Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

NORTON ROSE FULBRIGHT

# Business ethics and anti-corruption

## Asia Pacific insights

**Issue 08 / January 2016**

**In this issue:**

Privilege or sophistry?

Managing supply chain risk – moving beyond anti-corruption compliance

Hong Kong's Competition Ordinance

Hong Kong: revisiting the offence of misconduct in public office

Anti-Corruption in Thailand: new amendment strengthens rules on corporate bribery

# From the editor

I am delighted to bring to you this eighth issue of *Business ethics and anti-corruption: Asia Pacific Insights*.

We begin by exploring issues concerning the claim of legal professional privilege in the context of regulatory investigations – an area where we have seen various changes over the years and an area where different jurisdictions have taken on different approaches in their development.

Our next article looks at supply chain management and how the globalisation of supply sources and corporations' thrive for competitiveness are exposing businesses to unprecedented risks, both in terms of tangible losses and reputational losses. Proper supply chain management will include not just the management of bribery and corruption risks, but also human rights, health and safety and environmental risks. With multinational corporations being constantly targeted by the media and consumers increasingly becoming better informed, supply chain management is not something which corporations should overlook.

Next we explore some of the most up-to-date and high profile developments in the business ethics and anti-corruption space in Hong Kong. The Competition Ordinance which came into effect in December 2015 introduces a whole new regulatory regime in Hong Kong impacting a broad range of industries and businesses. We focus on how some of the entrenched practices of the construction industry are being challenged by the new legislation. Staying in Hong Kong, we turn our focus to a long-awaited case concerning charges for misconduct in public office against the former Chief Executive, Donald Tsang Yam Kuen. This unprecedented prosecution has brought to light some of the issues which have been vexing legislators and law enforcement agencies regarding the anti-bribery and misconduct in public office regime in Hong Kong. We consider the current law and its shortcomings.

Finally, we look at the newly introduced amendment to the Thai anti-corruption legislation. The amendment, among other things, brings Thailand into line with the 2003 UN Convention Against Corruption and introduces new offences for bribery involving foreign government officials and international organisations.

We trust that you will find this publication useful.

**Alfred Wu**
**Partner, Hong Kong**
Tel +852 3405 2528
alfred.wu@nortonrosefulbright.com

### Business ethics and anti-corruption in Asia Pacific

Norton Rose Fulbright advises clients across the globe on all matters relating to business ethics and anti-corruption. Within Asia Pacific, we have acted in major corruption investigations and have a track record of advising on complex, cross-border matters. We are amongst the largest global legal practices in the region. Our team operates across offices in Bangkok, Beijing, Hong Kong, Jakarta, Shanghai, Singapore, Tokyo, Brisbane, Melbourne, Perth and Sydney.
The quarterly review *Business ethics and anti-corruption: Asia Pacific insights* explores the impact of anti-corruption developments in the Asia Pacific region and offers practical insights in response to topical issues.

**See also**
*Business ethics and anti-corruption world*
A global bulletin published by Norton Rose Fulbright LLP

## Contents

Privilege or sophistry? 03

Managing supply chain risk – moving beyond anti-corruption compliance 07

Hong Kong's Competition Ordinance 10

Hong Kong: revisiting the offence of misconduct in public office 14

Anti-Corruption in Thailand: new amendment strengthens rules on corporate bribery 17

# Privilege or sophistry?

## An examination of legal privilege in internal investigations in the Asia Pacific region, in the United States and in the UK.

When is a document (a witness interview, for example) protected by privilege in an internal investigation? The SFO in the UK has in the last year taken a strong position on privilege claims, often refuting their validity. We look at policy and cases involving legal professional privilege and internal investigations across the UK, the US (including the Upjohn warning), Singapore, Hong Kong and Australia. Maintaining legal professional privilege over documents created by in-house counsel is not easy. We have pulled together our findings to create an unofficial, pragmatic code of practice designed for in-house counsel in order to strengthen their position in the event of an internal investigation.

A code of practice on legal privilege for in-house counsel.

- Keep legal advice about the investigation separate from operational advice.
- Document the dominant purpose of your legal advice.
- Avoid referring to legal advice in board minutes and papers.
- If legal advice must be discussed, the minutes should state simply that an issue involving the subject of legal professional privilege was discussed (rather than dealing with that issue in detail).
- If the legal advice must be recorded, keep it in a separate document which can be annexed to the minutes or in a separate section with the heading 'Subject to legal professional privilege'.
- Do not refer to specific legal advice in correspondence with other parties. This includes third party vendors who might have been retained to assist with an investigation.
- Check that internal investigation policies are in place and that these create a clear chain of reporting findings, guaranteeing that legal advice is only provided to those who need it and upon confidential terms.
- Be admitted to practice and maintain a current practising certificate (or report to someone who does).
- Sign legal advices (including email advices) in your capacity as the organisation's solicitor, never in a dual capacity.

## Assessing risk in the loss of legal privilege

The legal systems of the world are broadly split into those jurisdictions that recognise the concept of legal privilege and those that do not. Even within the category of jurisdictions where privilege is an entrenched part of the legal tradition, there are variations as to the source of the protection, whether the scope extends to in-house legal counsel and the circumstances under which privilege can be waived or preserved.

Conducting investigations into allegations of fraud or corruption can present serious legal and commercial risk if privilege cannot be asserted over the findings of those investigations. That risk may be compounded if boards choose to conduct fraud or corruption investigations in-house, often with compliance managers or in-house counsel reporting the findings of those investigations directly to the board. Waiving or losing privilege can have serious consequences if any conclusions (or preliminary findings) about who is culpable needs to be disclosed to a regulator before an organisation has concluded its investigation. This can have repercussions for the organisation and for the directors themselves.

## UK/approach to legal privilege

In 2014, the UK's Serious Fraud Office started warning organisations against asserting privilege over material as a way of resisting SFO fact-finding efforts in response to allegations of bribery and corruption. SFO Director David Green QC talked of privilege claims that 'amount to a strategy of deliberate obstruction' and indicated that the SFO will scrutinise all assertions of privilege over materials created during an internal investigation and might challenge those claims.

The SFO may start expecting corporations to hand over reports prepared by in-house counsel which summarise witness interviews – documents which traditionally in Australia, the UK and the US would attract legal professional privilege. David Green was reported by the London press in 2014 as saying that 'claims on legal privilege on witness statements taken by external lawyers can be questionable'. SFO General Counsel Alun Milford also said that 'the assertion of privilege over witness first accounts is unhelpful and impossible to reconcile with an assertion of a willingness to cooperate'. So is a document properly protected by privilege or is it mere sophistry?

## Singapore/approach to legal privilege

In Singapore, the doctrine of legal privilege is seen as 'a fundamental condition upon which the whole administration of justice rests'.

Under the Singapore Evidence Act, a legal adviser may not disclose any communication made to them by or on behalf of their client. Neither may the legal adviser state the contents or condition of any document with which they have become 'acquainted'. The adviser may not disclose any advice given by them to their client if these events occurred 'in the course and for the purpose of his employment as such advocate or solicitor'.

While it is unclear in certain jurisdictions whether privilege protection extends to communications with in-house counsel, the Singapore Evidence Act was amended in 2012 to extend legal advice privilege to communications between in-house counsel and their client. A legal counsel is prohibited from doing any of the following:

- disclosing communication made to them
- stating the contents or conditions of any document with which they have become acquainted
- disclosing any legal advice given to any officer or employee in the entity, in the course of and the purpose of their employment.

The Singapore Evidence Act defines legal counsel as 'a person…who is an employee of an entity employed to undertake the provision of legal advice or assistance in connection with the application of the law or in any form of resolution of legal disputes'. This allows for communication with in-house counsel to be privileged within a group of companies and reflects the commercial practice that legal counsel are often employed by one corporate entity but provide advice to a number of companies in the group.

The 2012 amendments were made to enhance Singapore's stature as an international hub for legal and commercial services.

## Australia/approach to legal privilege

In Australia, legal professional privilege is seen as a substantive right that cannot be abrogated by statute. Australia has adopted the 'dominant purpose test' (in line with other Common Law jurisdictions) now enshrined in the Uniform Evidence Acts.

In-house counsel conducting internal investigations must be careful to maintain the confidence in the documents or communications over which privilege is to be asserted. The issue of legal professional privilege can be difficult for in-house or corporate counsel, because of the perceived difference in the role that in-house counsel fulfil, as opposed to an outside lawyer. Throughout investigations, in-house counsel must be vigilant in maintaining independence and segregating legal advice from other considerations facing the organisation.

Where a decision has been made to investigate an allegation or complaint in-house, and – if the issue was raised by a whistleblower – adequate protections are in place, it is possible that a company-led investigation will not be covered by legal professional privilege. The current trend of decisions in Australia is that a report into an incident or investigation prepared or commissioned by an in-house lawyer may not be considered by a court for the 'dominant purpose' of providing advice or for use in litigation. This is because in most cases those reports have multiple purposes.

Even where it is accepted that the chief reason for the report or investigation is for the purpose of providing advice or for use in anticipated litigation, Australian courts have not accepted this as the dominant purpose for the report of an investigation. Why is

this? The New South Wales Court of Appeal explained it here, 'an in-house solicitor is, by reason of his or her position, more likely to act for purposes unrelated to legal proceedings than an external solicitor' (*Sydney Airports Corp Ltd v Singapore Airlines Ltd* [2004]). Tamberlin J stated that an in-house counsel 'may be in a closer relationship to the management than outside counsel and therefore more exposed to participation in commercial aspects of an enterprise' (*Seven Network Ltd v News Ltd* [2005]).

To best ensure privilege can be asserted, any investigation has to be properly established so that queries from a regulator can be satisfactorily dealt with.

A word of caution concerning the voluntary disclosure of compliance protocols or manuals to regulators in order to demonstrate that adequate controls are in place: in 2015, the New South Wales Supreme Court held that disclosing a compliance manual (and relying on a course of conduct in obtaining and acting on legal advice in order to substantiate its defence and avoid relief being sought) amounted to a waiver of privilege in relation to that legal advice (*Australian Securities & Investment Commission v Park Trent Properties Group Pty Ltd* [2015]).

It is important to be absolutely clear in setting out the parameters and scope of any investigation. Doing this at the outset might assist in establishing a claim for legal professional privilege over material produced during the course of the investigation. The following (rather lengthy) example illustrates this point.

In 2014, the Full Court of Australia's Federal Court came to a decision on *Bartolo v Doutta Galla Aged Services Ltd*. Mr Bartolo, an employee of Doutta Galla Aged Services (DGAS), challenged DGAS's assertion of privilege over a report prepared by solicitors commissioned to investigate allegations made against Mr Bartolo. Mr Bartolo claimed that, as the report was made during an investigation separate from the proceedings, it was not produced for the dominant purpose of obtaining legal advice or use in litigation, and he sought disclosure. The Federal Circuit Court held that the dominant purpose of the investigation was to provide legal advice and the report was subject to legal professional privilege. However, the Court found DGAS had waived privilege when it set out the reasons for Mr Bartolo's dismissal in its defence and referred to the board's recommendations to dismiss Mr Bartolo – which were based on the findings of the investigation.

The *Bartolo v DGAS* decision highlights the principles of privilege in relation to documents produced in internal investigations and the circumstances in which such privilege will be waived. It is a reminder to organisations to be clear about (and state clearly) where documents are prepared for obtaining advice or in preparation for litigation, and to have a clear understanding of the circumstances in which the privilege will cease to apply, particularly in the context of subsequent legal proceedings.

The importance of clarity in the status of documents was underlined in another case: the Supreme Court of Western Australia rejected a claim for privilege concerning communications between accountants and the company secretary (who was also the company solicitor for the purpose of overseeing investigations in preparation for the proceedings) (*Belle Rosa Holdings Pty Ltd v Hancock Prospecting Pty Ltd* (unreported, 2105 of 1992). The court held that the communications were made for mixed purposes by the company secretary, who was not acting in his capacity as in-house solicitor at the relevant time.

## United States/approach to legal privilege

In 1981, the US Supreme Court held that the attorney-client privilege is preserved between the company and its counsel when its counsel communicates with the company's employees, despite the rule that communications with third parties constitute waivers of the attorney-client privilege.

This judgment has led to established practice in an internal investigation whereby counsel (in-house or external) informs the interviewee that they represent the company alone and not the interviewee as an individual. This is known as 'the Upjohn warning'. The interviewee is also told that the attorney-client privilege over communications between counsel and interviewee belongs solely to, and is controlled by, the company. Finally, counsel informs the interviewee that it is the company's prerogative to choose to waive this privilege and disclose what the interviewee says to a government agency or other third party.

On that basis, the interview notes recorded by counsel are legally privileged, especially where they are not a verbatim account of what transpired but contain the impressions formed by the lawyer.

Taking steps to ensure privilege is maintained should always be a key consideration for the investigation team.

In 2014, there were several challenges in the US to privilege assertions over materials in connection with internal investigations or the provision of compliance advice. One example can stand for all.

The US Court of Appeals for the DC Circuit affirmed that attorney–client privilege will apply to internal investigation files only where 'obtaining or providing legal advice was one of the significant purposes of the internal investigation… even if there were also other purposes for the investigation and even if the investigation was mandated by regulation rather than simply an exercise of company discretion' (Kellogg Brown & Root, Inc No. 14-5055, 2014).

## Hong Kong/approach to legal privilege

In 2015, the Court of Appeal in Hong Kong made it clear that internal confidential documents created within a company for the dominant purpose of obtaining legal advice would attract legal advice privilege.

The 'client' for external lawyers is the company and is not restricted to the legal department and/or the board of directors of a company. The court recognised that the legal department of the company was unlikely to have all the knowledge and skills required to put together suitable instructions for external lawyers and stated that there is a need to protect the process of the gathering of information from employees of different departments or various levels for the purpose of obtaining legal advice. (*Citic Pacific Limited v Secretary for Justice and Commissioner of Police* [2015].)

The court saw this as a fundamental right protected by article 35 of Hong Kong's Basic Law. In taking this position, Hong Kong has departed from the narrow definition of 'client' laid down by the English Court of Appeal (*Three Rivers District Council v Governor and Company of the Bank of England* (No 5) [2003]).

**Previously published**
An earlier version of this article by Ben Allen was published on financierworldwide.com in July 2015

**Sources**
*Upjohn Company v United States*, 449 US 383 (1981)

Cambridge Symposium on Economic Crime, 2014, UK

*The Times* August 2014

Annual Employed Bar Conference, March 26, 2014, UK

*Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and Other Appeals* [2007] 2 SLR(R) 367

Singapore Evidence Act, sections 3, 128, 131

For more information contact:

**Abigail McGregor**
**Partner, Melbourne**
Tel +61 3 8686 6632
abigail.mcgregor@nortonrosefulbright.com

**Wilson Ang**
**Partner, Singapore**
Tel +65 6309 5392
wilson.ang@nortonrosefulbright.com

**Alfred Wu**
**Partner, Hong Kong**
Tel +852 3405 2528
alfred.wu@nortonrosefulbright.com

# Managing supply chain risk – moving beyond anti-corruption compliance

This article was first published in collaboration with *Ethixbase*.

## Ways your supply chain can impact your brand

- In Europe in 2013, horse meat was found in a number of products labelled as 'meat', 'pork' and 'beef'. The scandal revealed a major breakdown with traceability in the food supply chain and fraud. Major retailers acted to cease relationships with the brands that had supplied horse meat. Sales of frozen hamburgers fell by 43 per cent in the EU over the coming months.

- A corporation engaged intermediaries in a variety of markets to introduce it to potential government purchasers. Allegations have been made of systemic bribery by these intermediaries. The corporation is being prosecuted, as are its officeholders. It has been excluded from bidding on new projects in some jurisdictions pending the outcome of the prosecution.

- An NGO has recently released a score card for numerous participants in the Australian fashion industry. All major newspapers around Australia report on the human rights performance of the companies reviewed.

- In 2014, Oxfam Australia released a report alleging that Australian banks had financed corporations involved in illegal logging, forced evictions, inadequate compensation, food shortages and child labour. In response to the report, each of the banks agreed to work with Oxfam to look into the issues raised.

More than ever, businesses are using global supply chains to remain competitive. Often this involves businesses transferring parts of their supply chains to developing nations to benefit from reduced costs, particularly labour costs. At the same time as supply chains are becoming global and unwieldy, the community, regulators and NGOs are holding businesses accountable for all parts of their supply chain. This poses real challenges for businesses, whose reputations are now reliant upon the conduct of disparate suppliers, over whom they have traditionally sought to have little control.

What follows is a summary of some of the different ways that a business's supply chain can impact its reputation. In short, supply chain management has become an essential element in minimising a fundamental brand risk. We finish up with some thoughts about managing that risk.

## Quality and safety

As a critical threshold issue, a business needs to be able to rely upon a supplier to provide products or services of a consistent quality and safety.

The recall of frozen berries sourced from China earlier this year demonstrated the supply chain risk for businesses in the food and retail sector, even in circumstances where it is denied that there was a link between the berries and the hepatitis A outbreak. Supply chain risk is also substantial in the construction and extractive industries. These industries engage numerous contractors and subcontractors on projects, all of which have the ability to impact upon the reputation of the head contractor. A major concern for many mining companies with projects in developing countries can be the behaviour of the private security firms engaged to protect the mine sites.

One substandard element of a supply chain can cause substantial reputational damage. Although supplier selection is often focussed on this issue, processes need to be adopted to routinely review the performance of suppliers.

## Bribery and corruption

Supply chains can cause extreme bribery and corruption risk. There are a number of core bribery and corruption (BAC) supply chain risks:

- a supplier may pay or accept a bribe in connection with their role in the supply chain
- in some markets, a supplier of services, such as an intermediary, might be a foreign official creating a high BAC risk
- a supplier may pay a bribe to an employee of a business to win a mandate, costing the business at least the amount of the bribe (which presumably would otherwise have come off the negotiated price)
- employees may use suppliers to pay bribes in relation to a business, or suppliers may be asked to over-invoice to create a 'slush fund' that can be used for bribes
- a supplier may have paid bribes on behalf of another client and be investigated. Commonly regulators will expand their investigation into all businesses utilising the services of that supplier.

The BAC legal and reputational risk arising from supply chains can keep you awake at night if you do not have a robust compliance program. Such has been the impact of bribery allegations upon a brand that companies have been known to rebrand following bribery allegations.

## Human rights impacts, including worker safety

The last few years have seen a global trend of businesses being held responsible, at least by NGOs and consumers, for the human rights impacts of their entire supply chain.

The Guiding Principles on Business and Human Rights were unanimously adopted by the United Nations in 2011. They have produced an expectation about how businesses will manage their impact on human rights. Human rights due diligence is a core element of the Guiding Principles. The Principles provide that prudent corporations ought to identify and assess actual and potential human rights impacts throughout their entire supply chain. Businesses should then seek to prevent or mitigate those impacts, using whatever leverage is available to them where that negative impact arises from part of their supply chain. The Guiding Principles have become a new global norm.

We are seeing increasing activism in relation to human rights. In Australia, NGOs and the media have recently focussed upon supply chains in industries such as agriculture and food, timber production, mining, fashion and banking. Brand protection requires businesses to be ready for questions about the human rights impact of their entire supply chain, so you should not to wait until the questions are asked before you consider their impact upon human rights.

## Environmental impacts

Popular opinion is also holding businesses accountable for the environmental impacts of their supply chain. Manufacturing, extractive industries and agriculture all have the potential to cause a significant detrimental environmental impact.

Environmental issues are increasingly being viewed as overlapping with human rights. For example water pollution may impact upon the right to life if the pollution prevents local access to clean water. Environmental issues can also impact upon product quality in some industries such as agribusiness, expanding the reputational risk substantially.

Various Australian businesses have introduced Environment policies that extend to supplier selection and continuous review. Most Australian banks have adopted the Equator Principles, which provide a risk management framework in relation to their projects, as well as in connection with their internal environmental and social policies. All of these measures reflect an awareness of the potential impact of environmental impacts upon brand.

## How to manage supply chain risk

Businesses seeking to manage their supply chain risk need to start with a review of their relevant policies and procedures. This should include a gap analysis that will identify the areas for improvement and an audit which tests the effectiveness of existing processes. Areas of focus when considering supply chain risk are highlighted below.

## Contractual language

Although inserting appropriate contractual terms requiring suppliers to manage the risks described above is important, it does not provide a complete answer. Businesses cannot rely upon these contractual obligations for legal or brand protection. Other strategies to manage supply chain risk include those outlined in the sections below.

## Explicit commitment to human rights, anti-bribery and sustainability at pre-contract stage

Businesses should make their commitment to human rights, environmental sustainability and zero tolerance for bribery explicit, both in

their advertising and in requests for tender. Requests for tenders should state that tenderers are expected to similarly commit to these principles and will need to demonstrate that they are not aware of any breach. This commitment ought to be included in the express selection criteria. Draft contracts presented to suppliers should enshrine these principles.

## Supplier due diligence

The most critical element of a supply chain management program is the selection of suppliers. Businesses need to conduct due diligence into their supply chains. This is the primary means by which businesses can control all of the brand risks described in this paper.

The due diligence conducted needs to be responsive to risk. A pragmatic supplier due diligence program ought be developed that focuses resources on high risk suppliers. There is no substitute for visiting suppliers as part of the supplier due diligence.

Supplier due diligence may involve the following steps (and more):

- establish who your suppliers are, their location and what it is that they do for their remuneration (consider whether it is a reasonable fee for the service provided). This will include running appropriate company and other searches to make sure that you know who you are working with. This is easier in some jurisdictions than others
- establish that there is no unauthorised subcontracting by your suppliers and check that you are aware of each of the elements of their supply chain (as it pertains to their supply of services to your business)
- review suppliers' processes to make sure you are confident that each supplier can ensure product or service quality and safety
- ensure that appropriate policies, procedures and whistleblowing processes are in place and, if not, collaborate with suppliers to develop them
- review the work conditions and wages paid to staff, ensure that there are no child labour and all employees are there of their own free will and are not grossly underpaid
- consider whether there is any potential environmental impact of the supplier's business
- ask to see suppliers' financial records to confirm that they are an accurate reflection of their operations.

## Audit, certifications, training

Finally, there are a few other ways of managing the risk posed by existing suppliers. Consider the inclusion of a right to audit in supplier agreements to permit ongoing assessment of risk (and exercise that right!) Adopting a regular program of testing and auditing could have assisted in the horse meat scandal in 2013.

Introduce regular certifications for all suppliers in relation to BAC and other risks. External certifications can be useful to provide peace of mind. At the very least, this demonstrates that the issue remains front of mind for your business.

Consider rolling out training to suppliers as well as your own staff. Hopefully this will stop your suppliers engaging in conduct that can impact adversely upon your brand.

### For more information contact:

**Abigail McGregor**
**Partner, Melbourne**
Tel +61 3 8686 6632
abigail.mcgregor@nortonrosefulbright.com

**Jehan-Philippe Wood**
**Consultant, Perth**
Tel +61 8 6212 3281
jehan-philippe.wood@nortonrosefulbright.com

# Hong Kong's Competition Ordinance

## 10 points to note for employers and contractors in the construction industry

### Introduction

The Competition Ordinance, which serves to safeguard and enhance a competitive environment for consumers and businesses in Hong Kong by prohibiting anti-competitive conduct by businesses, was enacted in 2012 and came into full effect on December 14, 2015.

The Ordinance prohibits three categories of conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong:

- The First Conduct Rule prohibits anti-competitive agreements and concerted practices by businesses, including horizontal agreements between competitors (such as cartels) and vertical agreements (such as resale price maintenance in a distribution agreement).
- The Second Conduct Rule prohibits businesses with a 'substantial degree of market power' from abusing that power by acting anti-competitively. Examples of potentially abusive conduct include predatory pricing, refusal to deal and exclusivity arrangements.
- The Merger Rule prohibits mergers which have or are likely to have the effect of substantially lessening competition in Hong Kong. Unlike merger control regimes in other jurisdictions, the Merger Rule applies only to mergers involving a telecommunications carrier license.

The First and Second Conduct Rules are particularly relevant to the construction industry in Hong Kong which has traditionally been localised and concentrated. This article sets out 10 points to note for employers and contractors in the construction industry.

### Horizontal aspect

#### 01 | Collective negotiations

The Ordinance prohibits undertakings (the tenderers in this case) from engaging in a concerted practice if the practice has the object or effect of harming competition in Hong Kong. Exceptions can be made where the practice can be shown to entail economic efficiencies and enhance overall economic efficiency, result in significant cost savings and synergies and/or economies of scale or scope, or improvements in quality.

Collective negotiations raise significant risks as they give rise to the opportunity to exchange competitively sensitive information at meetings or discussions between tenderers (particularly at trade association meetings). In some instances, collective action by the tenderers and/or the association may also amount to a group boycott where there is an agreement or concerted practice not to do business with the tender offeror, or only to do business on the basis of unreasonable terms.

#### 02 | Sharing of historic pricing information

The exchange of information is prohibited if it has the object or effect of harming competition, unless it can be shown that the exchange enhances overall economic efficiency and entails pro-competitive benefits. Conduct may be taken as having an anti-competitive object or effect if it reduces or may reduce uncertainty regarding one or more parameters of competition in the market, such as price, components of price, costs, output, bid terms and conditions, information regarding customer preferences, new products, and strategic or investment plans.

In general, the following information can be exchanged without risk:

- historical, aggregated and anonymized data
- information relating to health, safety and security

- general market research or broad industry trends
- information which relate to technical or operational aspects, productivity or performance levels
- service quality measures.

There is no pre-determined threshold as to when data becomes old enough so as to amount to 'historical' data; this will depend on the specific characteristics of the market in question. The exchange of information (after a contract has been awarded/announced/completed) may raise some risks if they reveal terms and conditions of a past, non-public tender, particularly in a concentrated market where contractors are recurrent players and may influence the parties' market conduct for similar future contracts.

For government and MTR projects, the gathering of publicly available information, (i.e. information that is equally accessible to all competitors and customers) from parties that are not competitors, or from public sources (such as independent third parties or government sources) will be unlikely to result in a contravention of the Ordinance.

Contractors should be aware that job references and past tender scores (which are commonly adopted for government tenders) would be treated in the same way as pricing information for the purposes of exchange of information.

## 03 | Coordinated activities among entities within the same group

The First Conduct Rule does not apply to conduct involving two or more entities if they form part of a 'single undertaking'. Whether the relevant entities constitute a single economic unit is assessed based on the facts.

A parent and a subsidiary will form a single undertaking if the subsidiary (although a separate legal entity) does not enjoy economic independence and does not freely determine its own conduct or strategy on the market. If the subsidiary is wholly-owned, it is straightforward to establish a single undertaking.

For joint ventures, whether it forms a single undertaking with one of its parent companies will depend on whether and which shareholder has the ability to give instructions to control its market conduct. The relevant factors are who holds the majority of voting rights and who has management control rights, including board representation and approval of matters essential to the joint venture's commercial operations (i.e. mainly with respect to any decisions approving (a) the adoption of business plans; (b) the adoption of the annual budget; (c) the appointment of senior management; and (d) operational expenditure and capital expenditure). If there is only one shareholder with the ability to exercise all of these rights, then there is a single undertaking. If control is shared, then the joint venture is seen as a separate undertaking.

Consequently, if it can be shown that a holding company exercises control over its subsidiaries, the subsidiaries will not be considered as separate undertakings and any coordination between them will not be subject to the First Conduct Rule.

Notwithstanding the above, as a matter of good practice and to comply with the terms of a tender, certain entities forming part of the same conglomerate, particularly in a public procurement context should, as a matter of prudence, be disclosed to tender offerors.

## 04 | Formation of JVs among contractors

Joint bidding is a common practice and is considered legitimate under competition law where tenderers/bidders pool their resources to bid for projects or work they would be unable to perform individually. Aside from a lack of resources, there are many other commercial reasons that will be considered legitimate (for example portfolio diversification, reliance of a party's particular expertise, etc.).

Where parties decide to form a bidding consortium, they would need to ensure that any competitively sensitive information shared is strictly confined to the scope of and does not extend to persons outside of the joint venture such that it is not used as a vehicle for exchanging competitively sensitive information.

In extreme cases where joint bidding would have the effect of reducing the number of potential tenderers/bidders in an already concentrated market, the conduct of joint bidding may raise some risks under the Ordinance. In a market where there are many players, the risks are limited (even if for a specific bid, there are only very few tenderers/bidders).

## 05 | Pre-bid agreements for sub-contacting to JV partners

As explained above, joint bidding is a common practice and is considered legitimate under competition law where tenderers/bidders pool their resources to bid for projects or work they would be unable to perform individually.

If, however, instead of submitting a joint bid, each party is able to perform the project or work individually but choose to agree amongst themselves that only one of them will submit a bid (while the other submits a cover bid or does not submit a bid at all),

with the understanding that the other would be sub-contracted a portion of the works if either party wins, then this conduct may amount to bid-rigging in contravention of the Ordinance.

Conversely, if upon receiving a request for proposal, the parties submit independent bids but agree that if either one wins the bid, a portion of the works would be sub-contracted to the other party, then in this scenario, competition law risks will be more limited.

In either of the above scenario, A and B should limit the sharing of competitively sensitive information, particularly with respect to their respective bid prices if A and B are to submit separate bids.

As a matter of prudence, the fact that two parties will be entering into a joint venture in response to a RFP should always be disclosed to the tender offeror. The fact that initiatives to enter into sub-contracting arrangements are driven by a customer or on their request also provides additional comfort to the legitimacy of these arrangements.

### 06 | Market-sounding exercises

While market-sounding exercises to gauge another competitor's appetite for contracts will unlikely raise competition law risks, these discussions may fall foul of competition law where they pertain to specific transactions, particularly during the tendering stage or in anticipation of a tender.

Direct exchanges of planned prices or pricing strategy between competitors (including in trade association meetings) should be avoided irrespective of the context in which such exchange of information take place or the exact mode of communication and even if they are initiated or driven by the government.

In contrast, where competitively sensitive information (such as prices, components of price and costs) is collected by (or discussed with) an independent third party such as the government, an academic institution or trade association for market survey or research purposes and distributed to individual competitors in an aggregated and anonymized manner, risks of contravening the Ordinance are limited. For a trade association to qualify as an independent third party for information collection purposes, it should have its own resources and be staffed with independent personnel in order to ensure that independent members do not have ready accessibility to the competitively sensitive information collected.

## Vertical aspect

### 07 | Pre-tender discussions between employers/ consultants and contractors

The exchange of market intelligence about industry trends or with a view to promote technical or operational efficiency, productivity, performance or service quality does not generally raise competition law risks. The fact that initiatives to enter into discussions are driven by a customer or on their request also provides additional comfort to the legitimacy of these exchanges.

### 08 | Discriminatory conduct by related sub-contractors

Although discriminatory conduct is not expressly addressed in the latest Guidelines published by the Competition Commission, it may be caught under the Second Conduct Rule as amounting to 'predatory behaviour'.

In overseas legislation, the prohibition on discrimination serves two purposes:

- To ensure that a tender offeror with a substantial degree of market power cannot discriminate amongst sub-contractors when doing so leads to the exclusion of competitors from the market (known as 'foreclosure').
- To ensure that a tender offeror with a substantial degree of market power cannot discriminate amongst sub-contractors when doing so creates a competitive disadvantage between its sub-contractors.

Although it remains unclear whether discriminatory conduct will be an enforcement priority for the Competition Commission, the Ordinance provides for scope to ensure that conduct resulting in foreclosure may be challenged under the Ordinance. However contravention should be unlikely unless the contractor in question holds a substantial degree of market power and the conduct in question has the object or effect of resulting in foreclosure.

### 09 | Exclusive agreements with crucial consultants, sub-contractors or suppliers for risk management and price competitiveness

As regards pre-bid agreements for the purpose of forming a bidding consortium, please refer to point 5 above.

According to the latest Guidelines published by the Competition Commission exclusivity agreements will not generally be considered to have the object of harming competition. Instead, the Commission will conduct an analysis of their effects or likely effects on competition in the relevant market, having regard to whether or not such agreements are common in the relevant market, as well as the scope and duration of the exclusivity.

Exclusivities of a duration of less than five years between parties which have modest market power in their respective markets do not generally raise competition law concerns.

Practices which fall short of outright exclusivity, such as right of first refusal clauses, are subject to the same assessment discussed above.

## 10 | Discussions with subcontractors/suppliers/consultants regarding the lowest price amongst various quotations or an indicative budgetary/target price

The gathering of market intelligence about a competitor's conduct from third party sources that are not competing at the same level of the supply chain does not generally give rise to competition law risks where that intelligence is gathered in the course of regular commercial negotiations, even if the information relates to pricing or business plans.

However, in rare cases, competition law risks cannot be excluded where a third party acts as an intermediary to communicate with a competitor for the purpose of circumventing the prohibition against direct information exchanges among competitors.

In its capacity as a customer, disclosures to sub-contractors/suppliers/consultants regarding pricing information will be unlikely to raise competition law risks unless the contractor is acting as an intermediary assisting the exchanges of information between its sub-contractors/suppliers/consultants.

## For more information contact:

**Alfred Wu**
**Partner, Hong Kong**
Tel +852 3405 2528
alfred.wu@nortonrosefulbright.com

**Kevin Hong**
**Associate, Hong Kong**
Tel +852 3405 2535
kevin.hong@nortonrosefulbright.com

# Hong Kong: revisiting the offence of misconduct in public office

The common law offence of misconduct in public office is a key weapon in the fight against corruption in Hong Kong. We examine several key cases and their impact on the development of the law.

## Introduction

On October 5, 2015, former Chief Executive of the Hong Kong Special Administrative Region, Donald Tsang, was charged with two counts of misconduct in public office. The first charge alleges that Tsang failed to declare, or concealed from the Executive Council, that he was in negotiations with Bill Wong (a major shareholder of a company which was seeking approval from the Executive Council for a digital broadcasting licence) in respect of a residential tenancy in a flat in Shenzhen. The second charge alleges that Tsang either failed to disclose or concealed information from the then Permanent Secretary for the Chief Executive's Office, the Development Bureau and the Honours and Non-official Justices of the Peace Selection Committee, concerning an architect nominated for the HKSAR honours and awards who was responsible for the interior design of the Shenzhen flat. This is the first time a Chief Executive of the HKSAR has been charged with wilful misconduct in public office in the history of the territory.

The scope of the common law offence of misconduct in public office makes it a powerful tool in tackling corruption because of the lacuna in Hong Kong's anti-bribery legislation, the Prevention of Bribery Ordinance (POBO). Under the POBO, it is an offence for public officials to solicit or accept an advantage as an inducement or reward for them to perform certain acts. The POBO also provides for the following limited offences concerning the Chief Executive:

- soliciting or accepting an advantage as an inducement or reward for performing or abstaining from performing any acts in the capacity as Chief Executive (Section 4 POBO)
- soliciting or accepting an advantage as an inducement or reward for giving assistance in contracts with a public body (Section 5 POBO)
- maintaining a standard of living above that which is commensurate with his present or past official emoluments or is in control of pecuniary resources or property disproportionate to his present or past official emoluments (Section 10 POBO).

On the other hand, the common law offence of misconduct in public office is wider in scope, as it encompasses any serious misuse of power or position by public officials even in the absence of evidence that they have received a bribe.

Since 2000, the Independent Commission Against Corruption (ICAC) has initiated around 40 charges for this common law offence, 30 of which resulted in convictions. It can therefore be observed that the conviction rate for the offence is quite high.

## Misconduct in public office

In *Sin Kam Wah v HKSAR* (2005) 8 HKCFAR 192, the Court of Final Appeal re-formulated the test for the common law offence of misconduct in public office. In that case, Sin Kam Wah (Sin), a former Senior Superintendent of the Hong Kong Police, was charged with three counts of misconduct in public office. The charges concerned allegations that Sin had accepted from Lam Chuen Ip (Lam) (a person having proprietary interests in Kowloon nightclubs) sexual services free of charge from various women over whom he knew Lam was exercising control, direction or influence for the purpose of or with a view to the women's prostitution. Sin's conviction on all three counts of misconduct in public office was upheld by the Court of Final Appeal.

The Court of Final Appeal laid down five ingredients to the offence of misconduct in public office. It is committed where:

1 a public official

2 in the course of or in relation to his public office

3 willfully misconducts himself, by act or omission, for example, by willfully neglecting or failing to perform his duty

4 without reasonable excuse or justification

5 where such misconduct was serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

As regards point 3 above, the Court of Final Appeal stated that the misconduct must be deliberate rather than accidental in the sense that the official either knew that his conduct was unlawful or wilfully disregarded the risk that his conduct was unlawful.

The Court of Final Appeal stated that to constitute the offence of misconduct in public office, willful misconduct which has a relevant relationship with the defendant's public office is enough. Misconduct otherwise than in the performance of the defendant's public duties may have such a relationship with his public office as to bring that office into disrepute, in circumstances where the misconduct is both culpable and serious and not trivial. The Court of Final Appeal took the view that Sin's misconduct had the necessary relationship with his public office; it was also culpable and serious because it involved his participation in the acceptance of free sexual services with the knowledge that they were provided by prostitutes over whom Lam exercised control, direction or influence, that being in itself a serious criminal offence.

In 2010, the Court of Final Appeal examined the offence of misconduct in public office again in *Chan Tak Ming v HKSAR* (2010) 13 HKCFAR 745. Chan Tak Ming (Chan) was a former senior medical officer of a public hospital. He was convicted of a count of misconduct in public office through obtaining patients' personal particulars from documents and/or data-handling systems of the Hospital Authority for his personal use. In that case, Chan sent out letters to the patients whose personal particulars he had obtained indicating that he was going to commence private practice. In upholding his conviction, the Court of Final Appeal applied the test laid down in Sin Kam Wah and emphasised that personal benefit was not an element of the common law offence so that the relevant misconduct could be committed for no discernible or provable motive. In addition, the Court of Final Appeal held that to determine whether the necessary seriousness existed for the purposes of point 5 as laid down in Sin Kam Wah, an evaluation of the responsibilities of the office and the office-holder, the importance of the public objects which they served and the extent of the departure from those responsibilities was required.

Under section 101 (1) of the Criminal Procedure Ordinance (Cap. 221), a public official convicted of the offence of misconduct in public office is liable to imprisonment for seven years and a fine. In Sin's case, he received sentences of two years for each offence of misconduct in public office, to be served concurrently. In Chan's case, he was fined HK$50,000.

Another recent high profile conviction relating to the offence of misconduct in public office concerned Rafael Hui (Hui), the former Chief Secretary of the government of Hong Kong in December 2014. Of the five counts in respect of which Hui was convicted, three counts related to misconduct in public office and one count related to conspiracy to commit misconduct in public office. The three counts of misconduct in public office involved: (i) Hui's failure to disclose acceptance of secured loans in the total amount of HK$2.4 million from a subsidiary of one of the largest property developers in Hong Kong; his rent-free use of two luxury units and his negotiation of a consultancy agreement with the same property developer when he was a managing director of the Mandatory Provident Fund Schemes Authority; (ii) his failure to disclose the provision to him, and annual extensions, of another unsecured loan of HK$3 million from the same subsidiary of the same property developer at the time when he was the Chief Secretary; and (iii) his failure to declare to the government HK$11.182 million worth of bribes he received when he was a non-official member of the Executive Council. In addition, Hui was convicted of a count of conspiracy to commit misconduct in public office in respect of the transfer of HK$8.5 million worth of bribes to him when he was the Chief Secretary.

In the Court's sentencing decision against Hui, the judge accepted that (i) and (ii) did not involve bribery or corruption but that there were obvious conflicts of interest. The judge emphasised that high-ranking officials owe a duty not only to the government but to the people of Hong Kong whom they represent, and who expect them to act in the public interest and not

in their own selfish interest, and, therefore, the breach of that duty and trust is a significant aspect of Hui's criminality in the case. The sentencing decision demonstrates that misconduct in public office does not necessarily have to entail bribery.

Hui was sentenced to seven and a half years' imprisonment in respect of five counts of conviction and was ordered to pay HK$11.182 million to the HKSAR government.

Hui and others in the case have lodged appeals against their convictions. The appeals were heard in early November 2015 and judgment was reserved which has not been handed down yet.

## Codifying the offence of misconduct in public office

Many common law jurisdictions have codified the offence of misconduct in public office or are taking steps to codify it. With the exceptions of New South Wales and Victoria, most jurisdictions in Australia have codified the offence of misconduct in public office. For example, section 142.2 of the Criminal Code Act 1995 (Cth) provides for a statutory offence of abuse of public office under which any Commonwealth public official will be found guilty if he/she (i) exercises any influence that the official has in the official's capacity as a Commonwealth public official; or (ii) engages in any conduct in the exercise of the official's duties as a Commonwealth public official; or (iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and the official does so with the intention of: (i) dishonestly obtaining a benefit for himself or herself or for another person; or (ii) dishonestly causing a detriment to another person. Any public official who is found guilty of this statutory offence will be subject to a maximum penalty of imprisonment for five years. Similarly, section 359 of the Criminal Code 2002 (ACT) also provides for the same statutory offence for any abuse of public office by a public official in the Australian Capital Territory.

The UK has also been making headway in codifying the offence of misconduct in public office. In 2014, the Law Commission of England and Wales engaged in a project to review the common law offence of misconduct in public office with a view to simplifying, clarifying and codifying it. The review is currently at the pre-consultation stage which includes approaching interest groups and specialists in order to finalise the terms of project. It is expected that a final report with recommendations will be produced in the summer of 2016.

In Hong Kong, the possibility of codifying the common law offence of misconduct in public office was addressed in 2000 in a speech given by Mr. Kwok Man-wai (Kwok), the Ex-Deputy Commissioner & Head of Operations of ICAC. Kwok commented that the essential ingredients required to establish a charge of misconduct in public office were vague. Kwok also opined that since the offence was not codified, it was difficult to develop public awareness of the offence amongst civil servants and this deprived the public of ready access to the law. Accordingly, Kwok proposed to codify and include the offence of misconduct in public office in the POBO in the form of 'misuse in public office for personal gain'. To date, Hong Kong has not yet taken any steps to codify the offence. This may arise out of a desire to maintain flexibility given the wide scope of the offence, and a lack of need to change the current system due to the high conviction rates.

Recently, there has been debate in Hong Kong as to whether the scope of the POBO should be widened to include more provisions covering the Chief Executive. Currently, sections 3 and 8 of the POBO do not apply to the Chief Executive. Under section 3 of the POBO, a prescribed officer commits an offence if he solicits or accepts an advantage without the permission of the Chief Executive, and section 8 of the POBO prohibits any person who has dealings of any kind with a government department or public body from offering an advantage to a prescribed officer or public servant without lawful authority or reasonable excuse. The Democratic Party has moved a private motion to extend the application of sections 3 and 8 of the POBO to the Chief Executive. However, on 11 November 2015, the Hong Kong Legislative Council vetoed the private motion.

For more information contact:

**Wynne Mok**
**Partner, Hong Kong**
Tel +852 3405 2512
wynne.mok@nortonrosefulbright.com

**Valerie Fung**
**Senior associate, Hong Kong**
Tel +852 3405 2553
valerie.fung@nortonrosefulbright.com

**Catherine Leung**
**Associate, Hong Kong**
Tel +852 3405 2469
catherine.leung@nortonrosefulbright.com

# Anti-Corruption in Thailand: new amendment strengthens rules on corporate bribery

In this article, we examine Thailand's newly amended anti-corruption laws, highlighting the new offences introduced and new powers granted to its local anti-corruption commission.

Thailand's amendments to its anti-corruption laws bring the country into line with the 2003 UN Convention Against Corruption. The amendments introduce new offences for bribery involving foreign government officials and international organisations, as well as new powers for the National Anti-Corruption Commission (NACC) and the Thai courts.

The amendments also introduce specific liabilities for companies that benefit from bribes made by employees, affiliates and agents, irrespective of whether or not they had the authority to act on the company's behalf. A company can be fined up to twice the amount of damage incurred or benefit received.

Companies with operations in Thailand therefore need to ensure they have robust anti-bribery and corruption policies in place, and that staff, as well as external agents and contractors are made aware of these, and receive appropriate training. We look at the amendments in further detail below.

## New bribery offences involving foreign government officials and international organisations

Prior to the amendments, bribery offences covered under the Organic Act on Counter Corruption B.E. 2542 (OACC) applied to only Thai government officials. The amendments expanded the scope of offences to include foreign government officials and international organisations. Specifically, it is an offence under the OACC for:

- a 'foreign official' to seek, accept or agree to accept a bribe (including any bribe sought, accepted or which he or she agreed to accept before holding the relevant official position) to act or omit to act in his/her official capacity
- an intermediary (agent) to seek, accept or agree to accept any benefit with a view to influencing the decision or action of a 'foreign official'
- any person to offer or agree to offer a bribe to any 'foreign official' to induce any action, omission or delay in acting, which is contrary to the official's duties.

## Defining foreign officials

Under the amendments, *foreign officials* is defined to include any person working for a foreign government or foreign state enterprise or any person working in or on behalf of an international organisation (such as NGOs), but not private corporations.

## Bribery under the Penal Code and OACC

The prescribed penalties for bribery offences involving either a Thai government official or foreign official are similar to existing penalties for bribery under the Thai Penal Code (Penal Code). The following table compares the penalties under OACC and under the Penal code, which only applies to Thai officials.

| Offence | Penalties under the OACC | Penalties under the Penal Code |
|---|---|---|
| Seeking, accepting or agreeing to accept a bribe to act or omit to act in their official capacity | (i) imprisonment for between 5 to 20 years or life imprisonment and a fine of between THB 100,000 to 400,000 or<br>(ii) death | (i) imprisonment for 5 to 20 years or life imprisonment and a fine of between THB 2,000 to 40,000 or<br>(ii) death |
| Acting or omitting to act in their official capacity as a result of a bribe sought, accepted or agreed to accept before holding the relevant official position | Imprisonment for 5 to 20 years or life imprisonment and a fine of between THB 100,000 to 400,000 | Imprisonment for 5 to 20 years or life imprisonment and a fine of between THB 2,000 to 40,000 |
| An intermediary seeking, accepting or agreeing to accept a benefit with a view to influencing the decision or action of an official | (i) imprisonment of up to 5 years or<br>(ii) a fine of up to THB 100,000 or<br>(iii) both (i) and (ii) | (i) imprisonment of up to 5 years or<br>(ii) a fine of up to THB 10,000 or<br>(iii) both (i) and (ii) |
| Any person offering, requesting or agreeing to offer a bribe to any official to induce any action, omission or delay in acting which is contrary to their official duties | (i) imprisonment of up to 5 years or<br>(ii) a fine of up to THB 100,000 or<br>(iii) both (i) and (ii) | (i) imprisonment of up to 5 years or<br>(ii) a fine of up to THB 10,000 or<br>(iii) both (i) and (ii) |

Generally, it is easier for the NACC to enforce the OACC than the Penal Code as, for instance, NACC can directly investigate and (if it chooses) prosecute cases under the OACC. Most of the offences under the Penal Code are investigated by the police and prosecuted by the public prosecutor.

## Strict liability for corporate bribery

The amendment also introduce a strict liability offence for any company which benefits from a bribe by a 'related person', which includes an employee, agent, affiliate or any person acting for or on behalf of the company, irrespective of whether or not the related person has the authority to act. The offence does not require any intention on the part of the company to make the bribe.

The prescribed penalty for bribery is a fine of up to twice the amount of damage incurred or benefit received.

A company charged with bribery by a related person will have a defence if it can prove that it has in place 'appropriate' internal controls to prevent the bribe. There is no official guidance as to what would constitute 'appropriate' internal controls in this context.

## Other changes

Along with the new bribery offences involving foreign government officials and international organisations, the NACC has also been given additional powers to:

- investigate offences in respect of foreign officials and the discretion to refer the matter to the public prosecutor or to directly bring enforcement action in court
- investigate and make a ruling on offences under its jurisdiction committed outside of Thailand (e.g. offences under the Penal Code, where Thai government officials are alleged to have accepted bribes abroad)
- assist other countries' authorities in their corruption investigations.

The Thai courts have also been given additional powers to:

- confiscate money or other benefits (including proceeds from disposing or transferring such benefits) received by any person who has been found guilty of an offence under the OACC
- confiscate money being offered to officials as bribes
- order any person who has been found guilty of an offence under the OACC to pay to the court an amount equal to the benefits received.

The amendments also provide for the suspension of the statutory limitation period for offences committed by politicians where the politician flees during prosecution or after having been found guilty by a final judgment of the court.

For more information contact:

**Sarah Chen**
**Of counsel, Bangkok**
Tel +662 205 8518
sarah.chen@nortonrosefulbright.com

# Contacts

## Asia

### China
**Sun Hong**
Tel +86 21 6137 7020
hong.sun@nortonrosefulbright.com

### Hong Kong
**Alfred Wu**
Tel +852 3405 2528
alfred.wu@nortonrosefulbright.com

**Wynne Mok**
Tel +852 3405 2512
wynne.mok@nortonrosefulbright.com

### India
**Sherina Petit**
London
Tel +44 20 7444 5573
sherina.petit@nortonrosefulbright.com

### Japan
**Eiji Kobayashi**
Tel +81 3 5218 6810
eiji.kobayashi@nortonrosefulbright.com

### Singapore
**Wilson Ang**
Tel +65 6309 5392
wilson.ang@nortonrosefulbright.com

### Thailand
**Somboon Kitiyansub**
Tel +662 205 8509
somboon.kitiyansub@nortonrosefulbright.com

**Sarah Chen**
Tel +662 205 8518
sarah.chen@nortonrosefulbright.com

## Australia
**Abigail McGregor**
Melbourne
Tel +61 3 8686 6632
abigail.mcgregor@nortonrosefulbright.com

## Global

### Head of business ethics and anti-corruption
**Sam Eastwood**
Tel +44 20 7444 2694
sam.eastwood@nortonrosefulbright.com

### Head of regulatory and governmental investigations, United States
**Richard Smith**
Tel +1 202 662 4795
richard.smith@nortonrosefulbright.com

### Global co-heads of regulation and investigations
**Martin Coleman**
Tel +44 20 7444 3347
martin.coleman@nortonrosefulbright.com

**Lista M Cannon**
Tel +44 20 7444 5991
lista.cannon@nortonrosefulbright.com

### Global head of investigations
**Chris Warren-Smith**
Tel +44 20 7444 5992
chris.warren-smith@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

## Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3800 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP and Norton Rose Fulbright South Africa Inc are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.