

HKIA Feature Article

Case Study on Control of Materials

In control of materials used for the works, architects are responsible for, inter alia, specifying materials, accepting contractors' submissions of materials, and checking materials delivered to site to ensure compliance with the contract requirements. Given the substantial amount involved, such processes are inherent with integrity risks (e.g. conniving at substandard materials) as evidenced in past ICAC cases. To prevent architects from falling prey to corruption or other malpractices in the material control processes, the following case study aims to highlight the common corruption pitfalls and related corruption prevention measures for reference by members of The Hong Kong Institute of Architects.

Case Study¹

Alex, a registered architect in a consultancy firm seconded to work as the Resident Architect for a high-rise residential project, was responsible for control of materials. Towards the completion date of the project, Alex was tasked with inspection of marble slabs delivered by the supplier to site to ensure their compliance with the contract requirements (e.g. Italian origin, matching with approved samples of marble slabs). For the first three batches of marble slabs delivered, Alex kept rejecting them for substandard quality (e.g. discrepancies in thickness and presence of cracks). Given the long time for delivery of re-ordered marble slabs and the imminent completion date, the supplier's Managing Director, Matt, was anxious to complete the works quickly to avoid reimbursing the main contractor for liquidated damages imposed by the developer (for delay to the completion date caused by the supplier). Driven into a corner, Matt had no choice but to offer a cheque of \$1,000,000 to Alex for turning a blind eye to the substandard marble slabs. Alex refused the offer and reported the case immediately to the ICAC. After investigation, the ICAC laid a charge against Matt for an offence under the Prevention of Bribery Ordinance (Cap. 201) (POBO).

Legal/Professional Requirements

In accordance with Sections 9(1) and 9(2) of the POBO, it is an offence if:

- an agent, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or on account of his doing / forbearing to do any act or showing favour / disfavour to any person in relation to his principal's affairs or business; and
- a person, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or on account of the agent's doing / forbearing to do any act or showing favour / disfavour to any person in relation to his principal's affairs or business.

Any person guilty of the above offence is liable to a maximum fine of \$500,000 and 7 years of imprisonment. Criminal liability aside, Registered Architects are subject to disciplinary actions (e.g. reprimand, removal from the Register of Registered Architects) if they are convicted in Hong Kong or elsewhere of any offence which may bring the profession into disrepute and sentenced to imprisonment pursuant to the Architects Registration Ordinance (Cap. 408).

¹ The case details are hypothetical and developed for educational purposes only. The ICAC disclaims all liability for, damages of any kind arising out of use, reference to, or reliance on any information contained therein.

Integrity Risk Analysis

Under POBO,

- (a) Alex is an employee and falls under the definition of “agent”;
- (b) the consultancy firm is the employer of Alex and falls under the definition of “principal”;
- (c) the approval of marble slabs relates to consultancy firm’s business and is within the meaning of “in relation to the principal’s business”; and
- (d) the cheque of \$1,000,000 is an “advantage”.

If Alex does not have a lawful authority or reasonable excuse (e.g. the principal’s permission) to accept the advantage, he may commit an offence under Section 9(1) of POBO. Likewise, by offering the advantage to Alex, Matt may commit an offence under Section 9(2) of POBO.

Preventive Measures

To mitigate the integrity risks in control of materials, a consultancy firm should –

- ✓ issue a code of conduct or integrity guidelines for staff covering prohibiting staff from solicitation, acceptance (either for himself or others) and offering of any advantage as a reward for or an inducement to doing/forbearing to do any act or showing favour/disfavouring any person in relation to the consultancy firm’s business or affairs;
- ✓ ensure staff are well aware of the consultancy firm’s requirements on solicitation, acceptance and offering of advantage (e.g. enshrining the requirements in employment contracts, requesting staff to acknowledge the receipt and confirm understanding of the requirements by signing a form, circulating the requirements on a regular basis or when there are updates, and conducting periodic training);
- ✓ conduct integrity risk assessment for its operational activities and devise appropriate control or mitigating measures²;
- ✓ lay down procedures for control of materials (e.g. requiring contractors to submit proposals of materials with all documents such as test reports to support their compliance with contract requirements, mandating site supervisory staff to inspect all batches of key materials (i.e. those of high value and involving substantial quantities) and sample check on other materials, documentation of material submissions approved and materials inspected);
- ✓ require supervisors to conduct documentary checks on material submissions and spot checks on site for materials accepted by their subordinates;
- ✓ require site supervisory staff to select randomly samples of materials for testing, impose measures (e.g. bar code firmly affixed to samples) to ensure security of samples, engage laboratories independent from the contractors to conduct the tests, require the laboratories to submit test reports to the developer/consultancy firms in parallel to the contractors;
- ✓ conduct technical audits to ensure compliance with procedures; and
- ✓ adopt a computer system to digitalise the workflows for control of materials (e.g. notifying site supervisory staff to conduct inspection of materials delivered, requiring them to document materials inspected and samples selected for tests).

² Architects can make reference to the “Guidelines on Integrity Risk Management (IRM)” and related IRM Plans on areas of higher integrity risks which are available via the hyperlink (https://cpas.icac.hk/EN/Info/TP_Library?cate_id=10027) when devising their measures to mitigate the integrity risks.

To ensure adequate safeguards against corruption are in place and adherence to the laws, architects should –

- ✓ keep vigilant against the integrity risks in connection with their work and adopt necessary measures to mitigate the risks;
- ✓ not solicit and accept advantage from and offer advantage to relevant parties (e.g. government departments, utilities companies, contractors, subcontractors, suppliers and their workers/employees/agents) in the course of carrying out their duties; and
- ✓ promptly report any suspected corruption case to the ICAC by calling the 24-hour report corruption hotline 25 266 366. For other channels to report a corruption case, refer to the ICAC’s website at <https://www.icac.org.hk/en/rc/channel/index.html>.

Further Advice

For further information on corruption risks and measures on control of materials, please visit the website of the Corruption Prevention Advisory Service (CPAS) for the “Corruption Prevention Guide for Construction Industry” at https://cpas.icac.hk/UPloadImages/InfoFile/cate_43/2023/bc04940e-130e-49dc-a392-66660ef75d17.pdf. For enquiry, please contact the CPAS (hotline: 2526 6363; email: cpas@cpd.icac.org.hk), or visit its designated website at <https://cpas.icac.hk> for online corruption prevention resources.

Construction Industry Integrity Charter 2.0

Construction Industry Integrity Charter 2.0 has been jointly launched by the ICAC, the Development Bureau and the Construction Industry Council to promote and encourage the implementation of an Integrity Management System among consultants and contractors. For details of joining the Charter, please scan –

