
VISITING EXPERTS' PAPERS

COMBATING CORRUPTION IN HONG KONG

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I. INTRODUCTION

A. The Era of Abuse

Before 1974, Hong Kong was plagued with corruption. It was endemic within the police and other disciplined services. It existed within all departments of the government as well as in commerce and industry. The people of Hong Kong were rightly angered by what they saw: a corrupt society that strangled free enterprise and made a mockery of government and what it stood for.

B. The Public Outcry

The last straw came in 1973 when a senior police officer named Peter Godber, who had been under investigation by the police anti-corruption branch for corruption, fled Hong Kong by abusing his senior position in the police force. A Commission of Enquiry under the chairmanship of Mr. Justice Alistair Blair-Kerr was established to investigate the Godber incident, recommending that the task of investigating corruption be removed from the police and put into the hands of an independent agency.

C. The Inception of the ICAC

The Independent Commission Against Corruption (ICAC) was formed as a consequence. Its mandate was clear: to investigate and pursue corruption wherever it existed and to bring the corrupt to justice regardless of the amounts involved or the personalities or social standing of the perpetrators and to investigate corruption independently of, and unfettered by, any regulatory ties to government. By virtue of its establishing legislation the ICAC is only answerable to the Chief Executive of the Hong Kong Special Administrative Region.

D. Anti-Corruption Laws

It was realized at the outset that to make corruption a high-risk crime and to confer the necessary powers of investigation essential for fighting corruption, strong and effective legislation was required. This legislation, in the form of the Independent Commission Against Corruption Ordinance and the Prevention of Bribery Ordinance, achieved those objectives. The ICAC Ordinance established the organizational infrastructure of the ICAC and the Prevention of Bribery Ordinance defined the various crimes of corruption and established ICAC's powers of investigation.

E. The Three-Pronged Approach

The Commission of Enquiry recognized that corruption was not simply a crime to be investigated but an ideology that needed to be eradicated from society. Consequentially the fight against corruption was not limited to investigation and prosecution, but encompassed a systematic strategy of prevention and education.

The ICAC Ordinance stipulates the duties of the ICAC to receive and consider complaints alleging corrupt practices and to investigate offences described in section 12 of the ICAC Ordinance. This became the basis for the formation of the Operations Department. The Ordinance further empowered our Commissioner to examine the practices and procedures of government departments and public bodies to prevent corruption, which has become the core function of our Corruption Prevention Department. The third prong of the Commission, known as the Community Relations Department, performs the duty of

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educating the public against the evils of corruption and enlisting public support in combating corruption.

1. The Role of the Operations Department

The Operations Department enforces the anti-corruption laws by committing modern, sophisticated resources and dedicated, highly trained investigators to rooting out criminal corruption and bringing the perpetrators to justice. This process itself indirectly fosters corruption awareness among the community at large through consequent publicity in the news media. But the Operations Department also plays a more direct and proactive role in promoting alertness to the dangers of corruption in specific areas of both the public and private sectors.

2. The Philosophy of the Corruption Prevention Department

The Corruption Prevention Department of the ICAC has a statutory responsibility to minimize opportunities for corruption in both the government departments and public bodies. This is done primarily through conducting assignment studies to examine the relevant practice and work procedures of government departments and public bodies, to revise their work methods if they are conducive to corruption, and to make recommendations against abuse.

(i) Procedural Simplicity

Providers of public services are advised to adopt the simplest procedures possible for processing applications for their services. They are also advised to adopt the clearest criteria possible to determine approval or otherwise. The purpose is to reduce queuing time and to minimize human discretion, therefore taking away the incentive to bribe.

(ii) Transparency

The public must be informed of their rights to service and the ways and means to lodge a complaint if they are not satisfied with the service they get.

(iii) Accountability

The system should enable each public officer to be held accountable for what he or she does at work or for his or her omissions.

The Corruption Prevention Department adopts a 'partnership approach' with government departments and public bodies, and would advise them to install within their organizations a "Corruption Prevention Review Mechanism" to conduct regular reviews covering procurement or licensing matters, or other operational procedures. Client departments are also encouraged to set up an "Integrity Steering Committee" to look into matters pertaining to the integrity of staff. The Integrity Steering Committees have worked very well, especially in the Disciplined Services Departments, including the Police and Customs. They promote a healthy life-style and help their staff to handle financial matters, including cases of serious indebtedness. They have contributed to a decline in complaints against the public sector.

The Corruption Prevention Department also provides consultative services to the Government for the formulation of new legislation, policies and procedures to ensure that corruption prevention safeguards are built in at an early stage. Furthermore, it acts as an adviser to the Civil Service Bureau of the Hong Kong Government in the compilation and review of the Hong Kong Civil Service Regulations.

The Civil Service Regulations require all government officials to maintain a high level of integrity. Civil servants are required to observe a Code of Conduct. There are strict regulations restricting the acceptance of gifts or loans. All government officials are required to declare their investments on their first appointment to the Civil Service. On assignment to a senior or sensitive post, an officer may be required to update his or her declarations on a regular basis. Investment restrictions are also imposed on the holders of certain positions to avoid possible conflicts of interest. Public officers are not allowed to use confidential or unpublished information obtained in their official capacity to make profits. Failure to meet these requirements will render an officer liable to disciplinary action, dismissal from the service, and, in serious cases, criminal proceedings.

3. Function of the Community Relations Department

The Community Relations Department, the third constituent department of the ICAC, is vested with the

responsibilities of:

- (i) educating the public against the evils of corruption; and
- (ii) enlisting and fostering public support in combating corruption.

The public sector does not survive on its own, separate from the community. Public sector integrity can be established and sustained only if the general public demand, treasure and support a probity culture for the public sector and also for themselves. The Community Relations Department's work programme to educate the broader public and the Commission's task to strengthen public sector integrity are, therefore, mutually reinforcing.

Public education aside, the Community Relations Department also makes dedicated efforts to help enhance integrity in the public sector. Such efforts include:

- (i) Developing Codes of Conduct for government officials and staff of public bodies;
- (ii) Conducting "experience-sharing sessions" using real-life cases to illustrate how public officers in their everyday work may come across corruption pitfalls;
- (iii) Introducing an "Ethics Officer Programme" to government departments and public bodies, whereby a senior officer in each organization will be assigned as an Ethics Officer to plan and oversee anti-corruption strategies for the organization. Regular meetings are arranged for Ethics Officers from different organizations to discuss ethical management issues.

F. The Success of the Three-Pronged Strategy

The ICAC's work on enforcement, prevention and education are complimentary to each other. Practical experience gained from the investigation and detection of significant cases are carefully studied and analysed. The results are used not only to construct preventive measures for the relevant organizations; representative cases are also turned into action drama series. To date, the ICAC has, in collaboration with a TV station, produced 13 series of action-packed anti-corruption stories broadcast to millions of viewers in Hong Kong and abroad.

G. The Down Side

Whilst the establishment of ICAC was seen as a positive step to strike hard against a corrupt society, there were strong feelings of apprehension towards ICAC from within the government departments, particularly the then Royal Hong Kong Police Force. Syndicated corruption in the police, especially at middle and junior ranks, was entrenched. With numerous police officers being arrested on a regular basis, friction between the police and ICAC became critical. At one time, it reached a crisis point: in 1977, following the successful smashing of a drug cartel which operated from a fruit market under the protection of a large number of corrupt police officers, about a hundred members of the police force stormed the ICAC headquarters in an attempt to intimidate its officers and to disrupt its work. The successful ICAC operation and the subsequent storming of the ICAC offices clearly showed the level of entrenched corruption within the government. The incident shocked the entire community. The then Governor of Hong Kong decided to declare a partial amnesty against all corruption offences that pre-dated 1 January 1977.

H. Corruption in the '80s

Despite the setback brought about by the amnesty, the determination to eradicate syndicated corruption from within the government continued, but during the early years, it was far from the only priority. The early eighties witnessed the Hong Kong economy fluctuating considerably. These changes of fortune gave root to various banking and private sector corruption scandals, some of which have become infamous in the history of Hong Kong. One such investigation, namely the *Carrian* case, was pivotal to the introduction of much stricter systems of regulation within the banking industry. Another investigation, namely the *Overseas Trust Bank (OTB)* case, exposed one of Asia's largest-ever syndicated cheque kiting frauds. Corruption, it was said in those days, was the oil that lubricated the engines of business. The OTB case was a clear example of how corruption and cronyism came together to allow this scam to take place. A cheque kiting scheme disclosed that at one stage cheques worth over HK\$500 million were in circulation; this should have been impossible by even the most basic of banking compliance standards. It was, however, made possible through the forming of close, dubious and corrupt associations with senior officials of the bank.

In the late 1980s another scandal hit Hong Kong. The Deputy Director of Public Prosecutions (DDPP) was arrested and later convicted of corruption. The investigation was extremely scandalous. Ironically, the DDPP used to sanction ICAC investigations for prosecution. In the investigation against the DDPP, the ICAC had to obtain legal support and advice from private practice lawyers. The case effectively endorsed the true independence of the ICAC.

I. Corruption in the '90s

Corruption by its nature is a secretive crime and therefore its investigation, of necessity, needs to be secret. In the '90s, one case, which involved the smuggling of several hundred million dollars worth of contraband cigarettes, was made possible through the corrupt connivance of a former member of the Hong Kong Customs and Excise Department who was also a senior triad office bearer. The case in question went on to reveal a complex smuggling syndicate that was run from Hong Kong and involved Singapore, the Philippines, Taiwan and mainland China. This case also illustrated the significant overlap that can occur between public and private sector corruption. Contraband goods could not have been generated without the corrupt support of senior members of a leading tobacco company and the corrupt complicity of the triad Customs officer. While this case was under investigation, a principal witness was murdered in Singapore in what was a classic triad killing designed to frighten away other potential witnesses. Despite these setbacks, the ICAC successfully smashed the syndicate and convicted several members of the syndicate and corrupt officials from the tobacco company for offences of corruption, perversion and conspiracy to murder.

J. Independence

The establishment of the ICAC in Hong Kong signified a new revolution in combating corruption. It established a role model that has been used by many jurisdictions. The early turbulent years were a steep learning curve, both ethically and ideologically, for all sectors of Hong Kong society, and practically, for the ICAC itself. The ICAC is a forward-looking organization and corruption today poses as great a threat as it did back in the early 1970s. What has changed is the nature and form of corruption.

The ICAC is an independent agency separated from the rest of the government, which means that we are free from any interference by the government or anybody else in conducting our investigations. This is absolutely true and absolutely essential. In my 28 years' service I have never come across or heard of any undue interference from whatever quarters in our operations. Provided there is reasonable suspicion, we will investigate any person or organization without fear or prejudice. This statutory obligation is written into our constitution. Nor can anyone order us to stop an investigation. Once it is commenced, the full investigative process must be conducted.

II. THE NATURE OF CORRUPTION IN HONG KONG

A. Anti-Corruption Laws

Hong Kong differs from many jurisdictions in that its principal anti-corruption legislation – the Prevention of Bribery Ordinance (POBO) – not only proscribes corruption in the public sector, but in the business sector as well. Hong Kong is a major international centre for commerce and finance, and it is vital that business interests should not be adversely affected by corruption. The law ensures that those who wish to avail themselves of the commercial advantages that Hong Kong has to offer are able to do so on a level playing field, protected by provisions similar to those aimed at ensuring clean government.

B. Public Sector Corruption

The most common public sector corruption offence, under Section 4 of the POBO, concerns government officials and non-government public officers unlawfully soliciting or accepting advantages in return for performing or abstaining from performing their official duties (transactions in which both the official and the person offering the advantage are liable).

C. Private Sector Corruption

Corruption in the private sector is, in the main, proscribed by Section 9 of the POBO, which provides that an agent (that is to say, someone acting for or on behalf of another – usually, but not always, an employee), who, without his principal's consent, solicits or accepts an advantage in connection with his principal's affairs, commits an offence. As with the Section 4 offence, both the offeror and acceptor are liable. A typical example of the Section 9 offence is that of a bank officer who grants a loan to a client in return for a secret

kickback from the client, say ten percent of the value of the loan. It is this type of scenario that frequently leads ICAC investigators beyond the parameters of criminal corruption into the area of commercial fraud. Throughout its thirty-four year history, the ICAC has investigated and brought to court numerous cases of corruption-related fraud. A close look at the ICAC's Operations Department provides some insight into the strategies and resources deployed by the Commission in tackling both public and private sector corruption and related crime.

III. THE PROCESS OF INVESTIGATION

A. Corruption Reports

Members of the public who wish to report corruption may do so in person, either at the ICAC's headquarters or at one of its regional offices situated at convenient locations throughout Hong Kong. Alternatively, they may make reports by telephone, letter or e-mail. Whatever the means of reporting, all reports are considered daily by the Operations Department directorate. Those which fall within the ICAC's purview and appear suitable for investigation are allocated to Investigating Sections. Once an investigation has commenced, it can only be terminated in one of two ways: either by prosecution under the authority of the Department of Justice after legal advice, or with the agreement of the Operations Review Committee on the basis that no further investigative action is warranted.

B. An Oversight – The Operations Review Committee

The Operations Review Committee (ORC) is one of four advisory committees with responsibility for overseeing various aspects of ICAC work. The ORC presently comprises 17 members, including the Chairman. Four of these are *ex-officio* members – the Commissioner of the ICAC, the Commissioner of Police, the Secretary for Justice and the Director of Administration (a central Government officer). The remainder, including the Chairman, are prominent members of the community appointed by the Chief Executive from a variety of professional backgrounds on the basis of their undoubted integrity and sense of civic responsibility. The Committee, which meets approximately every six weeks, reviews all completed cases, as well as ongoing investigations, with particular reference to the use of resources and the exercise of special powers by the Commissioner. The Committee advises the Commissioner on matters within its purview, and may draw to the attention of the Chief Executive, on an ad hoc basis, any issues it considers appropriate. In any event, the ORC submits a full report to the Chief Executive annually on all matters within its purview.

C. Powers of Investigation

ICAC officers can exercise a variety of powers granted under the ICACO, the POBO and other legislation. These include, but are not limited to, the power to:

- examine bank accounts;
- require a suspect to produce material for investigation;
- obtain information from the Inland Revenue Department;
- require a suspect to furnish under a statutory declaration details of assets acquired or disposed of by him or her;
- require any other person to furnish information relevant to a suspected POBO offence under a statutory declaration or on oath;
- search premises and seize evidence;
- restrain property believed to be proceeds of corruption;
- arrest and detain suspects in the Commission's detention centre (for up to 48 hours, following which they must either be charged and brought before court, or released, either on bail or unconditionally);
- require a suspect to surrender his or her travel documents pending investigation.

With the exception of the power to arrest and detain, the above powers usually require judicial authority in the form of a warrant, notice or order.

D. Special Power of Investigation against Disproportionate Assets or Lifestyle

This paper would not be complete without mention of a controversial but especially powerful weapon in the ICAC's arsenal when investigating corrupt government officers. Even today it is possible for a corrupt civil servant, if he or she covers his or her tracks well enough, to amass an illicit fortune without leaving any evidence of its origins. Specific acts of corruption can be notoriously difficult to prove; cash bribes, for

example, cannot be traced back to the person who paid them. And so the wily government officer who has been careful to conceal the source of his or her corrupt wealth would be immune from prosecution were it not for Section 10 of the POBO. Under this provision, a government officer who possesses assets disproportionate to, or maintains a lifestyle incommensurate with, his or her official emoluments – that is to say (in simple terms) possesses or spends more than he or she has earned legitimately during his or her government service – commits an offence, unless he or she is able to explain how he or she legitimately acquired those assets or was able to maintain such a lavish lifestyle.

This offence carries a maximum penalty of 10 years' imprisonment and a HK\$1,000,000 fine, and the provision has been used by the ICAC sparingly but to devastating effect over the years. Although the provision has been challenged as being inconsistent with the Hong Kong Bill of Rights (in that it places the burden of proof on the defendant rather than the prosecution), the Hong Kong Court of Appeal has ruled otherwise (*Attorney General v. Hui Kin Hong. Court of Appeal No.52 of 1995*), citing in support of that ruling the United Kingdom Privy Council ruling in the appeal case of *Mok Wei Tak v. The Queen*. And so Section 10 of the POBO remains on the statute book – an ominous deterrent and formidable instrument of justice, without which corruption in the Hong Kong Government service might well be far more serious than it is today.

IV. SPECIALIZATION & PROFESSIONALISM

Because corruption is often committed by people who are highly educated, and the offences are invariably complicated, investigating corruption would require a high degree of professional training and specialized skill. As we all know, corruption is a secretive crime, and we need a good intelligence-gathering system. Let us take a look at the establishment of the Operations Department where we can find a number of specialized units providing operational support to our frontline investigators.

A. The Surveillance Unit

We put considerable resources into our surveillance capability (H Group) which account for about 10% of our total investigative resources. Our dedicated and powerful surveillance unit has played a very important role in many of our successful operations.

B. The Technical Support Unit

Apart from the surveillance team, our technical support unit also plays a very important role in the collection of crucial evidence in most of our cases.

C. The Witness Protection and Firearms Unit

This unit is mainly responsible for the centralized planning, administration and implementation of all witness protection programmes. Selected officers are trained to carry firearms and learn breaching techniques for assisting other officers in executing arrest and search operations.

D. The Informants' Handling and Undercover Operations Unit

The officers of this unit are assigned to potential informants or casual contacts in the active collection of intelligence in identified corruption-prone areas. In order to collect evidence, they will be deployed as undercover agents for infiltrating criminal syndicates.

E. The Central Intelligence Unit

This unit provides strategic and tactical intelligence analysis in support of covert operations conducted by the department and they also carry out research projects to facilitate strategic analyses to probe into targeted corruption-prone areas.

F. The Financial Investigation Unit

Because of the complexity of asset tracing and money laundering investigations, we now have a number of in-house investigative accountants who can offer professional expertise in this type of investigation.

G. Computer Forensics Research and Development

The rapid development of Information Technology can be a very useful tool for investigation as well as for corrupt offenders. We have a specialized computer forensic and research unit to hopefully keep us one

step ahead, although we can never be sure of that.

H. Local Partners

We see the value of a partnership approach with other local law enforcement agencies, including the Police, Customs & Excise, and Immigration and Correctional Services. In the old days, when the ICAC arrested a government official, this might not have been welcomed by his or her head of department, who blamed the ICAC for involving the department in a scandal. If the dark days of corruption teach us anything, it is that turning a blind eye to corruption simply will not do. The problem will only grow bigger. We are pleased that heads of departments, particularly the law enforcement agencies, have changed that attitude. Indeed, many of our most successful cases originated from their complaints or as a result of joint investigations.

V. CURRENT THREATS

What are the current threats facing the ICAC? I believe there are areas the ICAC must pay attention to. First, although we have eliminated most overt types of corruption, the conniving nature of corruption with satisfied customers unwilling to complain remains a constant challenge to us. Secondly, corruption is becoming more and more difficult to investigate. With advanced technology and global mobility, today's criminals have never had it so good, nor could they ever before so easily conceal the evidence of their crimes and their ill-gotten gains. Thirdly, organized crime has become a real threat and we must not allow its link to corruption to grow; they would make extremely dangerous allies.

VI. AN OVERVIEW

A. Corruption-Free

The Hong Kong experience in building an integrity system for the public sector is essential in the history of the ICAC. The ICAC in the discharge of its duties has helped keep Hong Kong fair, just, stable and prosperous.

The US-based Heritage Foundation has rated Hong Kong as the world's freest economy for 13 consecutive years, most recently in 2007. One of the reasons for awarding this honour to Hong Kong is that the Heritage Foundation considers Hong Kong "virtually free of corruption". We would interpret this complimentary remark to mean that in our region, corruption is very much under control, and that there is no longer any syndicated corruption in our public sector.

We also believe that our probity culture has contributed to Hong Kong's sustained development and economic growth. Over the past 20 years, despite an unprecedented Asian economic crisis, Hong Kong's economy grew by an average of 5.1% in real terms, against a world growth of 3.7%.

B. Corruption in the Private Sector

As a law enforcement agency, we will not be complacent about our work. Looking ahead, we see the need to expend greater efforts to combat private sector corruption, which offences are also covered by the POBO. Statistics show that corruption reports involving private enterprises have also stabilized in recent years. However, as Hong Kong has evolved from a manufacturing base to a leading world financial centre, we must be able to safeguard the integrity of our securities and futures markets.

C. Corruption Trend

As for the public sector, we are aware that corruption is no longer confined to the traditional *quid pro quo* "bribe for favour" type of offences. Corruption in a more subtle form seems to be on the rise, namely "misconduct in public office" (MIPO).

Misconduct in public office as a common law offence has been in existence since the 18th century. It has all along been challenged as ill-defined, too wide in scope and lacking clarity. In Hong Kong, the first prosecution under this offence by the ICAC took place in 1998. To date, 38 public officers have been prosecuted for MIPO offences related to acceptance of advantage, resulting in 18 convictions so far.

Arising from two landmark cases respectively in 2002 and 2005, the Hong Kong Court of Final Appeal has come to a clearer definition of MIPO. Five elements are listed to constitute this offence:

- A public officer;
- In the course of or in relation to his or her public office;
- Without reasonable excuse or justification;
- Willfully misconducts himself or herself, by act or omission, for example, by willfully neglecting or failing to perform his or her duty; and
- Where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from responsibilities.

We believe the Hong Kong Court of Final Appeal has come a long way in addressing MIPO offences. The ICAC will come in as and when there is a MIPO case “connected” with corruption, even if the act of corruption cannot be proven in the context of POBO provisions. It is of course up to the ICAC and our legal advisers to prove to the court that there is corruption involved. We will keep watch on the application of the CFA’s definition of MIPO and re-assess the situation in light of further experience to be gained from actual operation.

VII. CONCLUSION

The ICAC of Hong Kong is a special force established outside and independent of the Civil Service of the Hong Kong Special Administrative Region. The Hong Kong Civil Service is faithful and efficient, and they know their job is to ensure that the people of Hong Kong may freely pursue their social, political and economic goals, or legitimate objectives as they would determine for themselves. In our view, they can be relied upon to meet the toughest challenges. Amongst other government agencies, the Hong Kong Police Force, which was the immediate reason for the birth of the ICAC, will bear testimony to both the strength and the virtue of the public service. They serve with demonstrated integrity, without fear or favour, and ICAC colleagues are gratified that over the past three decades, we have contributed to this end.

Ultimately, success in our work rests not with ICAC officials.

The key to success is community support.