



**CBLF**

中国工商领袖论坛  
China Business Leaders Forum

# BUSINESS INTEGRITY HANDBOOK

## 商业诚信手册

Guidance on compliance knowledge, skills and strategies

合规知识、技能和战略指南







# BUSINESS INTEGRITY HANDBOOK

## 商业诚信手册

Guidance on compliance knowledge, skills and strategies  
合规知识、技能和战略指南

*This publication is made possible thanks to grants awarded by the FCO Global Prosperity Fund and Siemens Integrity Initiative and a donation from GE. We wish to acknowledge the role of the Global Compact Network China in helping to conduct the company survey and to distribute this publication to the business community in China.*

*感谢英国外交与联邦事务部全球繁荣基金、西门子商业诚信倡议以及通用电气对本手册编撰工作给予的资助，同时感谢全球契约中国网络帮助我们进行公司调研以及在中国企业内发放本手册。*

This publication is officially printed in May 2012  
本手册于 2012 年 5 月正式付印

E-version is also available on CBLF's website [www.cblf.org.cn](http://www.cblf.org.cn).  
本手册电子版可通过登录中国工商领袖论坛网站 [www.cblf.org.cn](http://www.cblf.org.cn) 获取。



SIEMENS



Global Compact Network China  
全球契约中国网络



# Table of Contents

## 目录

<b>Chapter I: Foreword</b> .....	<b>1</b>
<b>第一章：前言</b>	
<b>Chapter II: Editorial Group and Contributing Authors</b> .....	<b>5</b>
<b>第二章：编撰委员会</b>	
<b>Chapter III: Context - New Laws and Challenges</b> .....	<b>14</b>
<b>第三章：全球形势：新法规与新挑战</b>	
Overview of Major International Anti-Corruption Laws .....	15
全球主要反腐败律法概览	
Recent Regulation and Enforcement Trends .....	15
最新立法执法动向	
Comparison of Three Main Regulations and Enforcement .....	19
中外主要立法执法对照	
Challenges Faced by Businesses in China .....	21
在华企业面临的挑战	
<b>Chapter IV: Compliance Glossary</b> .....	<b>23</b>
<b>第四章：合规词汇</b>	
<b>Chapter V: Compliance Structure and Practice Sharing</b> .....	<b>34</b>
<b>第五章：合规构架及实践分享</b>	
Compliance Structure Example One .....	35
企业合规结构示例一	

Compliance Structure Example Two.....	36
企业合规结构示例二	
Key Principles .....	37
重要原则	
Best Practice I: CSCEC .....	38
最佳实践分享之一：中国建筑工程总公司	
Best Practice II: GE.....	40
最佳实践分享之二：通用电气	
Best Practice III: Siemens .....	42
最佳实践分享之三：西门子	
Best Practice IV: Shell.....	44
最佳实践分享之四：壳牌	
<b>Chapter VI: Self-Assessment.....</b>	<b>45</b>
<b>第六章：自我评估</b>	
Compliance Scenarios .....	50
合规情景	
<b>Chapter VII: Conclusion .....</b>	<b>55</b>
<b>第七章：结束语</b>	
<b>Chapter VIII: Appendix - Sources and Further Reading .....</b>	<b>56</b>
<b>第八章：附录——词汇来源及更多参考阅读资料</b>	

## Chapter I: Foreword



*Mr. Brook Horowitz, Director for Business Standards, IBLF*

Business integrity has become an extremely fashionable topic all over the world. Yet amongst company executives, it is one of the hardest subjects to discuss openly and in depth. Either the discussion is bland and self-promotional (“Our company adheres to the highest standards of integrity”); or it is deeply uncomfortable – the risk of transgressions of the past being revealed or double standards of the present being exposed make it extremely difficult for an honest exchange of opinions.

The purpose of this publication is to make a small, but we hope significant, contribution to overcoming these obstacles and facilitating a constructive dialogue between companies, as well as between business, government, and civil society, on the role business can play in reducing corruption.

With a crisis of confidence in capitalism in the West, brought on in part by the failure of traditional corporate governance structures, all the talk is about creating a form of “responsible capitalism” which allows companies to grow, but does not undermine the social fabric and natural environment which humanity depends on in order to survive. In rapidly developing markets such as China, the focus has in recent years moved from headlong financial growth to “balanced growth” - a more paced developmental model which incorporates environmental sustainability, social equity and transparency. All over the world, making money at any cost is becoming a less and less acceptable option.

But when it comes down to the practice of balancing growth and responsibility, things are not so simple. At the root of the question of responsible business practices are some very deep questions that business leaders have to address: where precisely are the limits of private benefit and public good? At what point should management constrain short-term returns for the sake of longer-term sustainability? What is the meaning of “ethical” and “unethical” behaviour in jurisdictions where the law is unclear or simply not being enforced, or where there are very different business and cultural traditions?

In this publication, you may not find answers to all these questions, but you will receive indicators about how other companies are dealing with them. This will help you find your own path to manage some of the biggest challenges that businesses have faced.

One of the biggest obstacles preventing an open dialogue about business standards is the cultural context. The international legal language of “anti-corruption” may be embodied in United Nations instruments such as the Convention Against Corruption, but in its ever more stringent global enforcement, it comes directly from legislation such as the US Foreign Corrupt Practices Act (FCPA) and is therefore rooted in the Anglo-American legal system. Even if we accept that this represents (for now) the basis for the international rules of the game, it would be wrong to assume that Chinese business executives and entrepreneurs, with their own cultural, religious, moral and linguistic traditions, necessarily understand the assumptions underlying these rules, or even buy into them. By the same

token, there is no reason to assume that their American or European counterparts have acquired much appreciation or acceptance of the fundamental traditions of Chinese business.

In other words, there may be broad agreement across nations that corruption is “bad”, and honest business is “good”. But “corruption” in fact is not the universal concept that we have come to believe. Corruption may be everywhere, but how corruption manifests itself, and the degree to which corruption can be tolerated in a particular society, is culturally specific.

Again this publication cannot be expected fully to bridge the enormous differences between cultures, but the glossary of terms – from the Chinese and English vocabularies – should help you to better appreciate the concerns and practices of Chinese and Western business in addressing ethical issues.

The direct beneficiaries of the enhanced dialogue which we hope will emerge from this publication and which typifies the work of the China Business Leaders Forum will be first and foremost business itself.

As a result of leaders from Chinese and multinational companies learning from each other, they will be able to come to a better understanding of the risks of corruption for themselves, and for their stakeholders – their employees, business partners, and investors both at home and abroad. With that clear vision in hand, they will be able to develop a corporate culture that discourages corruption, and establish codes of conduct and internal management procedures which will succeed in meeting the ethical standards of both local traditions, and where applicable, the international legal framework. That translates into financial benefits: reducing operational inefficiency costs and risk within the company itself, improving the quality and efficiency of the supply chain, and enhancing investors’ confidence. Ultimately, the primary criteria for business success are quality, service and value, rather than how much personal incentive you are willing or not willing to pay.

That will benefit not only the companies themselves. By eliminating market inefficiencies, this will bring enormous financial advantages to the companies’ clients, to the end users and ultimately to society. It’s the clearest example of how companies can achieve balanced growth: while growing their own business, they can share at least some of that added value with society.



**Professor Keyong Dong**, Dean,  
*School of Public Administration & Policy, Renmin University of China*

Beijing, 29<sup>th</sup> May 2012

A handwritten signature in black ink, appearing to read 'Brook Horowitz'.

Brook Horowitz  
Director for Business Standards  
International Business Leaders Forum

A handwritten signature in red ink, appearing to read '董克用' (Dong Keyong).

Professor Keyong Dong  
Dean  
School of Public Administration & Policy  
Renmin University of China



## 第一章：前言



董克用教授 - 中国人民大学公共管理学院院长

商业诚信已成为一个全球范围内非常流行的话题。然而在公司高层中，这却是最难以公开和深入探讨的话题之一。对此的讨论不是空洞乏味的自我推销（如“我们公司坚持最高诚信标准”）；就是让人深感不舒服的——担心过去违规行为被揭露，或者当前的双重标准被曝光的风险，都使得坦诚交换意见变得异常困难。

我们希望这本商业诚信手册能够对克服这些障碍并促进企业之间，以及企业、政府和公民社会之间就工商界如何在减少腐败方面发挥重要作用的建设性对话做出微小但却有意义的贡献。

由于传统公司治理结构的失败，在一定程度上导致了西方世界资本主义的信任危机，如今所有的对话都是围绕如何建立一个“负责任的资本主义”，使之在不破坏人类赖以生存的社会结构和自然环境的前提下促进公司成长。在中国这样迅速发展的市场上，近年的焦点已经从冒进的经济增长转向均衡增长，即一种融合环境可持续性、社会公平透明的有节奏的发展模式。在世界各地，不惜一切代价获取经济利益的发展模式越来越不为人们接受。

但是当落实到如何平衡增长和责任的具体实施时，事情往往就不是那么简单了。负责任的商业实践的根源是商界领袖必须解决的一些深刻问题：企业利益和公众利益的真正界限在哪？在何时，管理者应该遏制为了眼前利益而牺牲长期可持续性发展的行为？在法律不明确或者缺乏执行力度的司法体制中，或是在完全不同的商业和文化传统中，如何界定“道德行为”和“不道德行为”？

在本手册中，你也许无法找到所有这些问题的答案，但是你将能够看到其他公司是如何处理这些问题的。这些将帮你找到自己的解决之道，从而应对那些企业曾面临的巨大挑战。

关于商业标准的开放性对话难以进行的阻力之一便是文化背景。例如联合国《反腐败公约》等文件中或许包含一些国际通行的“反腐败”法律语言，而如今全球前所未有严厉的执法力度，则是植根于英美法律体制，更多从诸如美国《反海外腐败法》这样的立法中直接体现。即使我们同意它代表（目前来说）国际反腐败规则的基础，我们也不能想当然地认为，有着自己的文化、宗教、道德和语言传统的中国公司的高管和企业家们就一定了解这些规则成立的前提条件，或者会认同这些前提。同样的道理，也不能假设欧美的企业家或者高管能够理解或者接受中国企业做事的基本传统。

换句话说，各国可能都普遍认为腐败是“坏的”，诚实经营是“好的”。但是，“腐败”一词并没有像我们认为的那样有统一的概念。腐败可能是无处不在，但是腐败如何显现的，以及某个社会能容忍何种程度的腐败，不同的文化会给出不同的答案。

再次说明，本书并不能完全弥补不同文化之间的巨大差异，但是有关术语的词汇表（中英对照）应该能够帮助您更好地了解中西方企业在解决商业伦理问题时不同的关注点以及做法。

我们希望这本书能推动进一步的对话，而对话首要和最直接的受益者将是工商界自身，这也是中国工商领袖论坛一直致力推广的工作。

中国公司和跨国公司的领袖们彼此学习，将使们能更好地了解自己和利益相关方——即他们的员工、业务伙伴以及国内外的投资者——所面临的腐败风险。有了这个明确的愿景，他们将能够建设防止腐败的企业文化，建立起符合当地传统商业伦理并适用于国际法律框架的行为准则和内部管理程序。这将转化为经济利益：将减少公司内部低效运营成本及风险，增强供应链质量和效率，并增强投资者信心。最终，商业成功的主要决定因素是质量、服务和价值，而不是公司愿不愿意提供好处来买通对方。

从中受益的将不仅仅是公司。消除市场低效，能为公司客户、消费者并最终为社会带来巨大的财富。它其实是企业实现平衡增长的最佳实例：在企业自身业务成长的同时，将一部分财富与社会分享。



霍柏儒先生 - 国际工商领袖论坛  
全球商业标准总裁

2012年5月29日于北京



董克用教授  
中国人民大学  
公共管理学院院长



霍柏儒先生  
国际工商领袖论坛  
全球商业标准总裁

## Chapter II: Editorial Group and Contributing Authors

### 第二章：编撰委员会

**Mr. Neal Beatty**, Regional Director,  
Global Client Services, Greater China,  
Control Risks

Neal is primarily responsible for managing key account relationships and developing new business with multinational clients throughout the Greater China region. He develops and implements an overall corporate risk and crisis management strategy, in particular reducing the risks to people, information, reputation and physical assets. Before joining Control Risks, Neal worked as head of security in China for a large US financial institution, based in Beijing. Neal has a Master's degree in Chinese Studies from the University of Leeds and a BSc in chemistry from Warwick University, both in the UK. He is fluent in Mandarin Chinese and is originally from Belfast, Northern Ireland.



**柏颯先生**- 化险咨询（上海）有限公司全  
球客户服务大中华区总监

柏颯先生负责化险咨询大中华区核心客户关系管理，以及拓展跨国企业业务。他擅长就综合性企业风险及危机管理策略的研究和应用为机构提供咨询，特别是如何降低人员、信息、声誉及有形资产方面的风险。在加入化险咨询之前，他是一家大型美国金融机构在北京的风险控制负责人。他拥有英国利兹大学中国研究专业硕士学位，以及英国华威大学化学学士学位。他来自北爱尔兰首府贝尔法斯特，能讲一口流利的中文。

### Control Risks

Control Risks is an independent, global risk consultancy specializing in political, integrity and security risk. It helps some of the most influential organisations in the world to understand and manage the risks and opportunities of operating in complex or hostile environment. Its unique combination of services, its geographical reach and the trust its clients place in it, ensures Control Risks can help them effectively solve their problems and realise new opportunities across the world.



### 关于化险咨询

化险咨询是一家独立的全球咨询机构，擅长政治，诚信和安全风险咨询。它帮助世界上具有影响力的企业理解并管理风险，同时

致力于帮助客户了解且管理在复杂或不利环境中面对的运营风险。凭借特有的服务组合，广泛的地区覆盖以及客户对它的信任，化险咨询能够帮助企业在全世界各地有效解决问题并同时发现全新机遇。

This report has been prepared by China Business Leaders Forum. While the publisher acknowledges the contributions of the members of the Editorial Group, the responsibility for the publication, and any omissions or errors, remains solely with the publisher. The opinions expressed are purely those of the authors and may not in any circumstances be regarded as stating the official position of the international organisations or countries mentioned therein.

本手册由中国工商领袖论坛负责编制，我们衷心感谢编撰委员会成员的贡献，如出版物中有任何疏漏或错误之处概由出版方负责。书中观点仅代表作者个人，不代表手册中涉及的国际组织或国家的官方立场。

**Ms. Jun Cao**, Head of China Programmes, IBLF

Jun is a Cambridge Overseas Trust Scholar with a Master of Philosophy in Development Studies from the University of Cambridge. Jun currently works as the Head of China programmes. Her prime function is managing and developing IBLF's programmes in China. Before joining IBLF, in Cambridge and London, Jun worked with several NGOs and engaged in a number of development programmes. Prior to that, she accumulated years of experience in business news research with several international media outlets including her role as the chief news researcher for the Los Angeles Times' Shanghai Bureau. She is a former Shanghai representative and current special advisor with The Sino-Foreign Media Club.



**曹隽女士** - 国际工商领袖论坛 中国区项目总监

曹隽女士拥有剑桥大学发展学研究硕士学位，也是剑桥海外奖学金学者。目前她是国际工商领袖论坛中国区项目总监，负责所有中国项目的开发和管理。加入国际工商领袖论坛前，她曾在剑桥和伦敦的多个非政府组织负责国际发展项目的规划管理。在此之前，她曾在多家国际媒体负责财经新闻报道，并担任洛杉矶时报（Los Angeles Times）上海分社的首席新闻研究员。此外她是驻华外电俱乐部的前上海代表，目前担任俱乐部的特别顾问。

此外她是驻华外电俱乐部的前上海代表，目前担任俱乐部的特别顾问。

**The China Business Leaders Forum (CBLF)**

The China Business Leaders Forum (CBLF) is a joint initiative of the International Business Leaders Forum (IBLF) and the Renmin University of China. It focuses on promoting business practices that will ensure the sustainable social and economic development of China. CBLF's work in China focuses on developing sustainable business practices across all major business sectors, promoting good governance and transparency, as well as shaping new business leadership to help business leaders in China to better confront challenges in the global market. CBLF is well positioned to support companies to embed responsible business practice throughout their operations in China. Since 2005, IBLF has worked with its partner, Renmin University of China, to mobilize the business community to work collectively to improve business standards. CBLF looks at addressing the social, economic and environmental challenges faced by companies operating in the region.



**中国工商领袖论坛 (CBLF)**

中国工商领袖论坛（CBLF）是由国际工商领袖论坛（IBLF）和中国人民大学共同发起的倡议，旨在通过推行良好的商业实践，促进中国社会及经济的可持续发展。在中国，中国工商领袖论坛的工作重心，是在所有主要商业领域发展可持续商业实践、推行良好的公司治理和商业透明，以及塑造全新商业领导力，帮助中国的工商领袖们更好地面对来自全球市场的挑战。中国工商领袖论坛利用自身优势，积极支持企业将负责任的商业行为融入在华的所有经营中。从2005年起，中国工商领袖论坛协同其合作伙伴中国人民大学一起推动工商界采取联合行动，提升商业标准。中国工商领袖论坛致力于帮助在华运营公司解决来自社会、经济和环境方面的挑战。

中国工商领袖论坛利用自身优势，积极支持企业将负责任的商业行为融入在华的所有经营中。从2005年起，中国工商领袖论坛协同其合作伙伴中国人民大学一起推动工商界采取联合行动，提升商业标准。中国工商领袖论坛致力于帮助在华运营公司解决来自社会、经济和环境方面的挑战。

**Prof. Keyong Dong**, Dean, School of Public Administration and Policy, Renmin University of China

Prof. Dong holds a PhD in Economics from Renmin University of China. Currently he is Dean of School of Public Administration and Policy, and Director of Human Resource Development and Management Research Centre. His field of interests includes Human Resource Management and Social Security and Social Welfare. He has presided over a number of national level projects, including MPA Education and Human Resource Development System of Public Sector, Responsive Mechanisms of Significant Emergency etc. He is also General Secretary of National MPA Education Steering Committee, Deputy Director of Education Directorate Committee of University Public Administration Discipline, Ministry of Education, and Associate President of Chinese Public Administration Society.



**董克用教授** - 中国人民大学公共管理学院院长

董克用教授拥有中国人民大学经济学博士学位，现任该校公共管理学院院长、教授、博士生导师、人力资源开发与管理研究中心主任。主要研究方向为社会保障理论与政策、人力资源管理，主持《MPA 教育与中国公共部门人力资源开发创新体系研究》、《重大突发事件应对机制研究》等多项国家级项目。现兼任全国公共管理专业学位研究生（MPA）教

育指导委员会秘书长、教育部高等学校公共管理类学科专业教学指导委员会副主任委员、中国行政管理学会副会长、中国行政体制改革研究会副会长等职务。

**School of Public Administration and Policy (SPAP), Renmin University of China**

Under the direct leadership of the Ministry of Education, Renmin University of China is a key comprehensive and research-orientated university, and one of the most prestigious universities in the humanities and social sciences in China. The School of Public Administration and Policy (SPAP) was established in June 2001 and is now consisted of three departments (Department of Public Administration, Department of Land and Real Estate Management and Department of Urban Planning and Management), and several institutes like Institute of Social Security. It aims at exploring its traditional advantages and mobilising various resources to develop key disciplines and promote the development of public administration and public policy. In 2007, it became one of the first schools providing full-time MPA programmes in mainland China with the approval of the Ministry of Education.



**关于中国人民大学公共管理学院**

中国人民大学是一所以人文社会科学为主的综合性研究型全国重点大学，直属于教育部。公共管理学院组建于 2001 年 6 月，目前设有行政管理学系、土地管理系、城市规划与管理系、社会保障研究所等教学科研单位。它致力于利用传统优势、整合各种资源来发展重点

学科，促进公共管理和公共政策的发展。在 2007 年，经教育部批准，人大公管学院设立全日制公共管理硕士（MPA）课程，是中国大陆最早设立该课程的学院之一。

**Ms. Michelle Y.L. Gon, Senior Partner,  
Baker & McKenzie Shanghai Office**

Michelle Y. L. Gon's practice mainly covers China corporate, investment, regulatory and compliance law from the angles of anti-bribery and FCPA. With her long term China business experience, she provides pragmatic advice to clients to help them solve the complicated legal matters they encounter in and outside of China. Ms. Gon graduated from National Taiwan University with an LL.B, from the University of Illinois, Urbana-Champaign, USA, with an MC.L. and from Case Western Reserve University, USA with a J.D. She was licensed to practice law in the State of Illinois in 1986. In 2004, she was selected as one of the top 30 attorneys in China and one of the top 100 attorneys in the Asia Pacific region by Asian Legal Business.



**龚雅玲女士 - 贝克·麦坚时国际律师事务所  
所上海办公室资深合伙人**

龚雅玲律师的主要执业领域包括了与中国相关的公司法、投资以及侧重于反商业贿赂和美国海外反贿赂法（“FCPA”）的法规及合规等事务。基于龚律师在从事中国业务方面积累的丰富经验，她可以为客户在国内外投资过程中遇到的复杂法律问题提供务实有效的咨询。龚律师拥有台湾国立大学法学学士学位/美国伊利诺斯州大学比较法律硕士学位 以及美国凯斯西储大学法学博士学位。她于 1986 年获得了美国伊利诺伊州的律师执业资格。2004 年她被《亚洲律师事务》（“Asian Legal Business”）评选为中国三十强律师和亚太地区的百强律师。

**Baker & McKenzie**

Baker & McKenzie defined the global law firm of the 20th century and is redefining it to meet the needs of the global economy of the 21st century. With a network of 69 offices across 42 countries, it has been building valuable insights into the different laws and distinctive business cultures around the world. What sets it apart is its uncompromising commitment to excellence, coupled with its deep local roots and the experienced global perspective that comes from helping companies navigate sophisticated legal and business issues at home and across borders. Baker & McKenzie is one of the leading and largest international law firms in Hong Kong and China, providing dedicated legal services to multinational companies and domestic corporations doing business in China as well as to Chinese SOEs and regional corporations doing business in the region and internationally.



**关于贝克·麦坚时律师事务所**

贝克·麦坚时国际律师事务所是 20 世纪法律业务全球化的倡导者，而今，它为应对 21 世纪全球经济的挑战正对其进行重新定义。凭借覆盖全球 42 个国家和地区，69 家办事处构成的服务网络，贝克·麦坚时将自己富有价值的见解融入全球各地不同的法律体系和商业文化之中。使其脱颖而出的是其对卓越的不懈追求，加之深厚的本地根基以及广阔的全球视野。此外，贝克·麦坚时还从协助客户应对复杂的本地及跨境法律和商业问题的过程中积累了丰富经验。贝克·麦坚时始终是在香港和中国市场处于领先和规模最大的外资律师事务所之一，为国外的跨国企业或国内企业在中国的投资以及中国国有企业或地区性企业在本地区或国际上的业务发展提供专业法律咨询服务。

**Mr. Brook Horowitz**, Director, Business Standards, IBLF

A graduate of Cambridge and Harvard Universities, Brook spent most of the nineties working in Eastern Europe as a senior manager with US multinational General Electric. During this time, he held positions in business development, product management and sales and marketing, including in Tungsram, Hungary, the first major acquisition by a Western multinational in Eastern Europe following the fall of the Berlin Wall. From 1998 to 2000, he was a general product manager with GE for Europe. From 2001, Brook worked as a management consultant in projects funded by USAID, TACIS and DFID aimed at building the capacity of public sector organisations and NGOs in Russia. In 2005, Brook joined IBLF as Executive Director for the organisation's operations in Russia. As Director for Regions and Business Standards, he now oversees IBLF's programmes and staff in China, India and Russia, and heads up IBLF's work on anti-corruption. He regularly contributes opinion pieces to leading newspapers such as the Financial Times, International Herald Tribune, China Daily and Moscow Times and to blogs such as Huffington Post and Trust Law.



**霍柏儒先生** - 国际工商领袖论坛全球商业标准总裁

拥有剑桥大学学士和哈佛大学的硕士学位。90 年代的大多数时间，霍柏儒先生任职美国通用电气集团(GE)东欧市场的高级经理。其间，他负责通用电气在该地区的商业发展、产品管理和市场营销，包括匈牙利 Tungsram 公司收购案，即两德统一后第一例东欧公司被西方跨国公司收购的案例。

1998 年至 2000 年，他担任通用电气集团欧洲市场产品经理。自 2001 年起，他作为管理咨询顾问在包括美国国际开发总署 (USAID)，技术支持独立国家联合体 (TACIS) 英国国际发展部(DFID) 在内的政府部门和国际组织中工作，帮助俄国公共机构和非政府组织进行能力建设。霍柏儒先生于 2005 年加入国际工商领袖论坛 (IBLF)，担任机构的俄罗斯执行总裁，目前，作为区域及商业标准总裁，他负责国际工商领袖论坛在中国、印度和俄罗斯的项目开发和员工管理，并领导该区域的反腐败工作。他定期为一些主流媒体，如英国金融时报、国际先锋报、中国日报、莫斯科时报撰文，并为赫芬顿邮报、信托法报撰写博文。

**The International Business Leaders Forum (IBLF)**

The International Business Leaders Forum (IBLF) is an independent, not-for-profit organisation working with leading multinational companies on the responsible business agenda. It works to the ethos of 'redefining growth to help build a sustainable world.' Since our inception in 1990 by its late founding CEO Robert Davies and HRH The Prince of Wales, IBLF has led the field in promoting the role of business leadership in corporate responsibility and development. IBLF is supported by a network of over 85 companies from Europe, America, Asia and the Middle East and more than 200 affiliated organisations worldwide. Headquartered in London, IBLF also has active regional offices in Moscow, Mumbai and Beijing.



**国际工商领袖论坛 (IBLF)**

国际工商领袖论坛是一家独立的非盈利机构，我们通过和知名跨国公司的合作推动负责的商业运作。论坛的工作理念是“重新定义增长，帮助打造一个可持续发展的世界”。1990 年，由已故首席执行官罗伯特·戴维斯 (Robert Davies) 和威尔士亲王共同创建了国际工商领袖论坛。IBLF 一直帮助企业推行其在企业社会责任和可持续发展领域的领袖地位，并由此奠定了在这些领域的领先地位。如今，国际工商领袖论坛拥有来自欧洲、美洲、亚洲和中东超过 85 家公司及其世界范围内 200 多家下属机构的支持。国际工商领袖论坛总部位于伦敦，我们在莫斯科、孟买和北京也设有区域办事处。

**Dr. Jie Liu, Chairman of the Board of Supervisors, China State Construction Engineering Corporation**

Dr. Liu is currently the Chairman of the Board of Supervisors and Senior Economist of China State Construction Engineering Corporation Ltd. He joined China State Construction Engineering in 1982 and worked as Director of General Office, Assistant General Manager and Deputy General Manager. When China State Construction Engineering was restructured to form China State Construction Engineering Corporation Ltd, Dr. Liu took over the role as the Chairman of the Board of Supervisors. Dr. Liu was in charge of several major projects including designing corporate branding strategy, corporate identity strategy and establishing an efficiency monitoring system. He has received several awards from national, ministry and provincial level organisations and has rich experience in administration and management of state-owned enterprises, corporate culture management as well as corporate governance and supervision.



**刘杰博士-中国建筑股份有限公司公司监事会主席**

现任中国建筑股份有限公司公司监事会主席，高级经济师，博士研究生。1982 年加入中国建筑工程总公司，历任办公厅主任，助理总经理，副总经理。2007 年中国建筑工程总公司改制为中国建筑股份有限公司后，担任中国建筑股份有限公司监事会主席。曾主持公司企业形象策划、CI 战略、效能监察体系等重大课题，多次

获国家、省部级科技进步一等奖，拥有丰富的国有企业行政管理、企业文化和监管经验。

**China State Construction Engineering Corporation (CSCEC)**

China State Construction Engineering Corporation (CSCEC), (formerly the State Administration of Building Construction) was established in 1982. CSCEC has conducted its business operations in more than 100 countries and regions around the world. At present, it operates in 27 countries and regions worldwide, and across all parts of China. From its establishment in 1982 to the end of 2010, CSCEC's accumulated contract value and total turnover reached RMB 3 trillion and RMB 1.8 trillion respectively and its total assets in 2010 exceeded RMB 380 billion. CSCEC has been listed among the world's top 225 international contractors since 1984; in 2010, it ranked 22nd. CSCEC has been a Fortune 500 company since 2007, ranking 147th in 2011.



**关于中国建筑工程总公司（以下简称“中建总公司”）**

中建总公司正式组建于 1982 年，其前身为原国家建工总局。中建总公司曾经在全球一百多个国家和地区开展业务。目前经营区域主要分布于全球二十七个国家和地区，在全国各地均有经营业务开展。自 1982 年公司组建到 2010 年底，中建总公司共承接合约额 3 万亿元人民币，完成营业额 1.8 万亿元，2010 年公司的资产总额超过 3800 亿元。中建总公司从 1984 年起连年跻身于世界 225 家最大国际承包商行列，2010 年排名第 22 位。2007 年开始中建总公司进入《财富》世界 500 强企业行列，2011 年列 500 强第 147 位。



**Mr. Hongzhou Wong**, Greater China Cluster Downstream Controller, China Country Controller, Shell Companies in China

Hongzhou Wong, Malaysian, has held various finance positions in different Shell locations, including Upstream and Downstream businesses throughout his career with Shell. Prior to the current role as Country Controller for Shell Companies of China, he was the Finance Director and Cluster Controller for UAE and Oman. In his current capacity, he is the Director or the Supervisor of a number of companies in China in which Shell maintains shareholdings.



**黄宏洲先生- 大中华区下游业务财务总监，壳牌中国国家财务总监，壳牌中国集团**

黄宏洲先生是马来西亚人，他在壳牌的职业生涯中，曾在壳牌不同国家和地区担任一系列财务职位，包括上游和下游的业务。在担任目前的职务之前，他曾分别担任壳牌阿联酋财务总监及阿曼区域财务总监。目前，他还在壳牌在华拥有的不同持股数量的数家公司中担任董事或监事。

## Shell

Shell is a global group of energy and petrochemicals companies. As one of the world's leading energy companies, Shell plays a key role in helping to meet the world's growing energy demand in economically, environmentally and socially responsible ways. Its core values of honesty, integrity and respect for people form the basis of the Shell General Business Principles. Shell China seeks to provide energy solutions and contribute to the country's three key energy priorities: security of energy supply, environmental protection and energy efficiency, working in partnership with Chinese companies and customers to mutual benefit both in China and overseas. All of Shell's core businesses are now represented in China and its head office in China is in Beijing: Upstream (oil and gas exploration and liquefied natural gas), Downstream (Oil Products and Chemicals) and Projects and Technology businesses (Shell Global Solutions and Coal Gasification).



## 关于壳牌

壳牌是一家业务遍及全球多个国家和地区的全球化能源和化工集团。作为世界领先的能源公司之一，壳牌在帮助满足全球在经济，环境和社会责任等范围内日益增长的能源需求方面扮演着重要角色。它的核心价值观是诚实、诚信和尊重他人，这构成了壳牌商业原则的基础。壳牌中国旨在提供能源解决方案并为国家的三个主要能源优先事项贡献力量：能源供给的安全性，环境保护和能源效率，与中国的企业和客户建立伙伴关系以实现中国和海外的互惠互利。壳牌的所有核心业务都已进入中国，它在中国的总部位于北京：上游业务（石油和天然气的勘探以及液化天然气），下游业务（包括石油产品和化工）以及项目与科技部门（包括壳牌全球解决方案部和煤气化业务）。

**Mr. Zhi Qu (Jeffrey)**, Head of Compliance and Sector Compliance Officer of Infrastructure & City Sector, Siemens Ltd. China and North East Asia

Zhi Qu is currently the Head of Compliance and Sector Compliance Officer of Infrastructure & City Sector, Siemens Ltd. China and North East Asia. He has nearly 20 years of working experience in legal and compliance issues. Before joining Siemens Ltd. China, he worked as corporate counsel for major multinational companies including Lucent Technologies, Ericsson, and Siemens, as well as with the Beijing office of a large German law firm. He has been actively promoting good compliance practices in relevant industries with an aim to advance the business ethics.



**屈植先生-西门子（中国）有限公司和东北亚区基础设施与城市领域合规部负责人和合规官**

屈植先生是西门子（中国）有限公司和东北亚区基础设施与城市领域合规部负责人和合规官。他拥有近 20 年的法律合规方面的工作经验。加入西门子（中国）有限公司之前，他担任多家知名跨国公司的企业法律顾问，包括朗讯科技公司、爱立信、西门子等。他还曾就职于德国一家大型律师事务所驻北京办事处。一直以来，屈植先生致力于提高商业道德，积极推广相关行业良好的合规实践经验。

## Siemens Ltd., China

The history of Siemens in China dates back to 1872. For 140 years, Siemens has been active in the country, where it holds leading positions in the company's four sectors: Industry & Infrastructure, Industry, Energy and Healthcare. Siemens Ltd. China, the holding company, has 65 operating companies, 65 regional offices and 29,000 staff in China. China has become the second largest overseas market for Siemens. Over the years, Siemens has become an integral part of the Chinese economy and a reliable, committed and trustworthy partner of China. By applying a wide array of Environmental Portfolio and innovative solutions in the cooperation with the local partners, Siemens is committed to contributing to the sustainable development of China.



## 关于西门子（中国）有限公司

西门子在中国开展经营活动的历史可以追溯到 1872 年。在过去 140 年的时间里，西门子一直活跃在中国市场，并在工业、基础设施与城市、能源、医疗业务领域处于领先地位。西门子（中国）有限公司作为控股公司，在中国拥有 65 家运营公司、65 家区域办事处和 29000 多名员工。中国已经成为西门子的第二大海外市场。多年来，西门子已经成为中国经济不可分割的一部分，是中国可靠、忠诚、可信赖的合作伙伴。西门子将其环保业务组合与创新解决方案全面投入到与中国的合作中，彰显了其致力于帮助中国实现可持续发展的坚定决心。

**Ms. Charlene Zhu, General Counsel, GE Healthcare China**

Holding an LLB from Peking University Law School, and an LLM from University of Washington School of Law in Seattle, Washington, USA, Charlene is a registered attorney in the State of New York, USA. She joined GE Healthcare China in August 2008 and is General Counsel, GE Healthcare China, based in Beijing. She is responsible for GE Healthcare China's legal affairs across mainland China, Taiwan, Hong Kong and Macao. Prior to joining GE Healthcare China, she was General Counsel for Ericsson Greater China and was an Associate at Denton Hall International Lawyers Beijing Office, one of the earliest foreign firms with operations in China.



**朱湘莲女士 - GE 医疗集团大中华区总法律顾问**

朱湘莲女士毕业于北京大学法学院，获法学学士学位。她还获得美国华盛顿州西雅图的华盛顿大学法学院的法学硕士学位，是纽约州律师协会会员。她于 2008 年 8 月在中国加入 GE 医疗集团，现任 GE 医疗集团大中华区总法律顾问，常驻北京，负责涵盖中国大陆、港澳台地区的相关法律事务。加入 GE 医疗集团之前，朱湘莲女士曾任爱立信

大中华区总法律顾问，负责其大中华区的公司及业务的相关法律事务。此前，朱湘莲曾任丹敦浩律师事务所北京办事处法律顾问一职，该公司是最早进入中国开展业务的外资律师事务所之一。

**GE**

GE (NYSE: GE) is Imagination at Work -- a diversified global infrastructure, finance and media company taking on the world's toughest challenges. From aircraft engines and power generation to financial services, medical imaging, and television programming, GE operates in more than 100 countries and employs about 300,000 people worldwide. Jeffrey R. Immelt is Chairman of the Board and Chief Executive Officer of GE. GE is the only company listed in the Dow Jones Industrial Index today that was also included in the original index in 1896. Total revenue of GE reached \$150.2 billion in 2010. GE has seven businesses: Aviation, Transportation, Healthcare, Energy, GE Capital, Home and Business Solutions and NBC Universal.



**关于通用电气**

通用电气 (GE) 公司是一家全球化的基础设施、金融和媒体公司，是全球最大的多元化企业，致力于应对世界上最棘手的挑战。GE 的产品和服务范围广阔，从能源、石油天然气、

水处理、航空、运输系统、家电、照明和医疗，到金融和新闻媒体及娱乐，客户遍及全球 100 多个国家，拥有 30 多万员工。杰夫·伊梅尔特先生是现任董事长及首席执行官。GE 是道·琼斯工业指数 1896 年设立以来唯一至今仍在指数榜上的公司。2010 年 GE 的年销售达 1502 亿美元。GE 现有 7 个产业部门，其中包括：航空、交通运输、医疗、能源、GE 金融、家庭和商业解决方案和 NBC 环球。

## Chapter III: Context -New Laws and Challenges

### 第三章：全球形势：新法规与新挑战

From Wall Street to emerging markets, a number of new policies were released worldwide in 2011 that could have far-reaching impacts and re-shape the business world. In the US, the Dodd Frank Act passed in 2010 promises a bounty whistleblower incentive (10 to 30% of the value of fines over \$ 1 million) to informants who bring violations of securities and commodities laws to the attention of US regulators. The UK's Bribery Act, which came into force in April 2011, criminalised the offence of commercial bribery for the first time and included all companies doing business in the U.K. (including non-U.K. companies with offices, personnel or agents in the U.K.) in its jurisdiction. In the case of China, amendments to Article 164 of the Criminal Law were implemented on 1 May 2011. The revised article represents the first instance in which PRC law prohibited PRC nationals and PRC companies from paying bribes to non-PRC government officials to prevent overseas bribery. Never before has there been more exposure to the risk of prosecution for those companies that fail to take adequate safeguards.

2011年,从华尔街到新兴市场,一系列新政策在全球范围内颁布,它们在产生深远影响的同时也将重塑全球商业环境。在美国,2010年通过的《多德弗兰克法案》承诺,给向美国监管机构举报违反证券商品法案行为的举报人提供丰厚的奖励机制(罚款100万美元以上奖励10%-30%)。在英国,2011年4月生效的反贿赂法首次将商业贿赂罪纳入法律,使得所有在英国经营的公司包括在英国办事处、工作人员甚至代理商的非英国公司都纳入该法的管辖范围。在中国,刑法第164条修订案于2011年5月1日生效。这一修订案禁止中国公民和中国公司向非中国政府官员行贿,代表了中国防止海外行贿的第一个法律条款。如果企业不能采取足够的防范措施,则会面临前所未有的法律诉讼风险。



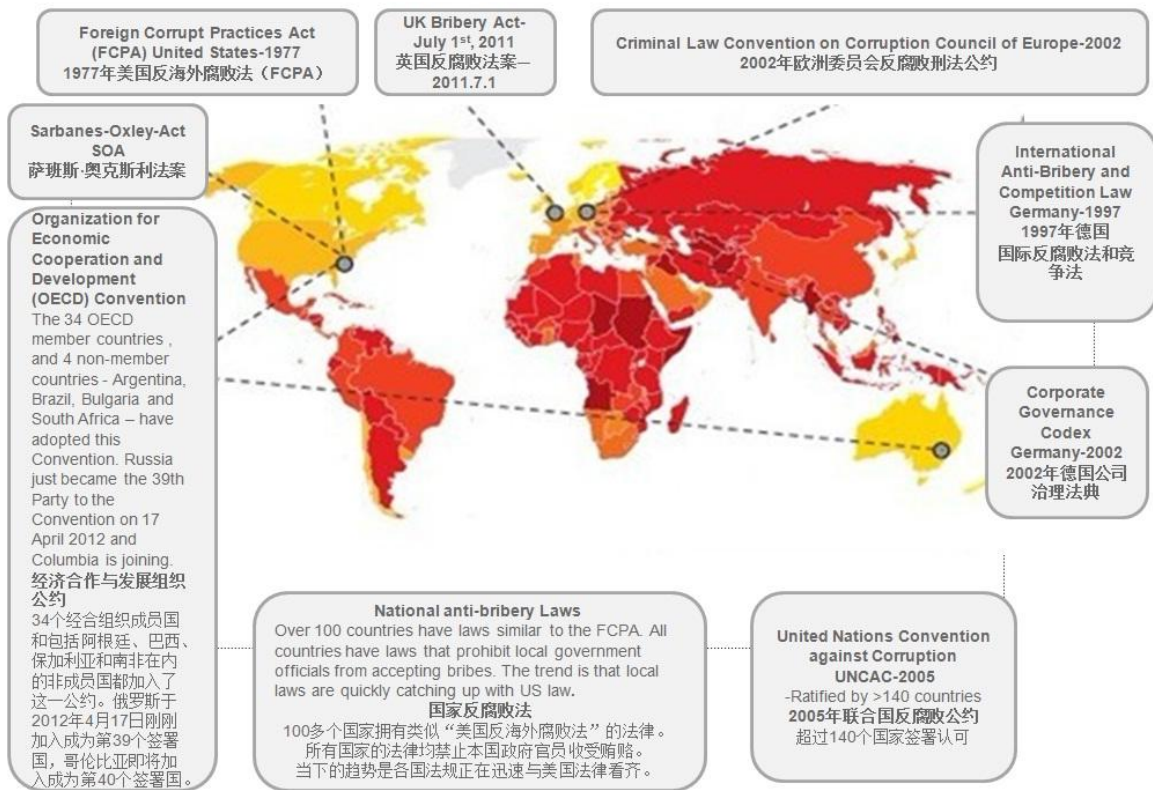
*It is important that all compliance programmes are supported by senior management in order to create a "top down approach" for establishing a "culture of compliance" within the organisation.*

--- Michelle Y.L. Gon, Baker & McKenzie

在机构中建立“合规文化”，高层领导必须全力支持所有合规项目，“自上而下奠定基调”。

——龚雅玲，贝克·麦坚时国际律师事务所

## Overview of Major International Anti-Corruption Laws 全球主要反腐败律法概览



## Recent Regulation and Enforcement Trends 最新立法执法动向

### -- OECD Anti-Bribery Convention

The Organisation for Economic Cooperation and Development (OECD) is an international economic organisation of 34 countries founded in 1961 to stimulate economic progress and world trade. The mission of the OECD is to promote policies that will improve the economic and social well-being of people around the world. The *OECD Anti-Bribery Convention*, officially known as *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, entered into force on 15 February 1999. The Working Group on Bribery, which is comprised of the signatories to the Convention has 40 members, 39 of which have ratified the legally binding standards, including most developed countries and emerging giants such as Brazil and South Africa. Russia most recently ratified the Convention and became the 39th Party on 17 April 2012, and Columbia is expected to soon ratify the Convention. All Parties are required to criminalise the supply-side (offering, promising or giving) of bribing foreign public officials in international

### ——《经合组织反贿赂公约》

经济合作与发展组织（经合组织）是一个以促进世界经济进步和贸易发展为目标国际性经济组织，该组织成立于 1961 年，拥有 34 个成员国。经合组织的使命是：在全球范围内推行促进经济发展和利于大众福祉的政策。《经合组织反贿赂公约》（正式名称为“打击国际商业交易中贿赂外国公职人员公约”），于 1999 年 2 月 15 日生效，这一反贿赂工作组由该公约的签署国构成，目前拥有 40 个成员国，其中 39 个已分别签署了具有法律约束力的条约准则。这些签署国中包括当今世界经济发达的国家，也包括像巴西，南非这样的新兴大国。俄罗斯于 2012 年 4 月 17 日正式加入，成为第 39 个签署国，哥伦比亚也即将加入成为第 40 个签署国。所有签约国都必须立法制裁在国际

business transaction (“foreign bribery”) and to provide enforcement that conforms to the Convention. These countries are subject to a rigorous peer review system for monitoring implementation of the standards under the Convention, which to date involves three intensive phases, two of which include a mandatory on-site visit with police, prosecutors, relevant government agencies, the private sector and civil society. The monitoring reports are adopted by the Working Group on Bribery on the basis of “consensus minus one” (i.e., the country being monitored cannot block adoption of the report). The monitoring reports are systematically published in their entirety.

The *OECD Anti-Bribery Convention* is the only international anti-corruption instrument focusing on the “supply side” of the bribery transaction. Under the OECD Convention, more countries are driven to adopt ever-tougher legislation like the United States *FCPA* and the United Kingdom *Bribery Act*. The OECD Working Group on Bribery works closely with partner countries that are not Parties to the Convention, but are also major exporters and foreign investors, such as China, through a mutual exchange of ideas and experiences in the fight against the supply-side of bribery in international business. According to the Working Group on Bribery’s enforcement data, as of December 2011, 210 individuals and 90 entities have been sanctioned under criminal proceedings for foreign bribery in 14 Parties to the OECD Anti-Bribery Convention between the time the Convention entered into force in 1999 and the end of 2011. At least 66 of the sanctioned individuals were sentenced to prison for foreign bribery, and a record amount of EUR 1.24 billion was imposed in combined fines on a single company for foreign bribery. At least 43 individuals and 92 entities have been sanctioned in criminal, administrative and civil cases for other offences related to foreign bribery, such as money laundering or accounting in four Parties. Approximately 300 investigations are ongoing in 26 Parties to the Convention. Criminal charges have been laid against 158 individuals and 13 entities in 13 Parties.

商业交易中向外国公职人员行贿（“海外行贿”）的一方（包括提供，允诺，给予等形式的行贿），并制定符合公约的执法措施。在这一公约下，签署国必须接受其他签署国对各项标准实施情况的严格监督。迄今为止，这一监督体系涉及三个集中阶段，其中的两个阶段包括了由警方，检察官，相关政府机关，私营部门和民间团体组成的强制性现场检查。反贿赂工作组在“共识除一”的原则下采纳这些监督报告，并将其完整和系统地出版。（也就是说被监督的国家无法阻止这一报告的采纳出版）。

《经合组织反贿赂公约》是迄今为止唯一一部针对贿赂“提供方”的国际性反腐败契约。经合组织公约推动了越来越多的国家通过类似《美国反海外腐败法》和《英国反腐败法案》这样愈加严厉的法律。同时经合组织反贿赂工作组与类似中国这样的主要海外出口投资非缔约国密切合作，在全球商业活动中，就如何针对“提供方”遏制腐败相互交流看法与经验。根据工作组收集的贿赂执法数据，截至 2011 年 12 月，自 1999 年《公约》生效起到 2011 年底，已经有 14 个缔约方的 210 位个人和 90 家企业因贿赂外国官员而被制裁；被制裁的个人中至少有 66 人因贿赂外国官员被判入狱；此外，还对单一一家公司贿赂外国官员实施了总计高达 12.4 亿欧元的罚款。至少 43 位个人和 92 家企业因与海外贿赂相关的其他违法行为而受到刑事、行政以及民事方面的制裁，如在四个缔约方内部的洗钱或账目问题。针对《公约》26 个缔约方的近 300 项调查活动正在进行中。13 个缔约国的 158 名个人及 13 家企业已被刑事指控。

## -- United States of America

The *U.S. Foreign Corrupt Practices Act (FCPA)* enacted in 1977 punishes foreign bribery of officials and inaccurate financial records and controls. It is enforced by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC).

In recent years, the government has pursued increasingly aggressive enforcement theories, strategies and tactics. New enforcement theory holds companies as well as control persons liable for wilful blindness and compliance failures. Regulators also aggressively seek international cooperation to apply stronger enforcement measures and expanded charges. The enforcement of *FCPA* almost doubled in 2010 when compared to 2009. In 2010 alone, cases with settlements over \$ 100 million exceeded the total amount of such cases prior to 2010. Further measures were passed in 2010 in the form of the Dodd Frank Act, which offers high monetary incentive awards to whistleblowers.

## ——美国

《美国反海外腐败法》（FCPA）于 1977 年出台，该法主要针对惩罚贿赂外国官员、不准确的财务记录和控制，由司法部和证券交易委员会执行。

近年，美国政府对执法理论、战略和手段的探索力度日益加大。新的执法理论认为公司以及公司的高管应该对“故意被蒙蔽”和合规失败负责。监管部门也积极寻求国际合作以采取更加强有力的执法措施并扩大诉讼范围。和 2009 年相比，2010 年美国反海外腐败法的执法案件几乎翻了一番，2010 年一年罚款超过 1 亿美元的案件就比 2010 年以前所有同类案件的总数还多。另一个例子是 2010 年通过的《多德弗兰克法案》，该法案许诺给举报人高昂的奖金。

### FCPA Enforcement Cases I: 《美国反海外腐败法》实施涉案实例分享之一

In 2011, a publicly-traded manufacturer of energy-storage and power-delivery products was charged with repeatedly paying bribes amounting to more than \$2.5 million to government officials in China to obtain business from several Chinese state-owned entities. The company, based in San Diego, agreed to pay an \$8 million criminal penalty, and \$6.3 million in disgorgement and prejudgment interest to resolve charges related to the Foreign Corrupt Practices Act (FCPA).

2011 年，一家总部位于美国圣地亚哥市，公开上市的蓄能和电力传输设备制造商，被指控为了从中国几家国有企业获得业务而多次行贿中国政府官员，行贿总额超过 250 万美元。该公司已经同意支付 800 万美元的刑事处罚以及上缴 630 万美元的非法所得以了结违反美国反海外腐败法的指控。

### FCPA Enforcement Case II: 《美国反海外腐败法》实施涉案实例分享之二

In 2008, the president of an American high-tech company with offices in Beijing was charged with offering bribes amounting to approximately \$189,300 to Chinese government officials. The subject, a naturalized US citizen born in China, was sentenced to 51 months in prison and a payment of \$386,740 to the federal government.

2008 年，美国一家在北京设有办事处的高科技公司总裁被指控向中国政府官员行贿总计约 189,300 美元。该总裁是一名美籍华人，他被判处 51 个月的监禁，同时还被联邦政府没收了与案件相关的 386,740 美元。

## -- United Kingdom

The *U.K. Bribery Act*, enforced by the Serious Fraud Office, received Royal Assent on 8 April 2010 and took effect on 1 July 2011. The *Bribery Act* is even tougher than the U.S. *FCPA* as it 1) creates offences for both paying and receiving bribes; 2) covers bribery of foreign officials and business partners.

It also provides stringent penalties that 1) establish strict liability so that companies can face unlimited fines; 2) sees liable individuals face a maximum penalty of 10 years imprisonment and/or unlimited fines; 3) leads to automatic and perpetual debarment from tendering for EU public contracts.

The *Bribery Act* applies to U.K. companies and non-U.K. companies with offices, personnel or agents in the U.K. British nationals and residents can also be held liable for offences committed anywhere in the world.

## -- People's Republic of China

In China, several laws regulate bribery. The *Criminal Law*, enacted on 1 July 1979, (amended after 1997 for a few times), provides a clear definition of "Official Bribery" while the *Unfair Competitive Law*, enacted on 1 December 1993, and the *Commercial Bribery Regulations*, enacted on 15 November 1996, provide the principles and rules against unfair competition arising from the giving of commercial bribes.

Recently, the offence of official bribery has been expanded by amendments to Article 164 of the *Criminal Law* ("Revised Article 164") implemented on 1 May 2011. The Revised Article 164 targets bribery of foreign public officials or officials of international public organisations, and has potential extraterritorial effect. This means that the application of the *Criminal Law* could extend to foreign-invested Chinese companies operating outside of China together with PRC nationals who are their employees. It is worth mentioning that a violation of official bribery can arise even if property is not given directly to an official but rather to someone who has a special relationship with the official.

## —— 英国

《英国反贿赂法》于 2010 年 4 月 8 日通过，并于 2011 年 7 月 1 日起生效，由英国重大欺诈案件调查署负责执行。这个法案比《美国反海外腐败法》更为严厉，因其 1) 同时设立了行贿和受贿两个罪名；2) 涵盖了对外国官员和商业合作伙伴的贿赂行为。它还规定以下严厉处罚：1) 确立严格法律责任，使违规公司面临的罚款没有最高限额；2) 责任人将被判处最高十年的监禁和 / 或高额罚款；3) 自动并永久取消其参与欧盟公共合同投标的资格。

不论贿赂发生在哪个国家，《英国反贿赂法》可以对英国企业或者在英国有办公室、员工甚至代理商的非英企业，以及英国公民和在英国居住的个人执法。

## —— 中国

中国有若干法律条例监管贿赂行为。1979 年 7 月 1 日生效的《刑法》对“贿赂官员”给出了清晰的定义（1997 年后刑法做了几次修正）。同时 1993 年 12 月 1 日生效的《反不正当竞争法》及 1996 年 11 月 15 日生效的《关于禁止商业贿赂行为的暂行规定》也出台了相应的原则和规定，禁止通过商业贿赂进行不正当竞争。

不久前，刑法第 164 条增补条例（第 164 条修订版）扩大了对官员行贿罪的范围界定，该修订案于 2011 年 5 月 1 日生效。修订后的刑法第 164 条针对对外国官员或国际公共组织官员的行贿，并具备潜在的境外执法效力。这意味着刑法的适用范围可能扩大到在海外运营的、有外商投资的中国企业连同他们企业内的中国国籍员工。同时值得一提的是，即便财产不是直接交给官员本人，而是和官员有特殊关系的其他人，也可能被视为对政府官员的贿赂。



## Comparison of Three Main Regulations and Enforcement

	US FCPA	UK Bribery Act	China (Criminal Law, Unfair Competition Law, Commercial Bribery Regulations)
Scope of Application	Applies to 1) all U.S. companies, residents and citizens; 2) foreign firms and persons within the territory of the United States; 3) foreign companies whose securities are listed in the U.S.	Applies to 1) U.K. companies and non-U.K. companies with offices and personnel or agents in the U.K. 2) overseas British nationals and U.K. residents	Applies to 1) Companies or individuals in China; 2) foreign-invested Chinese companies operating outside of China, employing PRC nationals.
Bribery of Foreign Officials	Prohibiting issuers, domestic concerns, and any person from bribing a foreign official, foreign political party, or candidate for political office, for the purpose of influencing any act of that foreign official in violation of the duty of that official, or to secure any improper advantage in order to obtain or retain business.	Prohibiting bribery of foreign public officials including an individual who holds a legislative, administrative or judicial position of any kind, exercises a public function or is an official of a public international organisation.	Article 164 Amendment extends to targeting bribery of public officials or non-public officials of international public organisations, with potential extraterritorial effect. Unfair Competition Law and Commercial Bribery Regulations focus on prohibition of commercial bribery.
Penalties	<u>Individuals</u> : 1) sentence lengths accrue depending upon the amount of money involved when in excess of \$2,000; 2) The Act also provides for civil penalties of up to \$100,000 that cannot be indemnified by companies; <u>Companies</u> : subject to debarment before government agencies.	<u>Individuals</u> : maximum of 10 years' imprisonment and/or unlimited fines; <u>Companies</u> : 1) an unlimited fine; 2) automatic and perpetual debarment from tendering for EU public contracts	<u>Individuals</u> : maximum 10 years' imprisonment and a fine; <u>Companies</u> : a fine up to RMB 200,000 with all illegal income confiscated.

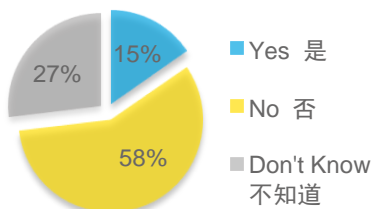
**Survey:** In February and March 2012, CBLF and UNGC China Network (managed by China Enterprise Confederation) conducted a survey of multinationals and Chinese companies. The survey sought to understand the general perception of integrity issues among businesses in China and how they guard against corruption risks. Most of the invited survey takers were compliance officers and legal counsel from large multinationals and large Chinese enterprises. Some of these survey results are shared in this publication.

**调研:** 2012年2月至3月, 中国工商领袖论坛(CBLF)和全球契约中国网络(UNGC China)进行了一场调研, 了解在中国的企业对合规问题的认识, 以及对腐败风险的防范程度。参加调研的主要对象为大型跨国企业以及中国企业的合规官和法律顾问。本书将和大家分享调研的部分结果。

## 中外主要立法执行对照

	《美国反海外贿赂法》	《英国反贿赂法案》	中国法律：《刑法》、《反不正当竞争法》及《关于禁止商业贿赂行为的暂行规定》
适用范围	适用于：1) 所有美国企业、公民和常住居民；2) 美境内的外国公司和个人；3) 在美上市发行股票的公司。	适用于：1) 英国公司及在英国有办事处、工作人员或代理商的英国公司；2) 国外犯罪的英国公民或常住居民。	适用于：1) 在华企业和个人；2) 在国外运营的、由外商投资的、雇员有中国人的中国企业。
在贿赂外国官员方面	禁止任何上市公司、国内法人以及个人，贿赂外国官员、外国政党或政治职位候选人，以影响该官员违反其职责的行为；或为了获取或继续某项业务，以确保不正当利益。	禁止贿赂外国公职人员。该法案规定，外国公职人员还包括任何拥有立法、行政或司法职位、行使公共职能的人或国际公共组织官员。	针对公职人员或非公职人员刑法 164 条修正案及对国际公共组织官员的贿赂，并具有潜在的域外效力。《反不正当竞争法》及《关于禁止商业贿赂行为的暂行规定》针对禁止商业贿赂。
处罚	<u>个人</u> ：当涉案金额大于两千万美元时，刑期长度由涉案金额决定。法案同时规定了最高达十万美元民事处罚，且规定罚金不可由公司赔偿。 <u>企业</u> ：可能失去参与政府合同资格	<u>个人</u> ：最高达十年监禁或/及无最高限额的罚款。 <u>企业</u> ：1) 无最高限额的罚款；2) 自动永久失去欧盟公共合同竞标资格	<u>个人</u> ：十年以下有期徒刑，并处罚金。 <u>企业</u> ：二十万元以下的罚款，有违法所得的，予以没收。

### Survey Question 1 调研问题一



Do you believe that Chinese legislation and regulation is effective in countering corruption?  
您是否认为中国的法律法规能够有效地抵制腐败？

Only 15% of the companies believed current legislation was effective in countering corruption.  
仅 15% 企业认为目前的立法足够抵制腐败。

## Challenges Faced by Businesses in China 在华企业面临的挑战

In recent years, the increasingly competitive market situation in the PRC has given rise to a number of enforcements in official bribery and/or commercial bribery situations, which have involved foreign and/or multinational persons or entities. One published report estimates that 64% of the corruption cases investigated by the PRC government in the past 10 years involved foreign businesses and international trade.

At the same time, China-based companies are investing outside of China in growing numbers. They are also challenged by the corruption risks arising with increasingly fierce competition for the resources, commodities and market opportunities that these investment destinations offer. The Criminal Law's revisions to Article 164 signal to China-based companies that the bribery of public officials, whether inside or outside of China, is not acceptable and they have to "do good and play fair" in the international marketplace, or else they will be subject to criminal sanctions in China.

In addition to domestic laws, Chinese companies are increasingly exposed to enforcement actions taken by overseas regulators for breaching overseas anti-corruption laws. In recent years, due to the difficulties in obtaining financing in China, many small and medium sized Chinese companies opted for listing on overseas stock markets. The US stock market has been a particularly popular destination. Like American companies, these companies are subject to the supervision of the US regulatory authorities. Their relatively weak corporate governance and internal control structure have made them a target for US enforcement actions. The DOJ and the SEC have launched a number of investigations targeting these Chinese companies for possible violations of the US securities laws and the *FCPA*.

Since 2005, US authorities have filed a number of *FCPA* enforcement actions against companies based on violations in China. Discernible trends for conducting underlying *FCPA* actions include

- employees directly paying bribes falsely described as "commissions" or "referral fees",
- companies paying bribes through agents or distributors, falsely described as "commissions"
- using an off-book bank account to pay bribes
- use of shell company to pay bribes
- paying Chinese officials to take vacations to the US, falsely described as "factory tours"

近年来, 竞争日益激烈的中国市场使得对官员以及/或商业行贿的状况层出不穷, 这些贿赂有不少涉及国外以及/或多国的个人或实体。一项公开发行的报告显示, 在过去十年, 中国政府调查的贪污案件中大约64%都涉及外资企业和国际贸易。

与此同时, 越来越多的在华企业开始在海外投资——但是由于在投资目的国, 在资源、商品以及市场机会方面的竞争日益激烈, 在这种情况下, 这些公司经常面临由此产生的腐败风险的挑战。《刑法》第164条修订条款向这些公司传递了信号, 即: 无论在中国境内外, 贿赂官员都是不合法的; 这些公司必须在在国际市场上要“正直行事, 公平竞争”, 否则将受到中国的刑事制裁。

除了国内法律, 中国企业正越来越多地面临海外监管机构针对违反海外反腐败法律的行为所采取的执法举措。近年来, 由于在国内融资困难, 中国许多中小企业选择在海外证券市场上市。美国证券市场一直以来是它们普遍选择的市场之一。和美国企业一样, 这些公司作为在美国的上市企业, 也同样受到美国监管机构的监管。这些公司治理和内部控制架构都相对薄弱, 往往成为美国执法机构的关注目标。由于它们可能会违反美国证券法和《美国反海外腐败法》, 美国司法部和证券交易委员会已经针对这些中国公司进行了多项调查。

自 2005 年以来, 美国当局根据《美国反海外腐败法》, 对一些公司在中国的违法行为进行了调查执法。针对《美国反海外腐败法》的调查重点有以下几点最新趋势:

- 员工假借“佣金”、“介绍费”等名义直接行贿
- 公司假借“佣金”等名义, 通过代理商或分销商进行贿赂
- 使用秘密银行账户行贿
- 利用空壳公司行贿
- 假借“参观工厂”等名义, 支付中国官员到美国度假的费用。

The UK *Bribery Act* came into force on 1 July 2011. Although it is similar in many aspects to the *FCPA*, it is considered to be broader and more robust than the *FCPA*. Unlike the *FCPA*, which only applies to bribery of foreign public officials, the UK *Bribery Act* also covers bribery of private individuals.

《英国反贿赂法案》于2011年7月1日生效。它在很多方面与《美国反海外腐败法》相似，但它比《美国反海外腐败法》的适用范围更广，力度更强。《美国反海外腐败法》仅适用于贿赂外国官员的情况，而《英国反贿赂法案》还涵盖个人贿赂行为。

The Act has significant extra-territorial reach. It applies to bribery that takes place outside the UK where the person committing the bribe has a “close connection” with the UK. There is also a strict liability offence for commercial organisations that fail to prevent bribery by those acting on their behalf, where the bribery was intended to obtain or retain business. This strict liability offence applies to companies incorporated or carrying on a business in the UK, including Chinese and foreign companies, regardless of where the bribery happens.

《英国反贿赂法案》有非常广泛的境外执法效力。只要行贿的当事人跟英国“紧密的联系”，即使行贿行为发生在英国之外，该法案同样适用。针对商业机构为自身获得或者保有某项业务，而未能阻止代理贿赂行为的情况，该法案也制订了严格的责任罪名。无论贿赂发生在哪里，这种责任罪适用于所有在英国注册成立的或在英国开展业务的公司，包括中国和外国企业。

Both Chinese and foreign invested companies should be aware of and alert to the exposure of their business to the UK *Bribery Act*. Nowadays, the Act should become a key / integral part of the compliance training programmes within companies. Although the Act only came into force less than a year ago, no action has been taken against a business in China by the UK authorities to date. However, one should not underestimate the potential impact that the Act may have on Chinese companies with investments in the UK.

中国和外资企业都应该知晓并注意避免其业务触犯《英国反贿赂法案》。如今，该法案应该成为这些公司对其雇员进行合规培训计划中的重要部分。也就是说，虽然该法案生效还不到一年，到目前为止，英国当局还没有采取针对中国公司的任何举措，但是不能忽视该法案对那些在英国投资的中国公司可能产生的较大影响。

### **Blacklist/Debarment 黑名单制裁/取消资格**

When firms or individuals are found through an investigation to have engaged in fraudulent, corrupt, collusive, coercive or obstructive practices, the World Bank may impose a sanction such as debarment. Debarred entities are ineligible to be awarded World Bank-financed contracts, either permanently or for a designated period of time. Since 2009, 13 Chinese firms and individuals have been blacklisted. The most serious of these included a company that was blacklisted for 8 years (the average period is approximately 4 years; the minimum is 2 years). The Asian Development Bank (ADB) also publishes sanction lists periodically. There have been 11 Chinese firms and individuals listed in ADB sanctions since 2009.

世界银行通过调查如发现公司或个人有欺诈、腐败、串通、胁迫或阻碍他人行为，即可实施制裁比如取消其竞标资格。被制裁的企业将永久或在指定期限内无权获得由世界银行资助的合同。自2009年以来，中国有13家公司和个人被列入世界银行黑名单。最严重的一家企业被处以8年内无权获得世界银行融资合同的惩罚（平均被制裁年限达四年，处罚最轻的也被处以两年内无权获得合同）。同样亚洲发展银行也会定期公布制裁名单，自2009年以来已有11家中国企业和个人被列入亚洲发展银行黑名单。

## Chapter IV: Compliance Glossary

### 第四章：合规词汇

Many of the latest concepts used in international discourse and legislation on compliance related issues/cases are characterized by the utilization of technical language and vocabulary that is unfamiliar to Chinese entrepreneurs and business leaders. At the same time, the vocabulary of many compliance related concepts deeply rooted in Chinese culture and the political environment are unfamiliar to non-Chinese entrepreneurs and business leaders, consequently making it challenging for multinationals. This chapter will provide a list of short and precise explanations of these key concepts with links to their Chinese counterparts and culture.

一方面，许多在国际合规讨论中运用的最新概念，往往都以使用技术性的语言和词汇为特色，但这些语言和词汇却不为中国企业家和商界领袖所熟悉。另一方面，中国的合规工作中，有许多基于中国文化和政治环境的概念，对非中国企业来说，同样也很难理解。本手册将参考联系中外语境以及文化背景，对一些重要概念给出简短而又准确的解释。



*By eliminating market inefficiencies, responsible and ethical businesses will bring enormous financial advantages to the companies' clients, to the end users and ultimately to society.*

--- Brook Horowitz, IBLF

*诚信、负责的商业行为能够消除市场低效，将为客户、消费者乃至最终为社会带来巨大的财富。*

——霍伯儒，国际工商领袖论坛

## Accompanying-bidding and surround-bidding

An act in which the winner of a tender is decided before the tendering procedure. The designated “winner” then organises relevant companies to bid in accordance with the bidding requirements to ensure that the designated company wins the bid.

Surround-bidding, also known as collusion bidding, is an act in which several bidders agree to raise or lower the tender offer to allow a certain stakeholder to win the bidding, with the intent of minimizing the impact of competitive bids and seeking profits.

## Active (“supply-side”) and passive (“demand side”) bribery

Active bribery of a domestic public official is committed by a person who promises, offers or gives, directly or indirectly, any undue advantage (a bribe) to a public official – whether pecuniary or non-pecuniary -- to induce the official to act or refrain from acting in relation to the performance of official duties to obtain or retain business or other improper advantage in the conduct of business. Active bribery of a foreign public official follows the same methodology, except that the purpose of the bribe is to obtain or retain business or other improper advantage in the conduct of international business. The important feature of active bribery is that the undue advantage does not have to be given at all – the offence is completed when an offer or promise has been made, and regardless if the official receives or accepts the offer, promise or gift. In addition, the offence is committed when the bribe transaction (including the offering or promising) is conducted through an intermediary, such as a local agent, joint venture partner, supplier, or legal representative. It is also committed when the undue advantage is conveyed directly to a third party instead of the official, including an entity in which the official has a beneficial interest, a business partner, family member, charity or political party. Active bribery is on the supply side.

Passive bribery can be defined as the solicitation or receipt, by a domestic (or foreign) public official, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of or request of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions. Passive bribery is on the demand side.

## Adequate procedures

The UK *Bribery Act* 2010 introduces the offence of failing to prevent bribery for commercial organisations, in addition to the liability of legal entities that already existed under UK law according to the “identification theory”, which applies when the “directing mind” of a

## 陪标和围标

陪标，就是在某项目进入招投标程序前，招标单位已经确定了意向单位，然后由意向单位根据投标程序要求，联系关系单位参加邀标，以便确保意向单位达到中标目的的举动。

围标，也称为串通招标投标，它是指几个投标人之间相互约定，一致抬高或压低投标报价进行投标，以使某个利益相关者中标，意图通过限制竞争谋取利益的手段和行为。

## 主动(行贿方)和被动(受贿方)贿赂

主动贿赂国内公职人员是指一个人通过直接或间接的方式承诺、提供或给予公职人员不正当利益（贿赂）——无论是金钱或非金钱形式——来诱使这位公职人员执行或者避免执行公务来获得或保有商业利益或在商业交易中获得其他不正当利益的行为。对外国公职人员主动贿赂与对国内公职人员主动贿赂的方式基本一致，除了贿赂的目的是为了在国际商业活动过程中获得或保有商业利益或是其他不正当利益。主动行贿的重要特征是这种不正当的利益不一定要兑现——当一方提供或是承诺给予贿赂，不管这名公职人员是否收到或是接受对方给予的承诺、好处或是礼物，都已经构成违法行为。此外，通过中介机构，例如一个当地代理商、合资伙伴、供应方或是法定代表来实现贿赂交易（包括提供或是承诺），也构成违法行为。当不正当利益直接通过第三方而非官员本身来传达，包括与官员有利益关系的机构、商业伙伴、家庭成员、慈善团体或是政治团体，也同样是违法行为。主动贿赂是对行贿方而言的。

被动贿赂是指国内（或国外）公职人员通过行使或者避免行使本人职务特权，直接或者间接为自己或他人索要或接受不当利益，以及接受或要求一项好处或相关承诺的行为。被动贿赂是对受贿方而言的。

## 充分程序

英国法律现有的“同一准则”规定，当代表一个法人单位“直接思想”的个人有行贿的犯罪意图，则该机构需要承担企业法律责任。在此之上，2010 英国《反

legal entity possesses the requisite *mens rea* for committing the offence of bribery. For the new offence of "failure to prevent", the prosecution is required to prove beyond a reasonable doubt that a person associated with the commercial entity has committed bribery under the Act, and that the bribery was committed with the intention of obtaining or retaining business or an advantage in the conduct of business for the commercial entity. The onus then shifts to the defendant entity to prove on a balance of probabilities that it had in place "adequate procedures" to prevent persons associated with it from committing bribery in order to establish a defence to escape liability for this new offence. The draft guidance for UK *Bribery Act* sets out six general principles for adequate procedure: 1) Risk Assessment; 2) Top Level Commitment; 3) Due Diligence; 4) Clear, Practical, and Accessible Policies and Procedures; 5) Effective Implementation; 6) Monitoring and Review.

### **Anonymous reporting system and whistle-blowing hotline**

An anonymous reporting system provides safe, confidential and anonymous communication channels to allow employees and other stakeholders to report integrity issues related to accounting, internal controls, audit or other operational matters directly to board members and senior management.

A whistle-blowing hotline is one method for employees or other informants to report illegal, unethical and improper conduct. A whistle-blowing hotline can be managed either internally or externally provided by a third party service provider. It is important to ensure the safety of the hotline so that whistle-blowers are comfortable reporting irregularities.

### **Associated person**

Companies and their senior executives could be held criminally liable for failure to prevent associated persons from engaging in misconduct. The UK *Bribery Act* defines an associated person as a person who performs services for, or on behalf, of the commercial organisations. This includes, but is not limited to, employees, agents and subsidiaries. This broad definition will inevitably include entities over which the company has very little control, such as affiliates, joint venture partners, or resellers.

### **Back-door dealing**

In the Chinese context, the front door is a metaphor for formal and legal channels and the back door for a variety of informal channels and undue approaches, especially through personal relations. Back-door dealing means using improper methods such as personal favours, internal connections or using one's power/influence to avoid regulatory procedures and

贿赂法案》引进了针对商业机构未能防范腐败的定罪条款。对于新规定的“未能阻止贿赂”的罪名，控诉方需要给出合理怀疑之外的证据，证明与商业组织有关的个人在这一法案下进行行贿，并且贿赂行为是以获得或保有商业利益或进行商业行为过程中的其他利益为目的。举证责任随后转移到被告方来证明自身在权衡可能性之后，制定实施了“充分程序”来防止与其相关的个人进行贿赂，以此进行免责辩护，免除这一新罪名的处罚。英国反贿赂法案的指导草案设定了六项充分程序的普遍原则：1) 风险评估；2) 高层承诺决心；3) 尽职调查；4) 清晰、实用、易于实施的政策和流程；5) 有效的执行；6) 监督和审核。

### **匿名报告体制及举报热线**

匿名报告体制通过提供安全、保密、匿名的沟通渠道，使得员工和其他利益相关方能够就财务、内部控制、审计及其他运营方面出现的诚信问题跟董事会成员和高层管理人员直接汇报。

举报热线是让员工和其他知情者报告非法、不道德或者不恰当做法的沟通渠道之一。举报热线可以设在公司内部，或者交由第三方外部服务机构管理运行。一定要确保热线的安全性，让举报者可以放心通过热线汇报异常情况。

### **关联方**

公司和高管可能因为没能阻止相关方的不当行为而承担法律责任。英国反贿赂法将关联方定义为：为商业机构服务的个人和法人。这包括但并不仅限于机构雇员、代理以及子公司。这一广泛的定义不可避免地涉及到公司控制有限的相关主体，例如少量持股的子公司、合资企业、合伙机构和零售商。

### **走后门**

在中国特定的语境中，前门，喻指正规的法定的规则；后门，喻指各种各样的非正规途径，特别是指人情关系。走后门一词指通过如托情、内部关系或利用职权等不正当的途径，来为自己或他人绕过规章制度及谋取不公平的优势利益。很多情况

gain unfair advantages and benefits, for one self or others. In many cases, back-door dealings provide a hotbed for corruption.

### **Be done for show**

Refers to a working style or methodology which partially focuses on the form or superficiality but neglects the essence. For instance, some senior leaders are keen on “showcase projects” - namely those projects with wide publicity and big scale - to showcase “achievements”, aiming to gain benefits for the individual and the organisation. It often leads to abuse of power and a waste of public resources.

### **Bribery**

The definition of bribery in the OECD Anti-Bribery Convention, which as previously mentioned is focused on the active (supply-side) of bribing foreign public officials in international business transactions is: “...for any person to intentionally offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.”

In order to commit active bribery, it is not necessary for passive bribery to also be committed. For instance, the public official to whom an undue advantage is offered, promised or given does not have to receive or even be aware about the offer, promise or gift. Only the *mens rea* of the person on the supply-side of the active bribery offence is relevant. The reverse is true for the offence of passive bribery by a public official.

### **Code of conduct / Code of ethics**

Related concepts include ethical codes and honour codes. The International Federation of Accountants provided the following working definition: “Principles, values, standards or rules of behaviour that guide the decisions, procedures and systems of an organisation in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations.”

### **Compliance**

Generally speaking, compliance means state or acts of accordance with established rules including standards, specifications, regulations, or laws. At a corporation or organisation level, compliance describes management processes that identify applicable rules, assess operation states and potential risks and then make efforts to ensure requirements

下，走后门是产生腐败现象的温床。

### **搞形式主义**

指片面地注重形式而不管实际的工作作风，或只看事物的现象而不分析其本质的思想方法。如个别领导为了个人和单位出名，显示“成绩”，热衷于搞一些声势大、规模大、影响大的“明星工程”，换取个人名利。形式主义常导致滥用职权和浪费公共资源。

### **贿赂**

经济合作与发展组织《反贿赂公约》给出的关于“贿赂”的定义，更关注之前提到过的国际商业交易中主动（行贿方）贿赂外国官员的行为，其将贿赂定义为：任何人直接或通过中介的方式，故意提供、许诺或给予任何不正当的金钱或其他利益给外国公职官员或者第三方，目的是为了该官员行使或避免行使本人职务特权，从而最终在国际商业交易过程中达到获得或保有商业利益或获得其他不正当利益。

进行主动贿赂并不一定需要有被动贿赂的发生。例如，对公职人员提供，承诺或给予不正当利益，但该名公职人员并不一定会接受甚至意识到自身将获得的好处、承诺或礼物。这种情况下就仅有行贿方的人员有着犯罪意图并与主动行贿相关，反之，没有行贿方，公职人员进行被动贿赂的罪名也同样成立。

### **行为规范 / 道德准则**

相关概念包括伦理规范及荣誉规范。国际会计师联合会提供了以下定义：“指一系列原则、价值观、标准或行为规范，用来指导机构的决策、流程和体系，目的在于让关键利益相关方获得福利，并尊重与其运营相关机构的权利。”

### **合规**

通常而言，合规是指状态或者行动符合既定的规则，包括标准、条例、政策和法律。就企业机构而言，合规指一套管理流程，来识别了解适用的法规，评估经营状况和潜在风险，然后努力使机构符合相关规定并采取必要的改进措施。由于全球范



are complied and corrective actions are taken when necessary. Due to the growing number of anti-corruption regulations worldwide and requirements for transparency and governance, organisations are increasingly adopting integrated and holistic sets of compliance controls. Such approaches can help ensure that all necessary governance requirements can be met without the unnecessary duplication of efforts and investment of resources.

### **Conflict of interest**

According to OECD, conflict of interest is defined as: "a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities." In addition to traditional forms of conflict of interest such as gifts or family relationships, increased cooperation with the private sector in recent years has led to more complex opportunities for conflicts of interest, which include public officials having private interests in the form of partnerships, shareholdings, board memberships, or affiliations with other organisations, or their departure from the public sector to work for a regulated private company.

### **Corruption**

Corruption is defined by Transparency International as: "The abuse of entrusted power for personal gain." Corruption can also be differentiated in terms of what can be called 'true corrupt intent' and 'necessary corruption'. Corruption in terms of true corrupt intent implies bribery in order to obtain a service to which one is not legally entitled. In contrast, necessary corruption implies bribery in order to obtain a service to which one is legally entitled. Facilitation payments would fall under this latter category of corruption.

### **Cronyism and nepotism**

Cronyism is a form of favouritism shown to close friends. A typical situation of cronyism would be the political appointment to office of a friend without regard for her/his qualifications.

Nepotism is another form of favouritism shown to family member without regard to merit - i.e. appointment of family member to civil service, often at the expense of a more qualified person.

### **Debarment / Blacklisting**

Debarment/blacklisting entails the exclusion from public contracting including public procurements. The use of debarment instruments is growing worldwide. Debarment is considered by authorities to be an effective preventive instrument. Debarment is an administrative sanction (not criminal). Recently, the

围监管法规的日益增多，以及企业治理和透明度要求的增强，越来越多的机构开始采取一套整体综合的合规控制模式。这种模式能帮助确保满足所有必要的治理要求，而毋需不必要的精力资源重复投入。

### **利益冲突**

根据经济合作与发展组织的定义，利益冲突指“政府官员面临公共义务和私人利益的冲突，在这种冲突之下，私人利益可能会妨碍政府官员履行其公共的职责和责任。”除送礼、亲属关系这类传统的利益冲突之外，近年来由于政府和私营领域的合作增多，带来一些更为复杂的利益冲突情况。这些新形式的利益冲突包括公共官员因为合伙、持股、作为董事会成员而带来的私人利益，及因为其隶属其他机构，或者将离职加入被监管私营企业而带来的利益冲突。

### **腐败**

透明国际组织对腐败的定义是：“滥用被委托权力谋取私利。”也可以通过“真正蓄意腐败”和“必要腐败”两层面来区分腐败。真正蓄意腐败，指的是为获得某一项从法律上无权享有的服务而行贿的行为。相反，必要腐败，意味着为了获得一个法律上有权享有的服务而行贿的行为。例如，疏通费就属于后一类腐败。

### **任人唯亲和裙带关系**

任人唯亲是一种对关系密切亲友的偏袒形式。典型任人唯亲的例子是：不论朋友资质如何，直接对其进行政治任命。

裙带关系指无视其能力，对家庭成员偏袒的一种形式。例如任命公务人员的过程中，选择自己的家人或而不是选择更具备资质的人。

### **取消资格/黑名单制度**

取消资格/黑名单制度即排除企业获得公共契约，包括公共采购合同的资格。这种方式正在全球范围内得以采纳。它被政府视为一种有效的预防工具。黑名单制度是一种行政制裁（非刑事制裁）。近日，欧

European Union adopted a new procurement directive which makes debarment of companies and persons convicted of bribery compulsory everywhere in the European Union.

### Double designation and double expulsion

Double designation refers to a special investigation procedure of the Communist Party for violating Party discipline. After pre-approval by the inspection commission, a member or party official suspected of wrongdoing is questioned at a designated place and for a designated duration.

Double expulsion refers to an official being expelled from the Communist Party and removed from public position. Double expulsion is the most severe punishment for violation of discipline by party members, excluding criminal charges.

### Due diligence

Due diligence refers to research and analysis of a company or organisation in preparation for a business transaction. Adequate due diligence is a preventative mechanism aimed at identifying high risk activity or situations. Due diligence has the potential of enabling a corporation to make appropriate decisions, implement preventative measures when necessary or avoid a given business relationship or project altogether

### Extortion

Extortion is the unlawful use of one's position or office to obtain money through coercion or threats. One example would be when customs officials request undue 'customs duties' from importers as a condition to clear their goods.

盟通过了一项新的采购指令，规定所有欧盟国家对犯有贿赂罪的企业和个人，强制取消其资格。

### 双规和双开

双规是的党内调查违纪的特殊手段。调查组在纪委监委同意后，要求被调查的嫌疑对象在规定地方，规定时间交待问题。

双开指开除党籍并开除公职。双开是在刑事处罚之外，党内对党员违纪处分最严厉的一类。

### 尽职调查

尽职调查指在准备商业交易的时候对一家公司或机构进行调查分析。充分的尽职调查是一种预防性机制，旨在识别高风险的活动或状况。尽职调查使公司做出适当的决定，必要时实施预防措施，避开某项业务关系或某一项目。

### 勒索, 敲诈

勒索是指非法利用职位之便通过强迫或威胁手段获得钱财的行为。例如，海关官员要求进口商只有交付过多的“关税”，才能做货物清关手续，这即是勒索行为。

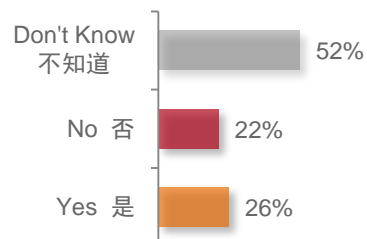
## Survey Question 2 调研问题二

Do you feel that your company has failed to win new business in the last 12 months because a competitor has paid a bribe?

您是否认为，在过去的 12 个月中，贵公司曾因竞争对手采取贿赂手段而没能赢得新的商业机会？

26% of the companies surveyed believed that they lost some businesses because of unethical behaviours of competitors.

26% 被调研企业相信公司曾因竞争对手不道德的行为而失去商业机会。



## Extraterritoriality

In addition to legal exemption such as that granted to foreign diplomats, in the context of international law, extraterritoriality also refers to the right or privilege of a state to exercise authority in certain circumstances beyond the limits of its territory. Pursuant to the OECD Anti-Bribery Convention, each Party must apply its offence of bribing a foreign public official to a national who bribes a foreign public official outside the territorial jurisdiction of the Party. For instance, both US FCPA and UK Bribery Act have extraterritorial features.

## Facilitation payments

Facilitation payments are made to induce public officials to perform their functions, such as issuing licenses or permits, and are generally illegal in the country where they are made. Facilitation payments are typically demanded by low level and low income officials in exchange for providing services to which one is legally entitled without such payments. Such payments do not constitute payments made to “obtain or retain business or other improper advantage” under the OECD Anti-Bribery Convention. Most Parties to the OECD Convention, including the United Kingdom, have not provided an exception under their foreign bribery offences for such payments. The 2009 OECD Recommendation on further Combating Foreign Bribery recognises the corrosive effect of small facilitation payments on sustainable economic development and the rule of law, and states that member countries should encourage companies to prohibit or discourage the use of such payments in internal controls, ethics and compliance programmes or measures, and must in all cases be accurately accounted for in companies’ books and records.

## Foreign public official

The OECD *Anti-Bribery Convention* defines the term foreign public official as: “any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation ” The Commentaries to the Convention clarify that a ‘public enterprise’ is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence. The Working Group on Bribery has stated that ‘dominant influence’ includes the situation where a foreign government exercises *de facto* control over an enterprise but does not for example hold in excess of 50% of the voting shares.

## 治外法权

除了如外交人员享有的法律豁免权的含义外，治外法权在国际法的背景下，也指在特定情况下，国家有权利或特权在领土之外行使管辖权。根据经济合作与发展组织《反贿赂公约》，每一个签署国都必须将其对贿赂的相关罪名，应用实施到国人在国土范围之外，对外国公职人员的贿赂行为上。例如，美国的《反海外贿赂法》和英国的《反贿赂法案》都带有一定治外法权的特征。

## 疏通费

疏通费常用来促使公职人员履行其职能，如发放牌照或许可证，在行为发生的国家通常被认为是违法的。疏通费通常针对一些级别较低或收入较低的官员，他们通过提供相应服务换取疏通费，但是这些服务从法律上来讲毋需支付费用即应获得。根据《经合组织反贿赂公约》，这种费用不属于“获得或保留商业或其他不正当利益”中的款项。《公约》的大多数缔约方，包括英国在内，在海外贿赂罪中并没有对疏通费进行例外处理。2009年《经合组织进一步打击海外贿赂建议》认识到疏通费对于经济的可持续发展以及法制的腐蚀作用。它指出成员国应该鼓励企业在其内部控制、道德、合规项目或措施中禁止或防止使用疏通费。同时，在任何情况下，必须将疏通费在公司的账簿和记录中准确记录在案。

## 外国公职官员

《经合组织反贿赂公约》对外国公职官员的定义为：“不论通过任命还是选举，任何在海外国家拥有立法、行政或者司法职位的个人、任何为海外国家的公共机构和企业履行公共职能的个人，以及公共国际组织的官员或代理”。“公约”的评注指明“公营企业”指的是政府享有直接或间接支配性影响力的一切企业，无论其法律形式如何。反贿赂工作组指出“支配性影响力”也包括外国政府行使事实上的控制权但并不持有超过50%有表决权股份的这类情况。

FCPA enforcement actions and other enforcement agency pronouncements instruct that once a foreign company (such as an oil and gas entity, hospital or laboratory) is deemed an instrumental of a foreign government, every employee of the entity (regardless of rank or title) will be considered a foreign official regardless of how local law may characterize the employee.

### Graft

Graft is a form of political corruption in which an official acquires financial gain by dishonest or unfair means, especially through the abuse of one's position or political influence. Unlike bribery, graft does not require that the official actually provide an undue advantage; it is enough that she/he gains something of value apart from her/his official pay when doing her/his job.

### Hospitality

Refers to the cost spent on the reception and entertainment of guests, visitors, special events, and other services for travellers and visitors. According to UK *Bribery Act* Guidance, bona fide hospitality is recognised as an established and important part of doing business (in order to improve the image of a commercial organisation, establish cordial relations, or present products and services).

However, hospitality and promotional or other similar business expenditure can be employed as bribes. It is undoubtedly true that if a form of corporate hospitality is used with the corrupt intent to induce someone to behave improperly, then it can be considered a bribe and criminal and civil penalties may follow.

### Intermediary

An intermediary is a person or entity who is put in contact with or in between two or more parties conducting business. In the business context, an intermediary usually is understood to be a conduit for goods or services offered by a supplier to a consumer. Hence, the intermediary can act as a conduit for legitimate economic activities, illegitimate bribery payments, or a combination of both. The hiring of intermediary is a tactic that corporations or individuals sometimes adopt to avoid direct involvement with corruption to gain business, which unfairly influences the marketplace. The OECD Anti-Bribery Convention requires that Parties criminalise bribing a foreign public official through an intermediary. For example, both the US *FCPA* and the UK *Bribery Act* criminalise corrupt payment through intermediaries, regardless of the form it takes (agent, consultant or sub-contractor).

FCPA 执法行动及其他执法机构的声明指出，一旦一家外国公司（例如石油和天然气企业、医院或实验室等）被认定为外国政府的职能部门，无论当地法律如何定义其员工，其每位员工（无论级别高低）都将被视为外国官员。

### 读职

读职是一种政治腐败形式，主要指官员通过不正当或不公正的方式，尤其是通过滥用自身职位或政治影响力来获取经济利益的行为。与受贿不同的是，读职并不需要向官员实际提供不正当的好处，只要他/她在行使职权的过程中获得了工作报酬之外的利益就构成了读职。

### 招待费

招待费指在客人、来访者的接待和娱乐上所花费的费用。《英国反贿赂法案》的指南手册指出，善意的招待和宣传或其他业务支出，旨在提高商业组织的形象、更好地展示产品和服务或建立友好关系，是进行业务的一个既定的重要组成部分。

然而，接待和宣传或其他类似业务的开支，可能会被用来行贿。无疑，如果一个企业通过招待费用来诱导某人做出不当行为，从而具有了行贿意图，那么这笔招待费可以被视为贿赂，它将有可能受到刑事和民事处罚。

### 中间商

中间商指在两家或多家贸易方之间建立联系的中介机构或中间人。在商业背景下，中间商常常被定义为将供方的货物或服务提供给消费者的渠道。所以，中间商可能作为合法商业活动或者非法贿赂支付或者两者结合的渠道。为了赢得业务，个人或公司有时会雇佣中介机构，以避免直接卷入腐败行为。这种行为会妨碍公平竞争的市场环境。《经合组织反贿赂公约》要求其缔约国将通过中间商贿赂外国官员的行为认定为犯罪。例如，美国的《反海外贿赂法》和英国的《反贿赂法案》都制裁通过中间商支付进行贿赂，不论中间商的形式是代理、咨询公司或分包商。

## Kick-backs

A kickback is a bribe given to obtain an undue advantage, where a portion of the undue advantage is 'kicked back' to the person who gave or is supposed to give the undue advantage. The payment of kickbacks is a corrupt practice which typically occurs in connection with a public procurement process when a company pays a procurement officer to illegally award the contract to the company in return for a bribe.

## Money laundering

According to the Financial Action Task Force (FATF), money laundering is the processing of criminal proceeds to disguise their illegal origin. According to the 40 Recommendations of the FATF, issued in 2003, "bribery and corruption" is a mandatory predicate offence for the purpose of money laundering (i.e., the criminal activity from which the proceeds of the crime are derived). Pursuant to the OECD Anti-Bribery Convention, Parties must make the bribery of foreign public officials a predicate offence for the purpose of money laundering if they have done so for the bribery of domestic public officials. Thus in practice, all Parties to the OECD Convention are required to make the bribery of a foreign public official a predicate offence for money laundering.

## Moderate corruption

Moderate corruption refers to the situation when government officials ask for personal gains after "performing their duties". In contrast, violent corruption means government officials refuse to act unless they receive undue payment. The phenomenon of moderate corruption occurs with expectation for bribes. Essentially, it is still an abuse of public power for undue personal benefits and is no less harmful.

## Hidden/tacit rules

Hidden rules refer to implicit, undocumented and conventional rules that are at the same time influential, widely accepted and observed. Hidden rules usually involve illegal and unethical practices that are against official regulations and thus exist in hidden forms.

## Little coffer

Little coffer refers to funds, securities and assets that should be, but are not, listed in the account books of Party and government departments in accordance with the law. According to a Chinese government regulation, "any form of funds from embezzling or intercepting the collective income that should be turned over and are privately kept without being recorded into financial department's account book or budget management should be defined as little

## 回扣

回扣是一种为了获取不正当好处而施行的贿赂，而其中不正当好处又按一定比例返还给提供或者或将提供不正当好处的一方。支付回扣是一种腐败行为，通常发生在与公共采购有关联的环节中，表现为公司为换取合同而向负责采购的官员支付回扣。

## 洗钱

根据金融行动特别工作组的定义，洗钱是一种掩盖金钱的非法来源的犯罪行为。根据 2003 年发布的《金融行动特别工作组 40 项建议》，“贿赂和腐败”是用于洗钱活动的强制性上游犯罪（也就是一种从犯罪所得派生出来的犯罪活动）。根据经合组织反贿赂公约，如果缔约国将贿赂国内公职人员认定为洗钱罪的上游犯罪，他们也必须将贿赂国外公职人员认定为洗钱罪的上游犯罪。因此，在实践中，经合组织所有缔约方都须将贿赂外国公职人员这一行为认定为洗钱的上游犯罪。

## 温和腐败

温和腐败指政府官员凭借权力在公事办成之后向他人收取钱财的行为。与其对应的是暴力腐败，即不收钱财不办事的政府官员。温和腐败现象的产生源于对贿赂的预期。其本质依然是滥用公权谋私利，同样危害巨大。

## 潜规则

是指明文没有规定、约定成俗的，但是却又是影响力、被广泛认同并遵循的规则。潜规则通常涉及不法、不道德的行为，因其违背正式法规，因此不得不以隐蔽的形式存在。

## 小金库

小金库，指的是所有依法应该列入，却没有列入党和政府部门财务账目的资金、债券和资产。根据中国政府法规，“侵占、截留单位收入和应上缴收入，且未列入本单位财务部门帐内或未纳入预算管理，私存私放的各项资金均属‘小金库’”。小金库违反了国家财经法规及其他有关规定，在有些情况下，小金库还和通过乱收费、

coffers". Little coffer is a violation of state financial regulations and other relevant provisions. In some cases, little coffer is related to illicit income from arbitrary charges, fund-raising, quotas and fines.

### Red tape

In a number of European countries, red tape was formerly used to bind legal documents and official paper. Now it refers to official routine or procedure, i.e. paper work and administrative formalities marked by excessive complexity which results in delay or inaction. It is usually applied to government, but can also be applied to other organisations, such as corporations. Red tape generally involves the filling out of seemingly unnecessary paperwork, obtaining unnecessary licences, having multiple people or committees approve a decision and various low-level rules that make conducting one's affairs slower, more difficult, or both. Cutting the red tape can help increase transparency, improve supervision and reduce corruption.

### Risk assessment

Risk assessment is a step in a risk management procedure to determine the potential loss and probability of occurrence of recognised threat. OECD defines it as a systematic process for assessing and integrating professional judgements about probable adverse conditions and/or events. The risk assessment process should provide means of organising and integrating professional judgements for development of the work schedule. It helps businesses to identify priorities for their compliance work and is a key element of adequate procedure required by UK *Bribery Act*.

### The issue of three public consumptions and one monetary gift

"Three public consumptions" means government spending on vehicles purchases and maintenance, official receptions and overseas trips. The "three public expenses and one monetary gift" refers to several forms of abusing public expense on vehicles for personal purposes, banquets, sightseeing and pocketing money and gifts. In order to curb extravagant public spending, the State Council required all central government departments and local government to publish their expenditure on "three public consumptions" in 2010 and 2012 respectively.

### Transparency

According to OECD's definition, transparency refers to an environment in which the objectives of policy, its legal, institutional, and economic framework, policy decisions and their rationale, data and information related to monetary and financial policies, and the

乱摊派、乱罚款等途径收敛非法收入相联系。

### 官僚程序

在许多欧洲国家，红带子曾用来捆绑法律文书和官方文件。如今英语中用“红带子”这个词形容过于复杂的官方程序流程，例如书面文件和行政手续，造成拖延并阻碍行动。它通常指政府机构，但也适用于诸如公司等其他机构。官僚程序，通常包括填写看似不必要的文书工作、获得不必要的许可证、一项决定需通过多人或多个委员会批准，以及各种使事情变难或者效率变低的低层面的规则。简化官僚程序有助于增加透明度，提高监督效率同时减少腐败。

### 风险评估

风险评估是风险管理过程的一个步骤，用来估算特定危险情况的潜在损失和发生的概率。经济合作与发展组织将其定义为对某一可能发生的负面情况和/或事件的专业结论，并对其评估整合的一套系统流程。风险评估流程应该提供相应的方法，将风险评估的专业结论应用到工作计划的修订中。它帮助企业识别合规工作的重点，也是英国《反贿赂法案》要求的充分程序的一个重要组成部分。

### 三公一金问题

"三公"指公车消费、公款接待、公费旅游和礼品礼金。"三公一金"主要指若干种滥用公款的情况，包括公车私用、公费大吃大喝、度假旅游，及收送礼金红包的问题。为了遏制公款奢侈消费，国务院于2010年和2012年分别要求中央各部委和省政府公开"三公"经费情况。

### 透明

根据经济合作与发展组织的定义，透明指的是一种特定的环境，（在这一环境中）通过及时、方便、通俗易懂的方式，向公众提供所有政策目标、法律或组织机构和

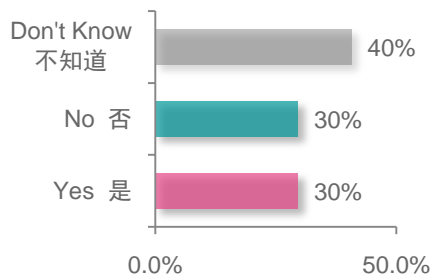
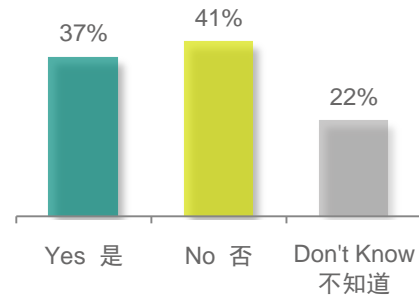
terms of agencies accountability, are provided to the public in a comprehensible, accessible, and timely manner. Transparency is the quality of being clear, honest and open on relevant information so the operation and development of one organisation is visible, predictable and understandable to its stakeholders. Transparency is therefore considered an essential element of accountable governance.

经济的构架、政策决定及其理由、货币及财政政策相关的数据信息以及相关部门的责任。透明指清晰、诚实并开放相关信息，使机构的运作发展信息对于利益相关方而言是可了解、可预见并可理解的。因此透明被认为是负责任监管的一个基本要素。

### Survey Question 3 调研问题三

Were you deterred from an otherwise attractive business opportunity because of concerns about corruption?  
您是否曾经因为担心腐败问题而没有跟进原本有吸引力的商业机会？

37% of the companies gave up attractive business opportunities because of concerns about corruption.  
37% 企业曾因担心腐败问题而放弃有吸引力的商业机会。



### Survey Question 4 调研问题四

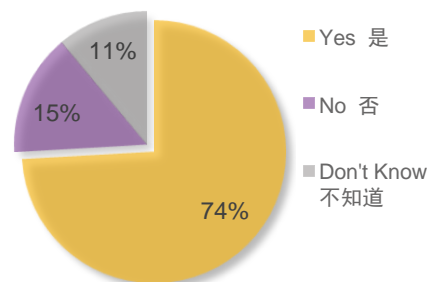
Do you expect the corruption level in China to increase over the next five years?  
您预计未来五年中腐败现象是否会上升？

30% of the companies thought corruption problem would be more serious over the next five years  
30% 企业认为腐败问题在未来五年会更严重。

### Survey Question 5 调研问题五

Does your company have a formal compliance programme to implement a zero-tolerance bribery policy?  
贵公司是否有正式明确的合规项目来实施零容忍的反贿赂政策？

15% of the companies surveyed did not have a formal compliance programme to implement a "zero-tolerance" policy.  
15%接受调研的公司没有正式明确的合规项目来实施零容忍政策。



## Chapter V: Compliance Structure and Practice Sharing

### 第五章：合规构架及实践分享

A well designed and implemented compliance programme can prevent illegal conduct and mitigate -- if not eliminate -- punishments and liabilities for those offenses that still occur. A good compliance programme also helps to increase confidence of shareholders, protect a company's reputation among its customers, improve relationships with investors and increase profits while reducing legal and other costs of doing business.

Different companies adopt different structures to prevent misconduct. In this chapter, we will detail representative compliance structures from both multinational and Chinese enterprises. By introducing these organization structures, we want to share certain important principles for designing and implementing a successful programme that focuses on compliance results rather than procedures.

一个充分设计执行的合规项目，能帮助企业在预防违规操作的同时，避免或者降低因为不当做法带来的惩罚和法律责任。与此同时，它还能帮助增强股东的信心，保护企业在消费者中的声誉，促进投资者关系，在增加利润的同时降低法律和其他经营成本。

各类企业会采用不同的合规构架来预防违规现象。在本章节中，我们会分享一些来自中外企业具有代表性的合规构架。通过这些组织构架，我们希望能分享成功的合规项目在设计执行时的一些关键原则，使合规项目能最终达到效果而非复制流程本身。



*My aim is for the SFO to work with corporations as part of a solution, not for bad practices to be a continuing problem.*

--Richard Alderman, Director, Serious Fraud Office at CBLF Business Leaders Dinner, 9 February, 2012

*我的目标是让重大欺诈案件调查署与企业共同寻求解决之道，使不正之风不再延续。*

——英国重大欺诈案件调查署署长理查德·埃尔德曼在2012年2月9日CBLF商业领袖晚宴上发言



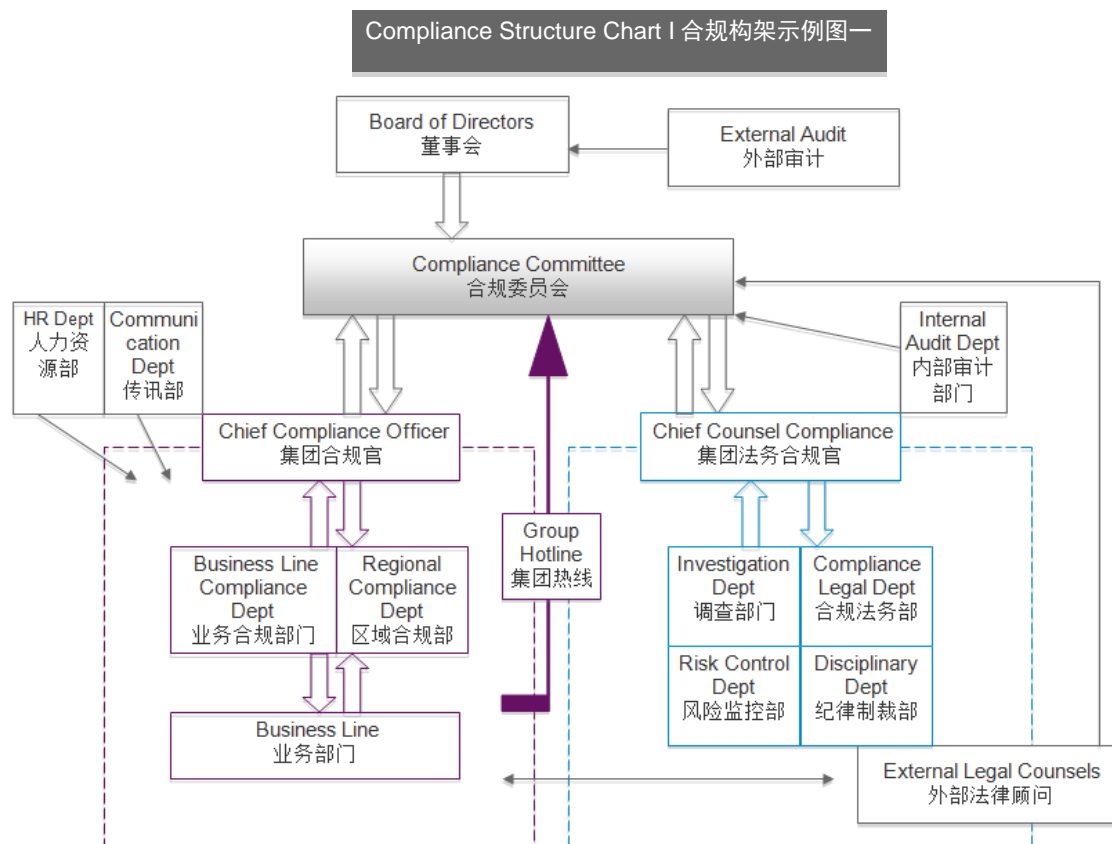
## Compliance Structure Example One 企业合规结构示例一

Many multinational corporations choose to establish a Compliance Committee or appoint a General Counsel / Group Compliance Officer to be responsible for compliance on a Group-wide basis. This includes developing, operating and monitoring the compliance programme, and the authority to report directly to the head of the organisation, such as the president and/or the board.

Depending on each company's size, geographical location and industrial classification, companies may choose different structures to realise their compliance results. Most structures, however, cover two main functions: compliance operation and compliance governance. Under the Compliance Committee, there are commonly business line and/or regional compliance officers responsible for introducing and implementing the compliance programme into the daily operation of their business division or region. There are also legal counsel/compliance officers leading the work of monitoring, investigation, risk control and sanctions to prevent and correct misconduct. The Compliance Committee also works closely with HR, Communication, Audit and many other departments to deliver education, training, and communication channels for the compliance programme.

许多跨国企业选择建立合规委员会或者任命总法律顾问 / 集团合规官来负责整个集团的合规工作，这包括发展、运作和监督整个合规项目的运行，同时他们有权直接向机构最高领导（比如总裁或者董事会）汇报。

由于公司的规模、地理位置和产业分布的差异，不同企业会选择不同的架构实现合规效果。不过大部分合规架构都会包括合规经营和合规治理两部分。在合规委员会下，通常会设立不同业务和地区专门的合规官，负责在各自业务和地区的日常经营中引入实施合规项目。与此同时，另有法律顾问或合规官指挥公司的监管、调查、处罚及风控工作，以预防并纠正违规操作。合规委员会还需要和人事、传播、审计及许多其他部门合作，为合规项目展开教育培训，建立汇报交流渠道等。



## Compliance Structure Example Two 企业合规结构示例二

While few Chinese companies use the term “compliance” in their corporate structure, most Chinese companies have established some mechanism to improve corporate governance and fulfil compliance mandates. In the past, these compliance functions were delegated to different bureaus and departments, such as the legal or audit department or supervision bureau, which operated on their own. However, in recent years, a number of companies have begun to establish specific Supervisory Committees to 1) set the tone from the top level and 2) coordinate various departments and bureaus to work collaboratively to promote business integrity, standardise procedures, monitor daily operations and prevent misconduct.

The supervisory committee can be composed of heads of various departments, including Human Resources, Safety, Quality and Environment, Auditing Bureau (including Board of Supervisors Office), Legal Affairs Department and/or Discipline Inspection, and the Supervision Bureau (including Inspection Office) if it is a State-Owned Enterprise (SOE). The Supervisory Committee has the right to settle, sanction, or provide suggestions to various management problems or misconduct and report directly to the Board and senior management. It is also responsible to share compliance experience and good practices with other companies. In Chinese SOEs, all important issues, personnel appointments and dismissals, project assignments, and the use of large sums of money (referred to as "Three Important and One Large" system), decisions must be made after plenary discussions.

虽然目前在企业架构中使用“合规”一词的中国企业并不多，但是大部分中国企业都或多或少地建立了一些机制来增强公司治理，履行合规职责。过去，这些合规职能被分派到不同的部门司局，如法律部、审计部或者监察局，各自进行自己的工作。然而近几年，一些企业开始建立专门的监督委员会来：一、自上而下奠定公司基调；二、协调各部门之间的合作以推动商业廉洁，规范运作流程，监控日常业务并预防不当操作。

监督委员会由人力资源部、安全质量环境部、审计局（包括监事会办公室）和法务部组成，在国有企业中则还会有纪检监察局（包括巡视办公室）。监督委员会直接向董事会和最高管理层汇报，对各种管理问题以及不规范行为有权处理、处罚或者提出建议。同时还负责同其他企业分享合规经验和好的做法。在中国国有企业中，还有一项“三重一大”制度，即“任何重大事项决策、重要人事任免、重要项目安排以及大额资金的使用，都必须经集体讨论做出决定”的制度。

Compliance Structure Chart II 合规构架示例图二



## Key Principles

### 重要原则

Regardless of its size, location, industry and ownership, all companies should have a compliance programme or its equivalent in order to have adequate procedures in place to prevent bribery and defend itself if held liable for misconduct.

A successful compliance programme should include the following elements:

#### 1. Top-level commitment

The tone of the organisation is set at the top. Therefore, a strong commitment must be instilled in top level executives and managers for ethics and compliance to be built into a company's corporate culture. Top level executives serve as examples for fellow employees and need to frequently communicate and demonstrate the company's zero tolerance policy while ensuring ethics and compliance are built into all company projects.

#### 2. A complete set of written policies, management procedures and code of conducts

It is important for an organisation to develop and distribute written policies, procedures and detailed codes of conduct to ensure high business standards are followed in the entire organisation, including subsidiaries and local branches. The code of conduct needs to provide detailed guidance on responses to challenging circumstances including grey area issues such as gifts, hospitality and facilitation payments.

不论大小、地理位置、产业及股权结构如何，任何公司都应该有一套合规构架或者类似的机制，来确保在机构里设立充分流程来防止腐败，并在发现违规操作时降低法律责任风险。

一个成功的合规项目应该包含以下要素：

#### 一、高层领导的示范决心

企业组织的基调是由高层领导奠定的，因此，为了使道德和合规成为企业文化的一部分，高层管理人员和经理层必须表现出强有力的承诺决心。高层管理人员应该为普通员工做好榜样示范，而且需要经常与他们沟通并表明公司的零容忍政策，以确保在公司的所有项目中都建立起道德和合规原则。

#### 二、一套完整的书面政策、办事流程、行为守则

机构有必要制定并分发统一的书面政策、办事流程和详细的行为守则以确保整个公司（包括子公司和当地分支机构）都能遵守较高的商业标准。行为守则要能为应对各种复杂的形势提供详细的指导，这些指导应该包括各种灰色地带的问题，例如礼品、招待费和疏通费。

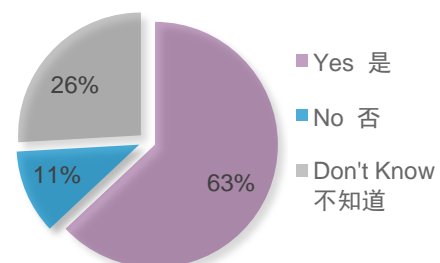
### Survey Question 6 调研问题六

Is your compliance programme consistent with anti-corruption laws in China and other jurisdictions in which the company transacts its business?

贵公司的合规项目是否与中国的反腐败法律以及公司所运营的其他国家司法体系中的相关法规相一致？

About 63% of the companies were confident that their compliance programmes were consistent with anti-corruption laws in all the jurisdictions in which the company transacts its business.

被调研企业中有 63% 的企业确信公司的合规项目与公司所运营的所有国家司法体系的相关法规相一致。



## Best Practice I: China State Construction Engineering Corporation, *Guidance for Internal Control and Monitoring*

China State Construction Engineering Corporation (CSCEC) compiled a set of its *Guidance for Internal Control and Monitoring* based on national laws and regulations, corporate management systems, and feedback from its internal controls. This guidance provides basic principles and specific implementation requirements on internal control and evaluation, which includes monitoring plans, scopes, methodologies, sampling, evaluation and recording of the monitoring results, defect evaluation and the submission of evaluation reports on internal control.

It covers nine categories (e.g. corporate performance, revenue and cost), three major business sectors (design, real estate and construction) and three levels (primary companies, secondary companies and tertiary companies), with 49 sub-categories and 329 monitoring points. The Guidance has been modified three times since 2008. Since 2007, CSCEC's Audit Department has been using the guidance to conduct annual assessments of key operations, and to monitor and improve the effectiveness of the internal control plan and its implementation.

According to 2011 results of the business monitoring programme, CSCEC managed to decrease defects in its internal control system by 7% compared to 2010. It successfully identified risks from weak implementation of the internal control system on areas like project contracting, cost control, accounting and client management in a number of companies. Based on these results, CSCEC has prioritised high risk areas and taken corrective actions to effectively address management problems and potential risks.

### 最佳实践分享之一：中国建筑工程总公司《中建股份公司内控测试技术指导手册》

2007年，中建总公司在全面了解公司内控实际情况的基础上，以国家法律法规、公司管理制度等为依据，编制了《中国建筑股份有限公司测试工作技术指导手册》。《测试手册》主要提供了内部控制测试与评估的基本原则和具体实施要求，主要包括测试计划、测试范围确定、测试方法、样本的选取、测试结果的评价与记录、缺陷评价及内部控制评价报告的提交等。具体内容涉及公司层面、收入与成本等9个类别、三大行业（即设计、房地产和施工）、三个层级（即一级公司、二级公司和三级公司），可细分为49个子类别、329个评估点。2008年至今，先后三次全面修订完善了手册。2007年以来，公司审计局每年以《测试手册》为基准，对中建股份主要业务运营状况进行分析，从计划有效性和执行有效性两个方面进行监督并提出建议。从2011年业务测试结果来看，公司制度内控缺陷较2010年下降7%。测试有效发现了几十家企业单位在项目承接、成本控制、会计核算、客户管理等方面内控执行上存在的风险。针对这一测试结果，公司确定重点风险领域，对发现的管理问题进行了有效的整改，以消除了相关的隐患。



The *Guidance for Internal Control and Monitoring* covers nine categories, three major business sectors and three levels.

《测试手册》覆盖九个类别、三大行业和三个层级

### 3. Ongoing education and training programmes

All employees should receive relevant education materials and training to ensure that they are informed about and understand the entire compliance programme. It is also crucial to arrange ongoing training sessions and follow-up reviews to make sure all employees are clear about what they are expected to do on a daily basis. The programme needs to have a clear definition of the roles and responsibilities of each department and employee within the organisation, and have an effective assignment of oversight responsibilities, which should also be reflected in the training programmes.

### 4. Effective communication lines and anonymous reporting channels

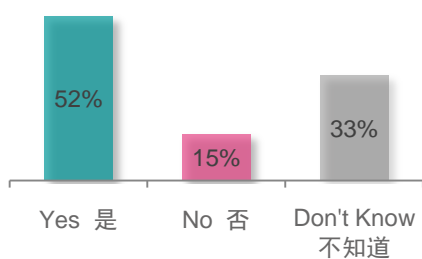
Companies need to establish effective communication lines between the compliance officer and all employees to provide advice and suggestions whenever possible, including a process (such as a hotline or other reporting system) to receive complaints or questions that are addressed efficiently and effectively. Such channels also need to adopt the procedures to protect the anonymity of complainants and shield them from retaliation.

### 三、持续的教育和培训项目

所有的员工都应该收到相关的教育材料并接受相关培训，以确保能够知晓并理解整个合规程序。重要的是，要反复组织各种培训班并进行后续评审以确保所有的员工都清楚地知道他们每天应该怎样工作。合规项目需要对组织内各部门以及每个员工的岗位职责有明确的定义，并对监督的责任进行有效的分配，这一点也应该在培训中有所反映。

### 四、有效的沟通专线以及匿名举报的渠道

企业需要在合规官和所有的员工之间建立有效的沟通专线，以便在任何可能的情况下为员工提供建议和意见，包括有效快速地接受投诉和问题（例如热线电话或其他报告系统）。这样的渠道还需要采取措施保障投诉的匿名性，并保护举报人免受报复。



#### Survey Question 7 调研问题七

Does your company have a procedure for engagement with your employees when developing, implementing, reviewing and improving the Programme?

贵公司是否有相关流程，在开发、执行、评估、改善合规项目时向员工咨询？

52% of the companies surveyed confirmed that they have such procedures for their compliance programmes.

52%的受调研企业确认他们合规项目有专门流程向员工咨询意见。

## Best Practice II: GE, Prevention & Detection System

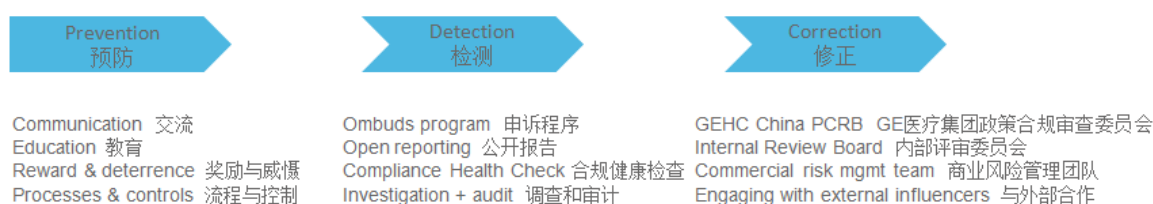
GE Healthcare China, one of the seven key businesses of GE, adopts Compliance Road Shows – a comprehensive compliance training approach to improve its employees’ awareness. The road show features “training the trainers” programmes and face to face training. This involves the training of business leaders by legal and compliance professionals, who in turn train employees. In 2011, 86 sessions were held, involving a total of 8,045 trainees.

GE has also established an extensive compliance detection system that serves as a mechanism for individuals to ask questions and report integrity concerns without fear of retaliation. This detection system consists of four modules: Ombuds Programme, Open Reporting, Compliance Health Check and Investigation and Audit. With an extensive global ombuds network, coverage is provided for every business and country in which GE operates. GE provides a variety of channels to facilitate reporting, including postings, Employee Day and a phone line. Compliance Health Check includes active leadership engagement and immediate response to local issues. GE leaders act promptly when a concern arises, and have it evaluated and investigated by counsel and other persons with the appropriate expertise. In addition, GE’s internal Corporate Audit staff conducts annual risk-based audits across all GE businesses, to identify and address potential instances of non-compliance with law, regulations and GE policies.

### 最佳实践分享之二：通用电气公司预防诊断机制

作为通用电气七大产业之一的通用电气（中国）有限公司医疗集团采用“合规路演”的形式——即一种综合性的合规培训方式——来加强其雇员的合规意识。路演的特点在于：“培训培训师”以及面对面培训，即先由法务及合规专业人士对业务负责人进行培训，之后再由这些业务负责人对员工进行面对面培训。2011年，总计举办了86次培训，共计8045人参加了培训。

此外，通用电气公司（GE）还建立了完善的合规诊断机制，这一机制令员工无须担心遭到报复，可以大胆咨询并举报与诚信相关的问题。该诊断机制包含四个模块：申诉计划、公开举报、合规健康检查以及调查和审计。其遍布全球的申诉网络，覆盖公司运营所在的每一项业务以及每一个国家。通用电气提供多种便于员工举报的渠道，包括发帖、举办员工日以及设立热线电话。合规健康检查包括要求高层积极参与并对当地市场合规纠纷做出及时回应，通用电气公司的高层能够在问题出现时立即采取行动，并通过律师或其他专业人士进行问题评估和调查。此外，公司的内部审计人员每年都会对通用的所有业务进行风险审计，以找出潜在的违反法律、法规或通用公司政策的违规实例。



*GE believes businesses have a crucial role to play in building a culture of safety, responsibility, integrity and compliance to ensure that people can work safely and productively, and to enable world-class industry and services to flourish.*

GE 相信，在构建安全、负责任、诚信和合规文化方面，企业应发挥重要的作用，这种文化将保障人们可以安全而高效地完成工作，也只有在这种文化的前提下才能产生世界级的工业和服务业企业。

**5. Identifying problem areas through independent monitoring, reviews of business relationship, and auditing of finance and operations**

Effective and independent monitoring is critical for any compliance programme to identify violations or “red flags.” It is important to keep the review process independent of implementation. The process may involve external audit and counsel to conduct supervision.

**6. A screen and due diligence model before entering contractual relationship with any business partner or intermediary**

The latest anti-bribery laws in many countries require companies to perform pre-contract due diligence. Such due diligence processes may vary from an Internet search to complicated investigation that takes reasonable steps proportionate to the scale of each company and level of the anticipated deal. This also makes business sense to help a company prevent problems and address risks in advance

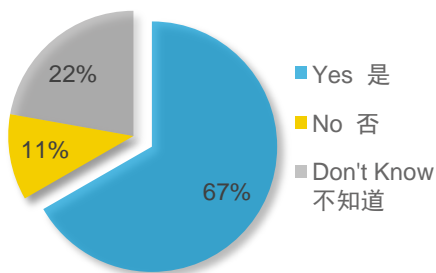
**五、对业务关系进行独立的监督回顾与检查以及对财务和运营的进行独立审计以便发现问题**

对任何合规项目来说，有效且独立的监督都是查出违规行为或“危险信号”的必要条件。保持审查程序独立于实施过程这一点很重要，并且在进行监督时还可能需要外部审计和咨询。

**六、和任何生意伙伴及第三方机构建立合同关系前，有审查和尽职调查的流程模式**

许多国家的最新反贿赂法律都要求公司在合同订立前进行尽职调查。这种尽职调查可能会有多种调查形式，可以是简单地在互联网上搜索，也可以是复杂的调查。采用何种形式，取决于对方公司的规模和预期的交易水平。这对企业的经营也有好处，能帮助公司事先防范问题和应对风险。

**Survey Question 8 调研问题八**



Is it the company's policy and procedure that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if such refusal may result in the company losing business?  
贵公司是否有相关政策或流程，规定任何员工不会因为拒绝行贿而遭受降职、处罚或其他后果，即使其拒绝行贿的行为导致公司失去生意？

33% of the companies surveyed could not confirm that they have such policy for their employees.  
33% 企业不能确认针对员工是否有这样的政策。

### Best Practices III: Siemens, Business Partners Policy - Compliance Due Diligence (CDD) Process and Tool

A global conglomerate like Siemens has thousands of business partners. The management of each Siemens unit is required to carefully select and appropriately monitor its business partners throughout the course of a business relationship. Siemens uses a web-based BPC (Business Partner Compliance) Tool to support an efficient and transparent workflow process for decentralised operations and monitoring of due diligences globally. Managers need to answer a set of “red flag” questions and use the numeric scoring system underlying the questionnaire to determine the risk level before entering into a business relationship. Approximately 500 Siemens entities completed more than 17, 000 CDD for business partners located in 170 countries.

**Red Flag Questions**

- previous experience with the BP
- purpose of the relationship
- interaction with government officials
- activities performed by BP
- country risk rating / TI/CPI index
- type of compensation
- payment terms – danger signs
- Internet check

### 最佳实践分享之三：西门子商业伙伴政策——合规尽职调查流程和工具

像西门子这样业务遍布全球的企业集团，有着成千上万的商业合作伙伴。在业务关系的所有流程中，西门子每个业务部门的管理层都必须仔细甄选并合理监督它的商业合作伙伴。西门子使用内部称为“商业伙伴合规”（简称 BPC）的网上评测工具，为其全球范围的分散经营和尽职调查监测提供了一项高效透明的工作流程。在缔结商业关系前，管理者需要回答一系列“危险信号问题”，并运用与数字评分系统相关的问卷调查确定风险等级。约 500 家西门子业务部门为分布在 170 个国家的商业合作伙伴完成了 17000 多项合规尽职调查。

**危险信号问题**

- 与业务伙伴（BP）之前的合作经历
- 该种关系建立的目的
- 与政府官员的互动
- 业务伙伴从事的活动
- 国家风险评级/透明国际指数/消费者物价指数
- 补偿类型
- 支付条款—危险信号
- 互联网检查



Web-based Business Partner Compliance Tool: The higher the risk level, the more information is needed

商业伙伴合规网上测评工具：风险级别越高，需要输入的信息就越多。



## 7. Regular risk assessment

A periodic risk re-assessment helps companies to identify existing and emerging risks, prioritise areas of high-probability occurrence and large potential losses, allocate reasonable resources and improve current preventive measures to protect themselves against these risks.

## 8. Investigative and disciplinary action for violations

Along with the monitoring programme, it is also important to develop follow-up appropriate investigation and discipline procedures for identified violations. Such “consequences” need to be clearly communicated in advance to maximize the deterrent effect.

## 9. Documentation

While this may sound obvious, the accurate documentation of the design, implementation and monitoring of a compliance programme is often neglected. Documentation helps to prevent misconduct by establishing accountability of performance. In the case of the identification of potential bribery, documentation can help to demonstrate evidence of company’s commitment and best efforts towards implementing adequate procedures.

## 10. Continual improvement

A good compliance programme should evolve with a business to address new circumstances and challenges, respond to new regulatory environment and prioritise compliance work. It is also very important to engage and consult with relevant interested parties including business partners and employees when reviewing and improving the compliance programme.

## 七、定期风险评估

周期性风险评估帮助企业识别现有和新出现的各种风险，重点关注那些发生机率高、破坏性大的风险领域，合理分配资源并完善现有防范措施，从而保护企业避免这些风险。

## 八、针对违规行为的调查和惩罚行动

除了监督体系，针对发现的违规行为，制定适当的调查流程和惩罚体系也非常重要。应该事先将这样的“后果”明确告知全体成员，以达到最好的震慑效果。

## 九、文件记录

一项合规项目的设计、实施和监控都应该有明确的文档记录，这一点看似理所当然，却经常被忽视。文档记录通过建立绩效问责制，可以有助于预防违规行为。假如潜在的行贿、受贿行为被发现，文档记录可以帮助证明公司在充分程序方面所做出的承诺和最大努力。

## 十、不断改进

一套好的合规项目应该随着商业的发展变化而变化，以解决新情况和应对新挑战、适应新的监管环境并合理安排合规工作的重心。在回顾改进合规项目时，让包括商业伙伴和员工在内的相关方参与这一过程，并询问、了解他们的意见建议，这对项目的改进也至关重要。

## Best Practices IV: Shell, China Assurance Framework

Shell's assurance framework is applied to fast growing minority shareholding ventures in China. The system builds on the concept of three lines of defence (LOD) by focusing on simple systemic application by all levels of staff with the right balance of assurance costs.

### The three Lines of Defence (LOD):

LOD 1 – day to day risk management, standard operating procedures, control process and administrative functions at Business Front Line level

LOD 2 – self assurance to confirm both the design and operating effectiveness of controls through desk-top reviews and in-depth compliance testing

LOD 3 – independent assurance provided to the shareholder to demonstrate that the control framework is operating effectively

### 最佳实践分享之四：壳牌中国业务保障框架

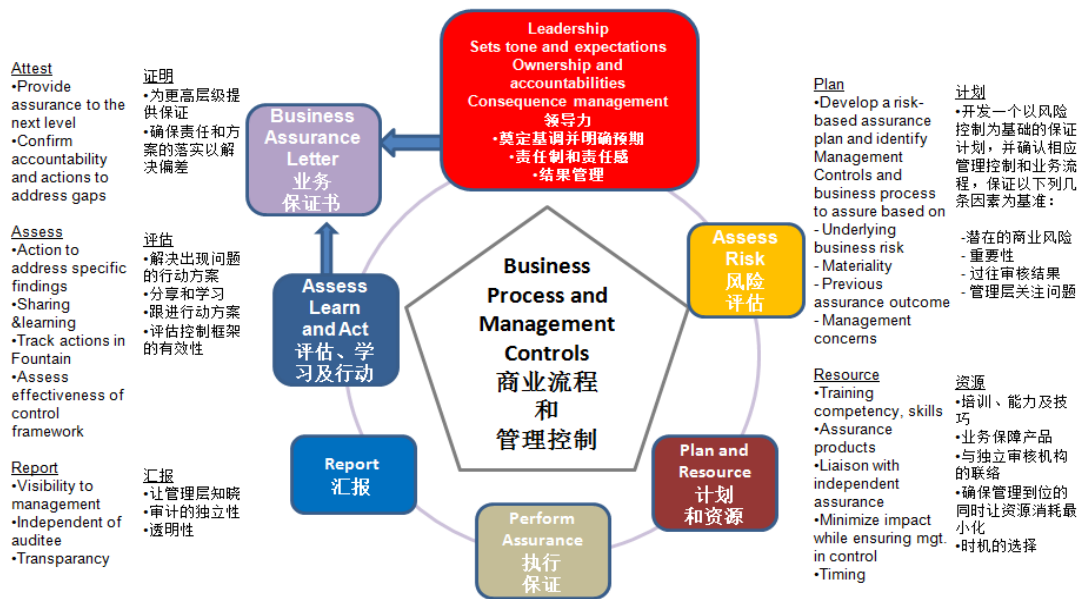
基于三重防线(LOD)的理念，业务保障框架应用于在中国快速增加的壳牌少量持股的合营企业，它注重在合理成本的范围内，使所有层级员工能简单系统化地应用。

#### 三重防线：

第一重防线：包括日常风险管理，标准化操作程序、业务前端的控制流程和行政职能

第二重防线：通过书面审核以及深度合规测试来确保监控在设计 and 操作上的有效性

第三重防线：通过“独立审核保障”向股东确保“控制框架”运转有效



Shell has a variety of self and independent assessment processes for obtaining assurance on the adequacy of risk management and internal control, and a series of Businesses and Functions plan assurance activities to ensure relevant risks are covered efficiently and effectively.

壳牌运用多种自我评估和独立评估流程来确保充足的风险管理和内部控制，同时通过业务和职能规划保障活动来确保迅速有效地防范相关风险。

## Chapter VI: Self-Assessment

### 第六章：自我评估

The survey results indicated that many compliance programmes may overlook important elements that could pose potential risks. Based partly on this survey, a simple self-assessment toolkit was developed with the help of experts in order for companies to assess their compliance work and identify pitfalls. This self-assessment is presented below.

This tool is a preliminary measure intended to identify the level of compliance of your company. If you cannot say yes to all the questions below, your company may be exposed to certain compliance risks. If you can answer all of the questions in the affirmative, you are on the right track. We also include three scenario-based exercises in this chapter and a list of more sophisticated tools in the appendix of the book. However, remember even companies with most sophisticated compliance programmes have found themselves under liability risk for failing to prevent wrong behaviours of employees, agents or subsidiaries doing business on their behalf worldwide. It is important to continuously improve your mechanisms for risk assessment, training and due diligence and have ongoing monitoring examinations and reviews to assess changed circumstances and identify new risks as they emerge.

调研结果显示，不少合规项目可能忽视一些对企业构成潜在风险的因素。在专家指导下，我们参考部分调研结果，开发了一套简单的自我评估工具，用于帮助企业评估自身的合规工作并找到漏洞。这套自我评估工具参见下页。这个工具只是初步的流程，帮助确认贵公司合规工作的级别。如果您没法对所有问题回答“是”，则意味着您的公司在合规方面可能存在一定的风险。如果您能全部选“是”，说明合规工作在正确轨道上。这一章我们还加入了三个情景练习，并且在附录里提供了一些更复杂的工具。值得注意的是，即便是那些拥有最成熟合规项目的公司，有时也会发现自己可能要承担因为没有防止员工、中介、子公司在全球范围的不当做法带来的责任风险。持续改善现有的风险评估、培训和尽职调查机制，同时不断监督检查并根据形势变化评估和发现新生风险，对企业至关重要。



*An effective compliance programme is a competitive advantage. A reputation for consistent ethical behaviour and professionalism will enhance your company's commercial prospects.*

---Neal Beatty, Control Risks

*有效的合规项目意味着竞争优势。若公司秉承一贯的道德行为和专业性，则必将提升公司的商业前景。*

——柏颯，化险咨询

## Compliance Practice Evaluation 合规操作评估

1. Does your company have a stated formal policy and Code of Conduct of zero tolerance that gives a clear definition of bribery and prohibits all forms of bribery, whether they take place directly or through third parties?

贵公司是否有明确的政策以及有关零容忍的行为规范，明确定义贿赂行为，并且禁止一切形式的（无论是直接或通过第三方实施的）贿赂行为？

2. Does your company have a formal compliance Programme to implement a zero-tolerance bribery policy?

贵公司是否有正式明确的合规项目来实施其反贿赂的零容忍政策？

3. Does your company regularly carry out a risk assessment to determine the extent of the risk of bribery to all business operations? If so, does the assessment prioritise high-risks business areas?

贵公司是否会定期进行风险评估，评测所有商业活动的贿赂风险？如果是，评估是否侧重高风险业务领域？

4. Are there procedures to ensure that the company does not channel improper payments through agents or other intermediaries?

是否有措施确保公司不通过代理商或者别的中间商进行不当付款？

5. Does the company apply sanctions to agents and intermediaries that pay bribes or act in a manner inconsistent with the Programme?

对于行贿或者行为不符合合规项目的代理商和中间商，公司是否对其进行制裁？

6. Is the Programme tailored to reflect the specific bribery risks identified?

贵公司专门的合规项目是否能切实针对已发现的贿赂风险？

7. Is there a procedure to ensure the Programme is consistent with all relevant anti-corruption laws in China and other jurisdictions in which the company transacts its business?

贵公司是否有相关流程确保合规项目与中国的反腐败法律以及公司运营所在的其他国家司法体系中的相关法规相一致？

8. Is there a procedure to implement accountability throughout your company to ensure the implementation of the Programme in all business entities and subsidiaries?

贵公司是否有相关流程，在全公司范围内实施问责，确保合规项目在其所有业务实体和分支中有效执行？

9. Does your company encourage the implementation of a Programme equivalent to its own in companies, in which the company has a significant investment or business relationship, including joint ventures and consortia, suppliers, contractors?

对与贵公司有主要投资关系或业务关系的公司，包括合资企业、联营、供应商、承包商等，贵公司是否鼓励实施相似的合规项目？

10. Does your company have procedures, both internally and for business partners, to monitor effective development and implementation of the Programme, share emerging best practices and apply sanctions to those that act in a manner inconsistent with its Programme?

贵公司是否有针对公司内部及商业伙伴的相关流程，以监督合规项目的有效进展和实施、分享新近的最佳做法、并对有违合规项目操作的内外部人员实行惩罚？

11. Is it the company's policy and procedure that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if such refusal may result in the company losing business?

贵公司是否有相关政策或流程，规定任何员工不会因为拒绝行贿而遭受降职、处罚或其他后果，即使其拒绝行贿的行为导致公司失去生意？

12. Does your company have a system of internal controls, which includes financial and organisational checks, accounting and record keeping practices? Are they subject to regular internal audits to provide assurance that they are effective in countering bribery?

贵公司是否有内部监控体系，包括财务和机构核查、会计和记录保存管理，并由内部审计人员定期审计，确保有效抵制贿赂？

13. Are there procedures to maintain accurate books and records that properly and fairly document all financial transactions for inspection, including those of agents and other intermediaries? Does your company maintain procedures to restrict 'off-the-books' accounts, inadequately defined transactions or false entries?

贵公司是否有相关流程，保证对账本和记录进行真实性核查，确保其恰当合理地记录包括代理商和其他中间方在内的所有财务往来，确保没有小金库、不明交易和假账？

14. Is there a procedure to carry out due diligence before entering into a joint venture or consortium, purchasing and contracting from suppliers and contractors, appointing agents and other intermediaries, and to determine 'legacy risks' for mergers and acquisitions to avoid dealing those know or reasonably suspected to be paying bribes?

在组建合资企业或集团公司之前，或从供应商处进行采买以及与承包商进行承包合作之前、或指派代理商以及其他中间方就并购进行“继承风险”调查之前，贵公司是否有相关程序进行尽职调查，从而避免与那些知晓其行贿或有行贿嫌疑的合作方交易？

15. Is there a procedure to ensure that compensation paid to agents and other intermediaries is appropriate and justifiable remuneration for legitimate services rendered and is paid through bona fide channels that will not be used as a subterfuge for bribery?

贵公司是否有相关程序，确保付给代理商和其他中间方的报酬是对其提供的合法服务给予的合理有据的报酬，并且通过真实渠道支付，而不是用于贿赂的借口？

16. Does your company have a procedure for engagement with relevant interested parties, including consulting employees, unions, work councils or other employee representatives when developing, implementing, reviewing and improving the Programme?

贵公司是否有相关流程，在开发、执行、评估、改善反贿赂项目时与相关利益方沟通，比如向员工、工会或其他员工代表咨询？

17. Are there policies and procedures covering facilitation payments (and the discouraging of facilitation payments if not prohibited)?

贵公司是否有涉及疏通费的相关政策和程序，明确禁止疏通费或者不提倡疏通费？

18. Are there procedures and controls to ensure that charitable contributions / sponsorships are not used as a subterfuge for bribery?

贵公司是否有相关流程和监控措施，确保慈善捐助和赞助不会被用于行贿？

19. Does your company provide guidance to its employees on policies concerning gifts, hospitality and expenses?

贵公司是否在对礼物、招待和费用方面对员工有相关指导和规定？

20. Does your company encourage employees and business partners to raise concerns and provide secure and accessible channels through which employees and business partners should feel able to seek advice, raise concerns and report violations ("whistle-blowing") in confidence and without risk of reprisal?

贵公司是否鼓励员工和商业伙伴表达顾虑，并且提供安全畅通的渠道，使得员工和商业伙伴可以寻求建议、表达顾虑、举报违规行为（“告密”）而不遭报复？

21. Is there a procedure to communicate the Programme to all employees including senior executives and those of subsidiaries and other companies with business relationship? Does the company provide reasonably detailed guidelines and continuous training on the implementation of the Programme?

贵公司是否有相关流程使得包括高管在内的所有员工及分公司及其他与贵公司有业务关系的公司的员工，了解合规项目，并提供较为详细的指南和不断培训，指导如何实施合规项目？

22. Is there a procedure for the Audit Committee, Governance Committee, the Board (or equivalent) to monitor, review and make independent assessments of the adequacy of the Programme and receive prompt reports of any issues or concerns?

贵公司是否有相关程序，确保审计委员会、监管委员会、董事会等可以监控、评审，并对合规项目的可行性和有效性做出独立评估，以及及时获取任何问题的报告？

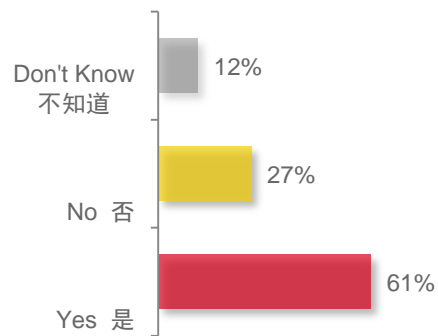
23. Has the Board, owner or equivalent top level leaders of the company formally approved the Programme and explicitly stated full commitment and support to the implementation of the Programme?

贵公司董事会、所有者或者相关高层是否正式批准合规项目，并且明确表示全力支持执行该项目？

### Survey Question 9 调研问题九

Does your company regularly carry out a risk assessment to determine the extent of the risk of bribery to all business operations?  
贵公司是否会定期进行风险评估，评测所有商业活动的贿赂风险？

About 27% of the companies surveyed don't conduct regular risk assessments  
约有 27% 的被调研企业没有定期进行风险评估。



## Compliance Scenarios

### 合规情景

#### **Scenario I: Applying for a licence**

Your company is applying for an environmental permit before setting up a new factory. As far as you know the application is in order. However, the authorities have been very slow to process it, and you do not know what the problem is. Your company's head office is becoming impatient.

One of the officials in the environmental department says he knows a local consultancy that specialises in helping companies with their applications. The head of the firm is a former member of the department. He charges high fees, but always gets good results. Perhaps you should go to see him?

#### **What you need to think about**

There may be a legitimate role for former officials with special expertise. Sometimes government procedures are obscure, and it is very helpful if an expert can explain them.

However, you need to take care. The principle is that you should only pay reasonable fees for clearly defined services. If you pay a large fee for poorly defined services there is a high likelihood that part of the fee will be passed on to the government officials concerned. This would count as a form of indirect bribery, and is covered by anti-corruption laws such as the US Foreign Corrupt Practices Act and the UK Bribery Act.

In this case the fact that a serving government official has recommended a specific consultant is in itself a warning sign. He/She may well have done so in the hope of sharing some of the consultant's fees.

#### **Possible responses**

You of course need to make sure that your permit application has all the information that the government needs, and has been completed correctly. If there is a problem, it is the responsibility of the government department to tell you. Sometimes it does take time to process applications. You may need to be politely persistent, making regular visits and phone calls to the government office to find out what is happening.

If you seek expert advice, you should only do so from reputable companies. Make sure that you know their background before working with them, and make clear that they must not pass on any part of their fees to the officials of the department concerned.

Explain the problem to your company's head office. These things do take time. You are doing everything you can!



## 合规情景一：申请许可证

贵公司正在为开设一家新的工厂申请环境许可证。据你所知申请正在受理之中。然而有关部门的进度一直很慢，你不知道究竟问题在哪儿。而贵公司总部正越来越失去耐心。

环保部门的一位官员说，他认识当地的一家顾问公司，专门帮助公司提供申请方面的咨询。该公司的负责人曾经是负责环境许可证部门的工作人员。他收取高额的费用，但事情总能办成，你是否应该去见他呢？

### 你需要考虑的方面

或许这种拥有特殊经验的前政府官员可以扮演一个合法的角色。有时候政府部门的工作流程是模糊的，此时如果有一个专家为你解释这将是非常有帮助的。

然而，你需要特别小心。原则是你只能为有明确定义的服务支付合理的费用。如果你为定义不清的服务支付了一大笔费用，那么费用中的一部分极有可能被给到相关的政府官员。这将被认定为间接贿赂的一种形式，这种行为在诸如美国《反海外腐败法》和英国《反贿赂法》等反腐败法律中都被明确界定。

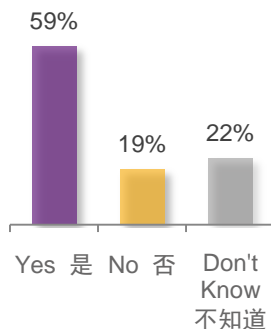
在这种情况下，一名在任的政府官员推荐一家特定的顾问公司，这种行为本身就是一个警告讯号。他可能希望通过这种做法能够分得一部分咨询费。

### 可采取的对策

当然你首先要确保你的许可证申请已经具备了政府部门需要的所有信息，并且已经正确地完成了。如果有问题的话，政府部门有告知你的责任。有时，处理申请确实需要花费时间，你可能需要有礼貌地耐心等待，定期拜访或者打电话到政府办公室以了解事情进展。

如果你想寻求专家意见，也只应该咨询有信誉的公司。在与他们合作之前，你必须了解他们的背景，明确他们不会把它们所得费用中的任何一部分转送给相关的政府官员。

向贵公司的总部解释事情情况，说明这些事情确实需要花费时间，你正在竭尽全力！



### Survey Question 10 调研问题十

Are there controls to ensure that charitable contributions and compensation to intermediaries are not used as a subterfuge for bribery?

贵公司是否有相关监控措施，确保慈善捐助和给中间方的报酬不会被用来行贿？

19% of the companies surveyed did not have such controls in place.  
19% 接受调研的企业没有设立这样的监控措施。

## **Scenario II: A business trip for your customers?**

A member of your marketing team, who has previously worked for a well-known international company, has come up with a brilliant idea to build relationships with your customers and boost sales.

You have a new product but – because it is new – it is important to explain how it works. You should therefore arrange for the customers to take a trip abroad, e.g. to London, to see for themselves. The programme should include a short demonstration of the product, tickets to the London Olympics and two or three days of shopping at your company's expense. Of course, they must be allowed to take their spouses.

This is a common sales technique, and it brings good results!

### **What you need to think about**

This is indeed a common sales technique, but it does not always bring the results that are intended.

What is the business justification for making the demonstration abroad rather than in China? What is the business justification for bringing the spouses? And why should your company pay for the shopping expedition?

If the business justification is weak or non-existent, the 'sales trip' will be seen as a bribe to influence your customers' judgement. There have in fact been several US Foreign Corrupt Practices Act cases where US companies operating in China have been obliged to pay substantial fines for arranging these kinds of trips for employees of Chinese state-owned enterprises (who are classified as 'foreign officials').

Olympics hospitality packages may raise even greater risks under the UK Bribery Act. First of all, if one offense is conducted partly within the UK, it automatically satisfies UK Bribery Act's jurisdictional requirement. Therefore, hospitality and other promotional activities offered or accepted during the London Olympics would fall into the jurisdiction of the UK Bribery Act, regardless of whether the company has a connection with the UK. In addition, the UK Bribery Act applies to broader categories of conduct that covers bribery (both domestic and international) in the private and public sectors as well as the solicitation and acceptance of a bribe.

### **Possible responses**

Reject the suggestion. Arrange for the person who made it to receive anti-corruption training.

## 合规情景二：为客户安排的商务旅行？

您的营销团队中有一名成员曾经在一家世界知名的跨国公司工作过，他向您提出了一个绝妙的主意，以建立与客户的关系并提升销售。

你有一项新产品，但是由于它是新产品，所以向客户展示该产品非常重要。因此，你应该为客户安排一个出国的机会，比如去英国伦敦，让他们亲眼看看。该计划应包括一个简短的产品演示、伦敦奥运会门票以及由贵公司支付费用让他们进行两三天的购物。当然，还须允许他们携带自己的配偶。

这是一个常见的销售技巧，而且能够带来很好的效果！

### 你需要考虑的方面

这的确是个常见的销售技巧，但它并不总能带来预期的结果。

有什么商业理由非要在国外而不是国内向顾客展示？又如何解释携带配偶的原因？另外，贵公司为客户支付购物费用的理由又是什么？

如果上述这些商业理由不充分或不存在，那么该“销售之旅”将被视为影响客户的判断而进行的贿赂。实际上已经有好几例这类的美国《反海外腐败法》案例，涉及在中国经营的美国公司由于为中国国有企业的员工（被归类为“外国官员”）安排类似的旅游，而不得不支付巨额罚款。

在英国出台《反贿赂法》后，涉及奥运会的客户招待则可能带来更大的风险。首先，任何违规做法如果部分发生在英国境内，就自动符合英国《反贿赂法》的管辖条件。所以，奥运会期间提供或者接受相关的请客招待和促销活动，不论公司是否在英国业务，都自动归入英国《反贿赂法》的管辖范围。另外，英国《反贿赂法》适用范围更广，不仅制裁（国内和国际）提供给公共部门以及私营企业的贿赂，也制裁索要和接受贿赂的一方。

### 可采取的对策

拒绝该建议。并给提出该建议的人安排反腐败培训。

### **Scenario III: A charitable donation?**

You are trying to sell your company's services to a powerful local official. Through a friend of his, he lets it be known that he likes to work with companies who make donations to a local children's charity.

The friend recommends that you give generously. It will be good for your corporate social responsibility (CSR) record, and it will be good for business.

#### **What you need to think about**

Does your company have a policy on charitable donations? If not, you should draw one up and consider including it in your code of ethics. If the company makes donations at all, it should work only with charities that fulfil a genuine social need, and are themselves accountable. For example, do they publish accounts showing the sources of their funds, and how they spend them?

In the worst case, this children's charity could easily be sharing 'donations' with the official. In that case, the donations would count as a bribe to the official.

#### **Possible responses**

Thank the 'friend' for his kind advice, but ignore it. Continue to promote your company's services on the basis of cost and quality.

### **合规情景三：慈善捐款？**

您正试图将贵公司的服务推销给当地一个有实力的政府官员。通过他的一个朋友，你了解到，他喜欢和那些向当地一家儿童慈善机构提供捐赠的公司合作。

这个朋友建议你慷慨捐赠。这不仅将成为贵公司企业社会责任的一项良好记录，还对业务发展大为有利。

#### **你需要考虑的方面**

贵公司在慈善捐赠方面是否有相关的政策？如果没有，你应该考虑制定并将之纳入公司道德准则。如果公司确实提供捐赠，那么应该仅与那些能够履行社会真正需求并且自身负责的慈善机构合作。例如，他们是否公布账目以表明他们的资金来源以及资金是如何使用的。

最糟糕的情况是，该儿童慈善机构很可能在与该名政府官员分享捐赠。在这种情况下，这种捐助就会被视为是一种对官员的贿赂行为。

#### **可采取的对策**

首先感谢这位“朋友”出谋划策，但是不要采纳。继续降低成本并提高质量，以此推销贵公司的服务。

## Chapter VII: Conclusion

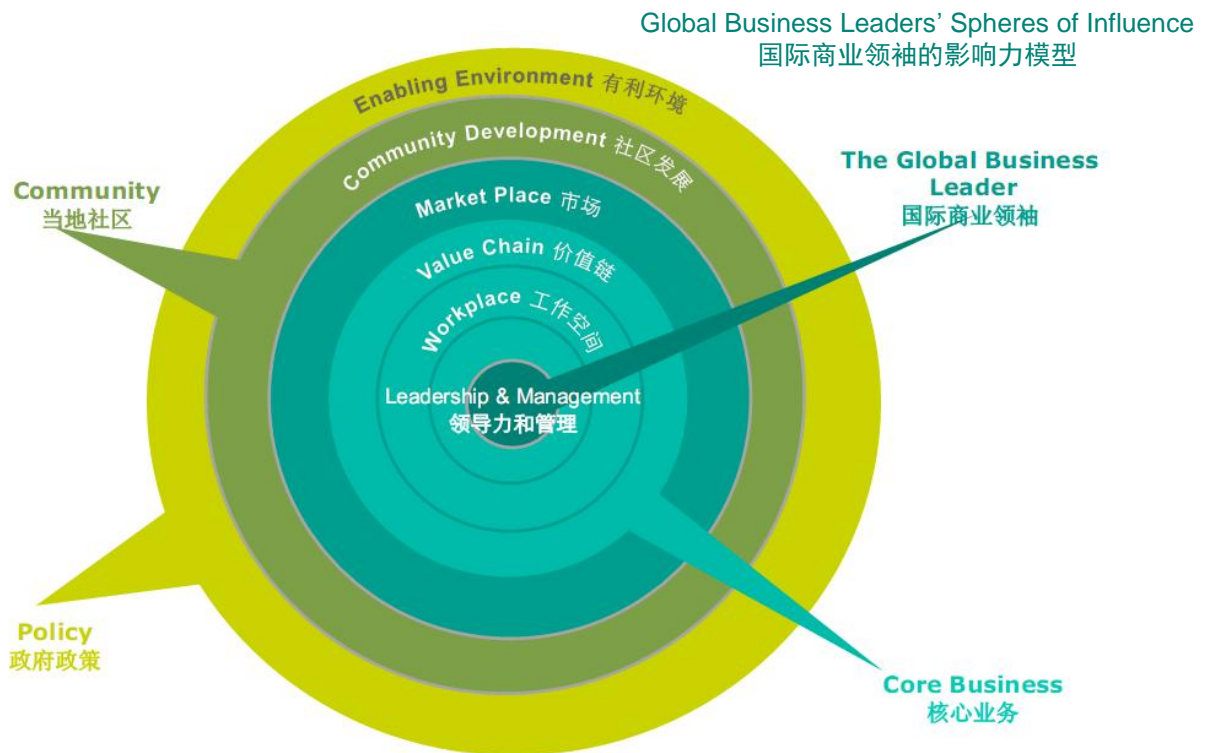
### 第七章: 结束语

IBLF's Spheres of Influence model (see below) believes that business leaders have a critical and positive role to play throughout their spheres of influence, from their core businesses, along their value chain, and to the broader market environment. China Business Leaders Forum (CBLF), the joint initiative of IBLF and Renmin University of China, helps companies to improve behaviours internally and work together externally to address problems they cannot solve alone, through a series of roundtables, leaders forums, studies and publications.

This bilingual publication is designed to be a simple and practical initial guide to prepare companies, large multinationals or small local businesses, for constructive dialogues and collective action towards a level playing field. We believe this is a good starting point.

国际工商领袖论坛（IBLF）的领袖影响力模型（见下图）相信，商业领袖在不同领域里，从核心业务到贯穿整个价值链，再到更大范围的市场环境，都能发挥至关重要的积极作用。国际工商领袖论坛和中国人民大学合作发起的中国工商领袖论坛（CBLF），通过一系列圆桌会议、领袖论坛以及调研出版，帮助企业对内完善行为管理，对外携手应对企业自身无法单独解决的问题。

这本双语出版物力求提供一套简单实用的指南，帮助大型跨国企业和本地中小企业开展建设性的对话，然后携手行动推动一个公平的市场环境。我们相信这是一个良好的开端。



## Chapter VIII: Appendix

### 第八章：附录

#### Sources and Further Reading

#### 词汇来源及更多参考阅读资料

The sources of the glossary include OECD Convention and OECD documents, FCPA, UK Bribery Act, Transparency International, Business Anti-Corruption Portal, U4 Corruption Glossary, and relevant Chinese governmental portals.

词汇主要来源包括：经济合作发展组织（OECD）相关资料及《OECD 反贿赂公约》、《美国反海外腐败法》、《英国反贿赂法》、透明国际、商业反腐门户、U4 腐败词汇，以及相关中国政府网站。

#### Reports, Tools and Guidance: 报告、工具及指南

1. The Business Case Against Corruption, by the International Chamber of Commerce, Transparency International, the United Nations Global Compact and the World Economic Forum Partnering Against Corruption Initiative (PACI)  
《反腐败商业案例》——国际商会、透明国际、联合国全球契约组织和世界经济论坛廉政倡议（PACI）
2. Clean Business Is Good Business – The Business Case Against Corruption, by Transparency International, the World Economic Forum, The International Chamber of Commerce, and the United Nations Global Compact  
《廉洁商业才是良好商业——反腐败商业案例》——透明国际、世界经济论坛、国际商会和联合国全球契约组织
3. RESIST (Resisting Extortions and Solicitations in International Transactions), by International Chamber of Commerce, Transparency International, the UN Global Compact and the World Economic Forum.  
《抵制国际交易中的勒索和诱惑》——国际商会、透明国际、联合国全球契约组织和世界经济论坛
4. Transparency International's Self-Evaluation Tool (TI SET)  
《透明国际自我评估工具》
5. The Integrity Pact, by Transparency International  
《诚信公约》——透明国际
6. OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (Annex II to the 2009 OECD Recommendation on further Combating the Bribery of Foreign Public Officials in International Business Transactions)  
《经合组织关于内部控制、道德及合规的良好做法指南》（经合组织 2009 年关于进一步打击在国际商业交易中贿赂外国公职官员的建议附录 II）
7. The OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones  
《经合组织针对治理薄弱地区跨国公司的风险意识工具》
8. OECD Guidelines for Managing Conflicts of Interest in the Public Service  
《经合组织管理公共服务中利益冲突的指南》

9. The OECD Guidelines for Multinational Enterprises.  
《经合组织跨国企业指南》
10. Uses and Abuses of Governance Indicators (2006), by OECD  
《治理指标的使用与滥用》(2006)——经合组织
11. The Business Principles for Countering Bribery, by Transparency International and Social Accountability International.  
《反腐败商业原则》——透明国际和国际社会责任
12. Strengthening Corporate Governance to Combat Corruption, by Transparency International  
《加强公司治理应对腐败挑战》——透明国际
13. Business against Corruption - Case Stories and Examples, by Global Compact.  
《商业反腐败——案例故事与范例》——联合国全球契约组织
14. Fighting Corruption through Collective Action, by WBI  
《通过联合行动打击腐败》——世界银行学院
15. Template For Country Assessment Of Corporate Governance, by WBI  
《国家评估公司治理的模板》——世界银行学院
16. ICC Guidelines on Agents, Intermediaries and Other Third Parties  
《国际商会关于代理商、中间商和其他第三方的指导方针》
17. APEC Anti-corruption Code of Conduct for Business  
《亚太经合组织反腐败的商业行为守则》
18. UN Global Compact (Anticorruption Guides and Scenario-based Tools)  
《联合国全球契约》中的反腐指南和实景工具
19. ICC Rules of Conduct and Recommendations for Combating Extortion and Bribery (2005 edition)  
《打击勒索及腐败的行为原则及建议》——国际商会 2005 版

#### **Websites of the Organisations 机构网址**

1. International Chamber of Commerce 国际商会 <http://www.iccwbo.org/>
2. Transparency International 透明国际 <http://www.transparency.org/>
3. United Nations Global Compact 联合国全球契约组织 <http://www.unglobalcompact.org/>
4. World Economic Forum 世界经济论坛 <http://www.weforum.org/>
5. OECD 经合组织 <http://www.oecd.org/>
6. WBI 世界银行学院 <http://www.worldbank.org/>

## Acknowledgment 致谢参与人员

We would like to thank all who have contributed their time, expertise and efforts to help compile this publication.

在此我们特别感谢为此书的编撰贡献时间、精力和专长的所有人员。

### Experts 专家

Michelle Gon, Senior Partner, Baker & McKenzie  
Shanghai Office

龚雅玲律师 - 贝克·麦坚时国际律师事务所资深合  
伙人

Bin Han, Deputy Executive Director of Global  
Compact Network China, China Enterprise  
Confederation, Director of Global Compact  
Promotion Office

韩斌 - 全球契约中国网络执行副主任, 中国企业  
联合会全球契约推进办公室主任

Jie Liu, Chairman of the Board of Supervisors,  
China State Construction Engineering Corporation

刘杰博士 - 中国建筑股份有限公司公司监事会主  
席

Hongsheng Zhang, Director-General, Director of  
the Perambulatory Office, Supervisory Bureau,  
China State Construction Engineering Corporation

张洪生 - 中国建筑股份有限公司公司监察局局  
长、巡视工作办公室主任

Chenglin Guo, Deputy Director - General, Audit  
Bureau (Office of the Board of Supervisors), China  
State Construction Engineering Corporation

郭成林 - 中国建筑股份有限公司公司审计局 (监  
事会办公室) 副局长

Yan Li, Senior Manager, Supervisory Bureau, ,  
China State Construction Engineering Corporation

李燕 - 中国建筑股份有限公司公司监察局高级经  
理

Lingling Yang, Audit Assistant, Audit Bureau (Office  
of the Board of Supervisors), China State  
Construction Engineering Corporation

杨玲玲 - 中国建筑股份有限公司公司审计局 (监  
事会办公室) 审计业务助理

Neal Beatty, Regional Director, Global Client  
Services, Greater China, Control Risks

柏颯 - 化险咨询 (上海) 有限公司全球客户服务  
大中华区总监

Charlene Zhu, General Counsel, GE Healthcare  
China

朱湘莲 - GE 医疗集团大中华区总法律顾问

Christine Uriarte, Counsellor, Anti-Corruption  
Division, Directorate for Financial and Enterprise  
Affairs, Organisation for Economic Co-operation  
and Development (OECD)

Christine Uriarte - 经济合作与发展组织财政和企  
业事务理事会反腐败司参赞

Irene Hors, Senior Adviser in Beijing, Organisation  
for Economic Co-operation and Development  
(OECD)

何伊兰 - 经济合作与发展组织北京高级顾问



Professor Keyong Dong, Dean, School of Public Administration and Policy, Renmin University of China	董克用教授 - 中国人民大学公共管理学院院长
Yujun Feng, PhD, Professor, Law School, Renmin University of China	冯玉军博士 - 中国人民大学法学院教授
Fenfei Li, PhD, Associate Professor, Law School, Renmin University of China	李奋飞博士 - 中国人民大学法学院副教授
Hongzhou Wong, Greater China Cluster Downstream Controller, China Country Controller, Shell Companies in China	黄宏洲 - 壳牌中国集团大中华区下游业务财务总监, 壳牌中国国家财务总监
Zhi Qu, Head of Compliance and Sector Compliance Officer of Infrastructure & City Sector, Siemens Ltd. China and North East Asia	屈植 - 西门子(中国)有限公司和东北亚区基础设施与城市领域合规部负责人和合规官

## Contributors 编撰人员

Brook Horowitz, Director for Business Standards, IBLF	霍柏儒 - 国际工商领袖论坛全球商业标准总裁
Julia Przetakiewicz, Manager, Corporate Partner Development- Asia Pacific, IBLF	Julia Przetakiewicz - 国际工商领袖论坛亚太区企业伙伴开发经理
Ina Velikova, Programme Researcher, IBLF, UNGC U.K. Network	Ina Velikova - 国际工商领袖论坛项目, 联合国全球契约英国网络研究员
Raji Dattani, Programme Researcher, IBLF	Raji Dattani - 国际工商领袖论坛项目研究员
Aibek Yergaliyev, Programme Researcher, IBLF	Aibek Yergaliyev - 国际工商领袖论坛项目研究员
Ya Feng, Programme Assistant, CBLF	冯娅 - 中国工商领袖论坛项目助理
Lin Huang, Programme Assistant, CBLF	黄琳 - 中国工商领袖论坛项目助理
Zhaoyu Wu, Programme Assistant, CBLF	吴照玉 - 中国工商领袖论坛项目助理
Zhongkai Zhang, Programme Assistant, CBLF	张钟凯 - 中国工商领袖论坛项目助理

## Editor 编辑

Jun Cao, Head of China Programmes, IBLF	曹隽 - 国际工商领袖论坛中国区项目主管
---	----------------------

## Associate Editor 助理编辑

Suping Xu, Programme Manager, CBLF	徐素萍 - 中国工商领袖论坛项目经理
------------------------------------	--------------------

*This publication is made possible thanks to grants awarded by the FCO Global Prosperity Fund and Siemens Integrity Initiative and a donation from GE. We wish to acknowledge the role of the Global Compact Network China in helping to conduct the company survey and to distribute this publication to the business community in China.*

感谢英国外交与联邦事务部全球繁荣基金、西门子商业诚信倡议以及通用电气对本手册编撰工作给予的资助，同时感谢全球契约中国网络帮助我们进行公司调研以及在中国企业内发放本手册。



**SIEMENS**



Global Compact Network China  
全球契约中国网络





**CBLF**

中国工商领袖论坛  
China Business Leaders Forum



**中国工商领袖论坛**  
**China Business Leaders Forum**

北京市海淀区苏州街29号维亚大厦1201-009室 100080  
Rm1201-009, Viva Plaza, 29 Su Zhou Ave, Beijing  
T/F: + 86 (0) 10 59732669  
W: [www.cblf.org.cn](http://www.cblf.org.cn)

