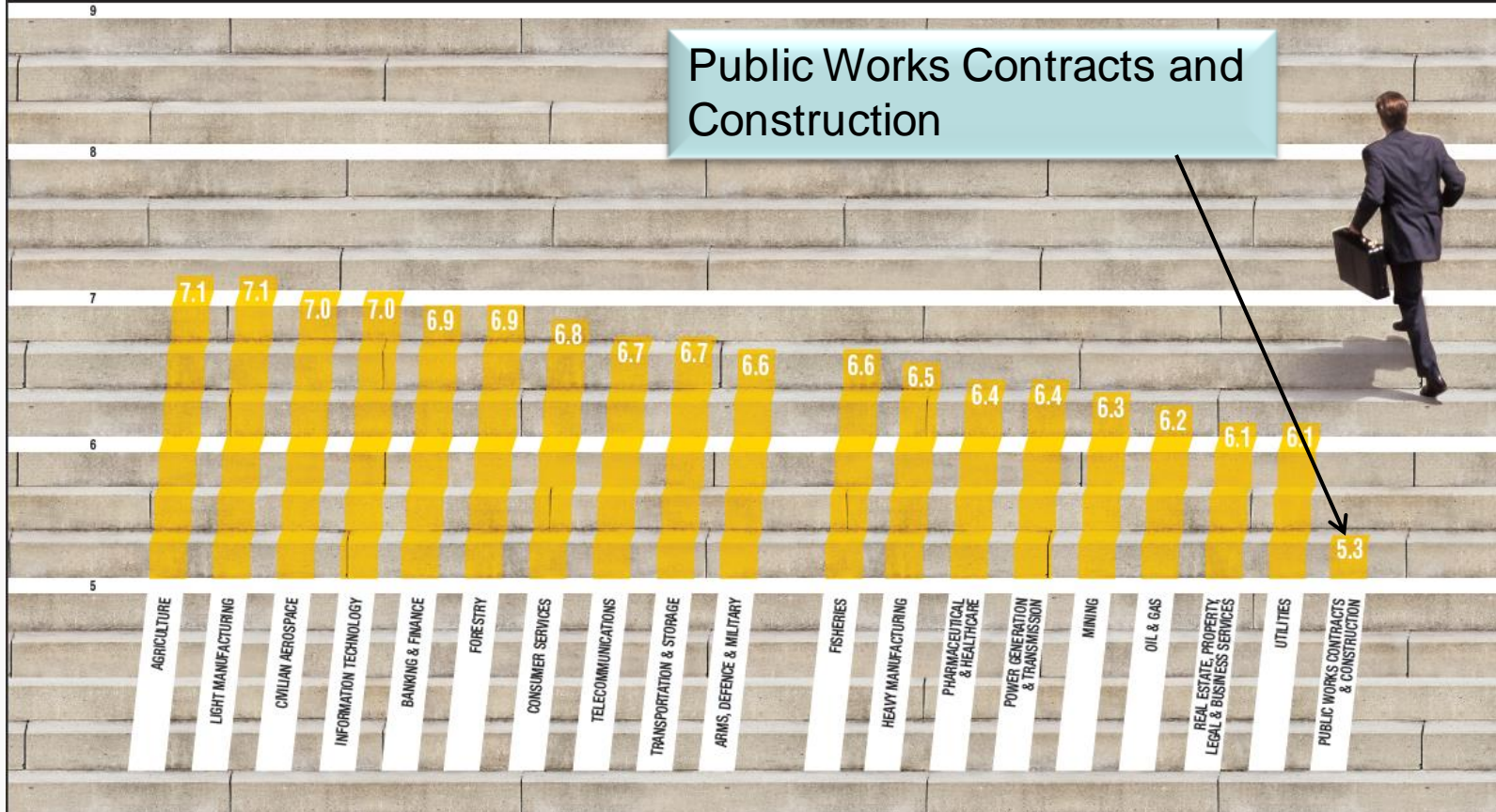
- A concern arises at X Co about how a Project Exec in the China business has won new business. The GC looks through the training records of the Project Exec:
 - He was trained 7 times on anti-corruption policies between 2008 and 2014
 - He received 35 corruption compliance reminders by email
 - The company required the Project Exec to certify his compliance with the UK Bribery Act and US FCPA on multiple occasions
- Does this help the X Co if there is a problem?

SECTOR AND ENFORCEMENT RISKS

Perceptions of sector risks



Likelihood of companies to bribe abroad, by sector



Construction Sector Risks

Some corruption touch points?

- Planning approvals from governmental authorities
- Design phase risks
- Facilitation payments e.g. licences/permits for land development and construction phases
- Project completion and disputes risks



Top ten FCPA enforcement actions

1. **Siemens** (Germany): \$800 million (2008)
2. **Alstom** (France): \$772 million (2014) **NEW!**
3. **KBR / Halliburton** (USA): \$579 million (2009)
4. **BAE** (UK): \$400 million (2010)
5. **Total SA** (France) \$398 million (2013)
6. **Alcoa** (U.S.) \$384 million (2014)
7. **Snamprogetti Netherlands B.V. / ENI S.p.A** (Holland/Italy): \$365 million (2010)
8. **Technip SA** (France): \$338 million (2010)
9. **JGC Corporation** (Japan) \$218.8 million (2011)
10. **Daimler AG** (Germany): \$185 million (2010)



ANTI-CORRUPTION COMPLIANCE – SPOTTING BRIBES AND PRACTICAL EXAMPLES

Spotting bribes – Help from the regulators!

- US FCPA Guidance offers useful insights on how bribes can be mischaracterised in accounting records
- The UK SFO publishes list of corruption indicators
<http://www.sfo.gov.uk/bribery--corruption/corruption-indicators.aspx>



Commissions or Royalties

Consulting Fees

Sales and Marketing Expenses

Scientific Incentives or Studies

Travel and Entertainment Expenses

Rebates or Discounts

After Sales Service Fees

Miscellaneous Expenses

Petty Cash Withdrawals

Free Goods

Intercompany Accounts

Supplier / Vendor Payments

Write-offs

"Customs Intervention" Payments

Example Warning Signs

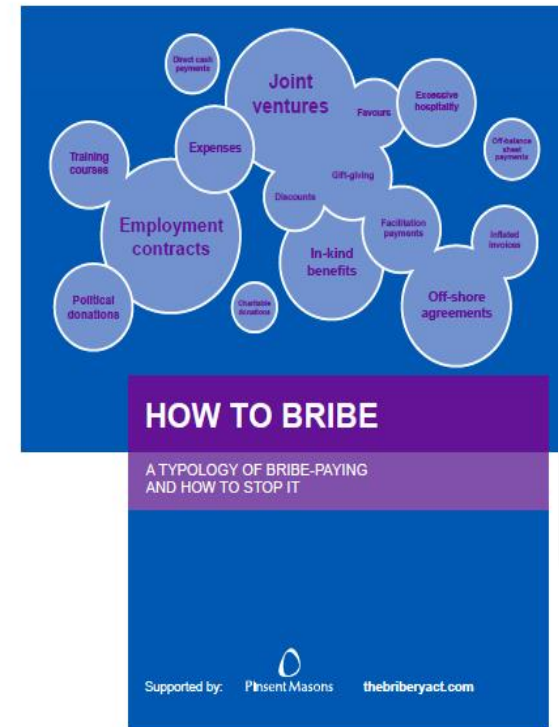


- Abnormal payments methods or structures, e.g.
 - in cash
 - high or unusual commission percentages
- Lavish gifts or hospitality
- Lack of transparency in business dealings
- Bypassing of usual processes
- Conflicts of interest

Typologies of corruption

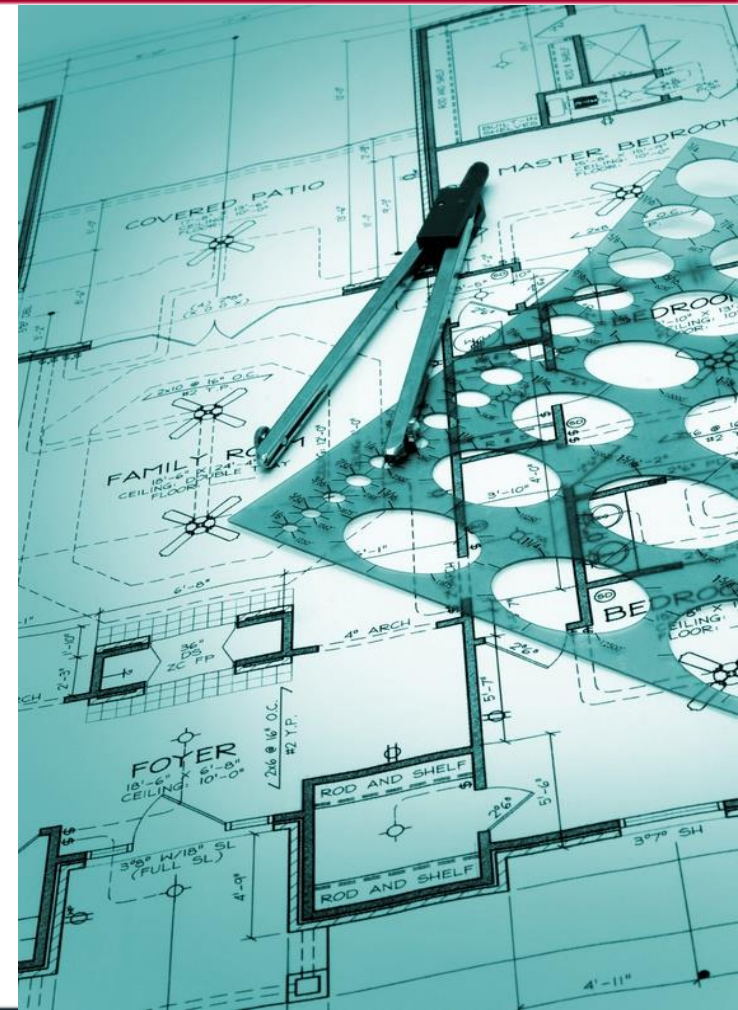
Risk assessment: understanding regional and local typologies of bribery

<http://www.transparency.org.uk/our-work/publications/15-publications/833-how-to-bribe-a-typology-of-bribe-paying-and-how-to-stop-it>



Hypothetical 1: Specification risk

- A Supplier of cladding products made improper payments to Ministry of Buildings officials
- Supplier's local sales incentive policy required its sales personnel to use their own commissions to disguise these payments
- Ministry officials then required certain specifications on public works projects which favoured Supplier's products at future tenders
- Conduct uncovered at Supplier's own compliance training



Hypothetical 2: Bidding for a new phase



- A contractor asks their supplier to raise a fictitious invoice for the supply of materials
- The contractor pays the invoice and then asks the supplier for a credit note and reimbursement in cash.
- The cash is used by the contractor to funnel improper payments to public officials in a procurement department of the Ministry of Public Works.
- The contractor is awarded work in a further phase of the project

Hypothetical 3: Contract administration

- A firm of consultant engineers is assisting a project owner with assessment of claims from contractors on a large infrastructure project.
- While negotiations over an aspect of the project are ongoing, one of the piling contractors invites the consultant engineers to an all expenses paid training event over 4 days in a 6 star golf resort.
- The agenda includes a half day presentation on the contractor's new piling capabilities and a shopping trip

Hypothetical 4: Defective materials

- On a rail project, a consultant engineer learns that there are potential defects in the construction of a section of the line crossing a busy road
- The relevant contractor responsible for the defective work offers to give the engineer an expensive watch and make a downpayment on a luxury apartment, if the engineer agrees to sign off on the satisfactory completion of the section of the rail line.



Top tips



#1 Be vigilant to warning signs

#2 Always report concerns

Questions



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