

# Modern Slavery and Corruption









**"La plus belle des ruses du diable est de vous persuader qu'il n'existe pas"**  
*"The devil's finest trick is to persuade you that he does not exist"*

Charles Baudelaire, *Paris Spleen*







# Briefing Paper







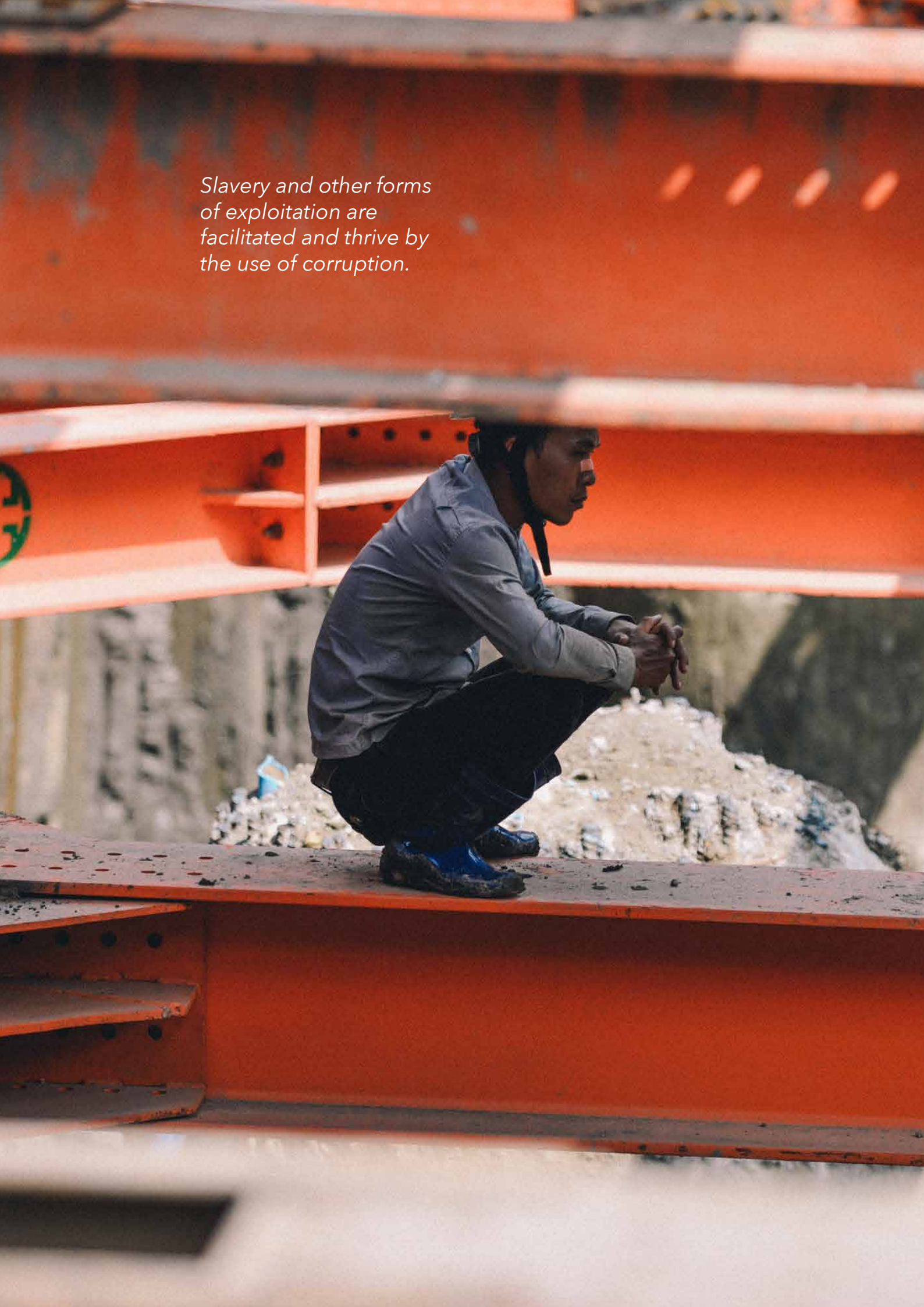
## INTRODUCTION

Corruption is the power to turn a lie into a truth. It is the malicious instrument needed to sustain falsehoods, seize that which is undeserved and conceal favour in the guise of fairness.

To ensure people can work free from exploitation, rule of law, due process, transparency and accountability, and proper governance must be preminent. Laws must require that commercial relationships and transactions be conducted in a manner that uphold these principles and be supported by the threat of effective enforcement leading to severe punishments on conviction.



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Slavery and other forms of exploitation are facilitated and thrive by the use of corruption. For example, payments made to gain government approvals to build labour intensive infrastructure projects; extravagant entertainment provided to government officials and their families to win service contracts; incentives to local or national government officials to win clients for banking and investment services.

Organisations and those who manage them need to be held responsible for ensuring there are consistent and robust efforts within their daily activities to eliminate corruption from operations and practices. This requires transparent and accurate books and records, effective internal controls and comprehensive ongoing training for staff.

As we explore in this Briefing Paper, and examine more thoroughly in the Legal Analysis, the Foreign Corrupt Practices Act ("FCPA") is, from the perspective of the anti-human trafficking community, that rare piece of legislation that creates criminal liability for corrupt action taken by certain substantial commercial organisations and their employees that directly facilitate and contribute to the occurrence of modern slavery in industry and business. In short, the FCPA:-

(i.) sets out simply what is prohibited (e.g. individuals and businesses are prohibited from bribing foreign government officials in order to obtain or retain business, and from knowingly falsifying a company's books and records - see section titled "Elements of an FCPA Violation" in the Legal Analysis);

(ii.) creates obligations on global organisations, their subsidiaries and their respective management (e.g. all "issuers" of securities on a U.S. stock exchange as well as officers, directors, employees, or agents acting on behalf of those issuers - see section titled "The FCPA's Extensive Reach" in the Legal Analysis);

(iii.) has extra-territorial reach;

(iv.) requires implementation of internal controls including training (e.g. requiring companies to implement an effective system of internal accounting controls - see section titled "Elements of the FCPA's Accounting Provisions" in the Legal Analysis); and

(v.) has a history of enforcement and substantial penalties including severe fines and custodial sentences.

Of most importance, point (iii), is the extra-territorial reach which gives enforcement the powers to prosecute foreign and domestic companies operating overseas, as long as they are listed on a US exchange. While the FCPA was not drafted to address modern slavery, many NGO practitioners, especially those in anti-trafficking, can benefit greatly from understanding the FCPA's reach, as many instances of trafficking are done on behalf or for the benefit of companies that are listed in the US.

Eliminating corruption from all stages of the value chain or life cycle of business relationships and transactions, by using the powers available under legislation like FCPA, can be a vital component in the fight to reduce the opportunity for and the occurrence of modern slavery.

## CORRUPTION AND MODERN SLAVERY

In practice, there is a multiplicity of ways corruption and bribery are used to transform lawful commercial activities that should offer genuine employment opportunities into opportunities to benefit unfairly and unlawfully, most particularly from the exploitation of others.

One of the most obvious areas of industry where corruption facilitates slavery is in the identification, transportation, control and delivery of individuals for labour. The recruitment business is an industry in its own right and the bribery of local law enforcement, immigration officers and business owners/managers is often required to move people and maintain the conditions for exploitation.

This Briefing Paper and the Legal Analysis consider the use of corruption in the recruitment industry, but as importantly, perhaps more so, we also examine the larger systemic issue of corruption in the entire value chain of a product (small or large, from shirts to hydroelectric power plants) in the modern global market, which also create opportunities to exploit the labour cost component. Corruption may be present in every part of the value chain, from the first stages of securing the legal right to conduct business and the location for production, to later stages that include the hiring of labour. Human trafficking intersects only a part of a long, corruptible chain of business. Prosecution for those engaging in corruption is vital, but to ensure prevention the FCPA also proffers the opportunity to include better internal controls and anti-corruption compliance as it relates to anti-slavery.

## IDENTIFYING THE USE OF CORRUPTION

The anti-trafficking community has identified from victims' testimonies many industries in which slavery is able to thrive - the fishing industry, agriculture, construction, entertainment, mining, electronics, domestic work, hospitality...the list is long. Yet, we do not need to rely solely on victim accounts.

In order to be predictive, we can examine the value chain and structure of transactions that have a substantial labour component at risk of exploitation, and identify points that are vulnerable to corruption. Corruption may make an opportunity commercially viable or more financially attractive, such as in certain emerging markets where individuals in government bureaucracies or political parties demand undue incentives to provide licences, access finance, use land, export goods, reduce tax, access foreign exchange and establish factories.

Industry stakeholders, whether those directly engaged in primary activities, such as manufacturers, construction companies or fishing distributors, or those providing supporting services, such as banking and finance, should ensure their business operations are free of corruption through the implementation of proper internal controls and training. In doing this, they at once avoid very costly and damaging punishments under relevant laws but also reduce the risk that they become involved in and derive benefit from the use of slavery and human trafficking.



## ABOUT THIS BRIEFING PAPER AND THE LEGAL ANALYSIS

The purpose of this Briefing Paper and the more comprehensive Legal Analysis is to introduce and examine the relationships between the occurrence of corruption, slavery and human trafficking; the prevailing law/regulations; various industry sectors, banking and finance; and law enforcement (both from a banking and securities enforcement perspective and more the familiar criminal enforcement.)

We have sought to use hypothetical case studies to explore the relationships and structure of corruption, slavery, commerce and financing/investment arrangements.

## AN ANTI-CORRUPTION FRAMEWORK - LEGAL, REGULATORY, AND PRACTICE

The scope and effect of the Foreign Corrupt Practices Act, provides one of the best examples of an anti-corruption law that has extensive global reach that carries substantial criminal liability for acts of bribery and, just as importantly, for failures in an organisation's internal controls and books and recordkeeping.





Furthermore, the United States Department of Justice (“DOJ”) and United States Securities and Exchange Commission (“SEC”) have repeatedly enforced the various elements of the FCPA. As most companies under investigation settle charges with the government rather than litigate, the law that has emerged around the FCPA is quite broad, as prosecutors are able to interpret the statute broadly. In support of these actions are white papers and resource guides explaining what is expected of robust internal organisational controls which should include in practice (but certainly not be limited to),

- Full adoption and support of senior management;
- Robust written policies and clear explanations of the crimes, the risks and exposure (such as definitions of public officials and identification of the various business activities undertaken by the organisation that may be vulnerable);
- Contractual requirements;
- Due diligence of third parties (both individuals and organisations);
- Use of databases to identify politically exposed persons;
- Robust procedures setting out approvals and reporting such as in relation to gift, entertainment and contributions;
- Creation and development of well-resourced and experienced legal, compliance and risk capabilities;
- Whistleblowing mechanisms; and
- Regular training and testing through the organisation.

Ultimately, what is expected of an organisation caught by the requirements of the FCPA is that they will not engage in corruption, and they will implement better governance and controls, better auditing and reporting, proper training, and better risk assessment and analysis.







## FROM LEGISLATION TO BEST PRACTICE AND SUPPORT FOR ANTI-SLAVERY EFFORTS

Since its promulgation the wide scope of the FCPA's requirements, combined the severity of its penalties, both personal (including custodial sentences) and organisational, and the active enforcement efforts have created a vibrant industry of compliance, risk and legal anti-corruption specialist advisors and consultants. For the anti-slavery movement this is a huge resource in our favour. And for those who have worked in this area, these are obvious partners.

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## WHO IS CAUGHT BY THE FCPA?

The FCPA covers all "issuers" of securities on a U.S. stock exchange as well as officers, directors, employees, or agents acting on behalf of those issuers.

For example, for those in the anti-trafficking community in Asia, "issuers" includes more than 50 major Thai companies, their subsidiaries and officers in industries ranging from food producers, entertainment, chemicals, manufacturing and tourism, and in New Zealand, this includes nearly 40 companies in industries such as fishing, chemicals, oil and gas.

The FCPA's requirements, the crime of bribing government officials and standards for internal controls and books and records, reach down into the whole organisation, its staff and its activities across the globe.

It demands that the way a business, from the local to the global offices, is managed, controlled and conducts its business is in compliance.

The cost of a legal action is considerable even before such is brought before the court and sentencing is pronounced, and may be enough to close a local subsidiary business guilty of corruption and cause considerable financial, legal and reputational damage to the group business.



## OPPORTUNITY FOR FIGHTING MODERN SLAVERY

Attacking the presence and use of corruption in industry, whether in direct activities or by service providers, presents a unique opportunity in the fight against modern slavery and trafficking.

Anti-corruption law, but in particular the FCPA, create significant criminal and civil liabilities on organisations and importantly personal liability on those managing them. The FCPA has a strong history of enforcement by the DOJ and SEC with severe punishments in the form of heavy fines and individuals receiving custodial sentences, underlining the liabilities for businesses very clearly. Simply put, no business would want to defend a FCPA case against the US DOJ, and no individual director or employee would even want to entertain the idea of prison from a FCPA conviction.

In addition, the requirement for appropriate internal controls, particularly in accounting/books and records, proffers the anti-slavery community opportunities to assist law enforcement gather evidence of corruption as it facilitates exploitation. Such evidence includes recruitment agents bribing immigration officers, firms falsifying accounting and lacking internal controls, and bribes to government officials for approving labour intensive infrastructure projects or the establishment of new factories.

Finally, the need for training of staff in anti-corruption best practices offers a way for experience and knowledgeable members of the anti-slavery community to provide instruction in preventing business activities from involvement and exposure to slavery and human trafficking.



## CORRUPTION, INDUSTRY AND SLAVERY: HYPOTHETICAL WORKED EXAMPLE

A young boy from Cambodia, seeking work to support his family, learns of a hydropower plant construction project in Laos. Dammed Construction Inc., an American construction company, whose securities are listed on a US stock exchange (1 & 2), is seeking to win the project from the Laotian Government.

Dammed Construction Inc. uses the Project Team from their Asia Pacific regional office based in Hong Kong, Dammed Construction APAC. In order to win the project, a number of approvals, permits and licences must be obtained from various Laotian government departments (4). It is indicated to the Project Team that to secure the required approvals, permits and licences, support should be provided in the form of gifts and entertainment (3).

Having satisfied the requests, Dammed Construction Inc. receives the necessary financing from their bankers (5). The Project Team sets up an office in Laos and employs a Project Manager who is the main local contact (6).

As part of the approvals, the Project Team is told that they must use certain local suppliers of machinery and labour owned and managed by relatives of the officials (8).

The Project Manager is offered the services of Cheap Labour, an unlicensed subcontractor, to staff and supply workers to the construction project. The Project Manager comes to an 'arrangement' with Cheap Labour and then organises for Dammed Construction APAC to hire Cheap Labour (7).

Cheap Labour starts recruiting for the project and promises the boy a good salary and free housing - a dream opportunity (14).

Cheap Labour bribes a consular officer at the Laotian Embassy in Phnom Penh to issue the boy's work permit, and he is given a fake ID to conceal his real age (10 & 11). Human traffickers then proceed to drive the boy across a border checkpoint. Although his false ID is clearly deficient, an immigration official allows him to enter the country after the driver hands over a small envelope of money (12 & 13). Once in Laos, the boy works twelve-hour shifts, seven days a week at an excruciatingly hot, cramped construction site (15).

The Project Manager comes to an 'arrangement' with a local accounting firm to provide bookkeeping services at the site and handle the budget and payroll, create accounting records and reports for Dammed Construction APAC. The Project Manager organises for Dammed Construction APAC to hire the accountants (9).

As the construction progresses, the Project Manager and Cheap Labour remove payroll money for their own interests (18). Project Manager's ensures the bookkeepers create falsified reports showing the payment of salaries and payments to Cheap Labour as set out in their contract (19).

The falsified reports created by the bookkeepers are sent to Dammed Construction APAC (20) and after review the reports are forwarded to Dammed Construction Inc. (21). Finally, the reports are used to provide information to the Bank (22).

The Cambodian boy is paid nothing, and after work each day the young boy is locked in a room with other men (14). Local police are paid to ignore the conditions at this situation (16 & 17).

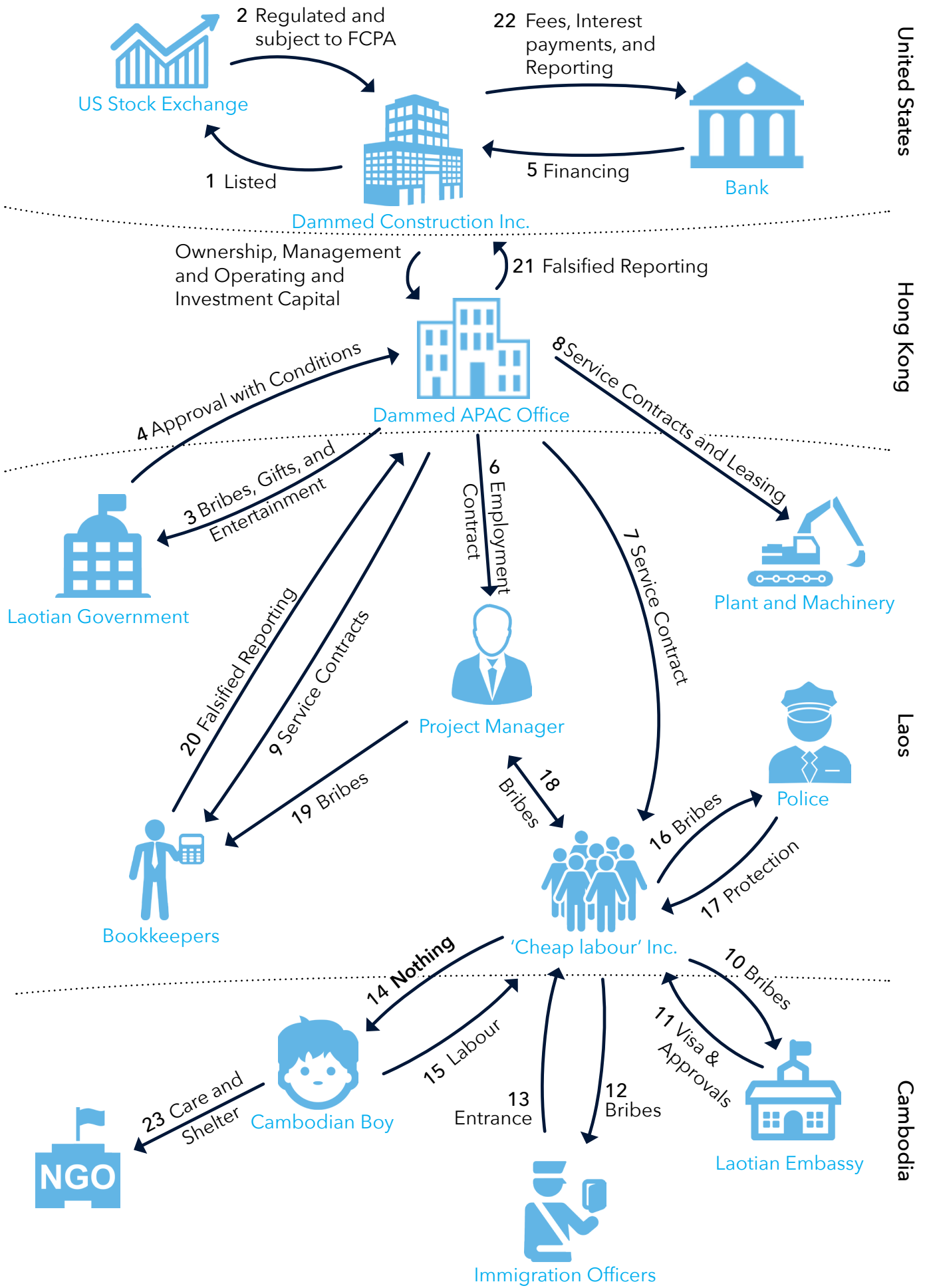
Dammed Construction Inc. has not implemented any internal controls over their employees, such as the Project Team or the Project Manager, or provided them any anti-corruption training.

The Cambodian boy is injured during construction and is left on the street where he is found and returned home to Cambodia by an NGO caring for victims of modern slavery (23).

### DISCLAIMER

Any resemblance between the contents of the above case study in this Briefing Paper and/or others set out in the Legal Analysis with actual events involving actual people or places is merely coincidence. All case studies are purely hypothetical examples only representing possible situations and any places listed or names used are for solely illustrative purposes only.





Images: Julia Macher for Liberty Asia ©2015.

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None of the individuals depicted in this report is a victim of human trafficking. Images are provided for illustration purposes only.

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