

# INVESTIGATION OF CORRUPTION CASES

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## I. INTRODUCTION

The Hong Kong Independent Commission Against Corruption (ICAC) is popularly regarded as a successful model in fighting corruption, turning a very corrupt city under colonial government into one of the relatively corruption free places in the world. One of the success factors is its three-pronged strategy - fighting corruption through deterrence, prevention and education. All three are important but in my view, deterrence is the most important. That is the reason why the ICAC devotes over 70% of its resources to its Operations Department, which is responsible for investigating corruption. Nearly all of the major corruption cases I have dealt with were committed by people in high authority. For them, they have certainly been educated about the evil of corruption and they may also be subject to certain degree of corruption prevention control. But what inspired them to commit corruption? The answer is simply greed, as they would weigh the benefits they could get from corruption against the chance of them being discovered. If they think that it is a low-risk, high-return opportunity, they will likely succumb to the temptation. So how can we deter them from being corrupt? The only way is to make them realize that there is a high risk of them being caught. Hence the mission of the ICAC Operations Department is to make corruption a high-risk crime. To do that, you need a professional and dedicated investigative force.

## II. DIFFICULTIES OF INVESTIGATING CORRUPTION

Corruption is regarded as one of the most difficult crimes to investigate. There is often no scene of the crime, no fingerprint, no eye-witness to follow up. It is by nature a very secretive crime and can involve just two satisfied parties, so there is no incentive to divulge the truth. Even if there are witnesses, they are often parties to the corruption themselves, hence tainted with doubtful credibility when they become prosecution witnesses in court. The offenders can be equally as professional as the investigators and know how to cover their trails. The offenders can also be very powerful and ruthless in enforcing a code of silence amongst related persons through intimidation and violence to abort any investigation. In this modern age, the sophisticated corrupt offenders will take full advantage of the loopholes in cross-jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants and computer experts in their clandestine operations and to help them launder their corrupt proceeds.

## III. CORRUPTION AND ORGANIZED CRIME

Corruption rarely exists alone. It is often a tool to facilitate organized crime. Over the years, ICAC have investigated a wide range of organized crimes facilitated by corruption. Law enforcement officers have been arrested and convicted for corruptly assisting drug traffickers and smugglers of various kinds; bank managers for covering up money laundering for organized crime syndicates; hotel and retail staff for perpetuating credit card fraud. In these cases, we need to investigate not only corruption, but some very sophisticated organized crime syndicates as well.

## IV. PREREQUISITES FOR AN EFFECTIVE INVESTIGATION

Hence, there is an essential need for professionalism in corruption investigation. There are several prerequisites to an effective corruption investigation.

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### **A. Independence**

Corruption investigation can be politically sensitive and embarrassing to the government. The investigation can only be effective if it is truly independent and free from undue interference. This depends very much on whether there is top political will to fight corruption in the country, and whether the head of the anti-corruption agency has the moral courage to stand against any interference.

### **B. Adequate Investigative Power**

Because corruption is so difficult to investigate, you need adequate investigative power. The HK ICAC enjoys wide investigative power. Apart from the normal police power of search, arrest and detention, it has power to check bank accounts, intercept telephone communications, require suspects to declare their assets, require witnesses to answer questions under oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. Not only is the ICAC empowered to investigate corruption offences, both in the government and private sector, they can investigate all crimes which are connected with corruption. I must hasten to add that there is an elaborate check and balance system to prevent abuse of such wide power.

### **C. Adequate Resources**

Investigating corruption can be very time-consuming and resource intensive, particularly if the cases involve cross-jurisdiction. In 2007, the HK ICAC's annual budget amounted to US\$90M, about US\$15 per capita. You may wish to multiply this figure with your own country's population and work out the anti-corruption budget that needs to be given to the equivalent of ours! However, looking at our budget from another angle - it represents only 0.3% of our entire government budget or 0.05% of our Gross Domestic Product (GDP). I think you will agree that such a small "premium" is a most worthwhile investment for a clean society.

### **D. Confidentiality**

It is crucial that all corruption investigation should be conducted covertly and confidentially, at least before arrest action is ready, so as to reduce the opportunities for compromise or interference. On the other hand, many targets under investigation may prove to be innocent and it is only fair to preserve their reputation before there is clear evidence of their corrupt deeds. Hence in Hong Kong, we have a law prohibiting anyone, including the media, from disclosing any details of an ICAC investigation until overt action such as arrests and searches have been taken. The media once described this as a "press gag law" but they now come to accept it as a right balance between press freedom and effective law enforcement.

### **E. International Mutual Assistance**

Many corruption cases are now cross-jurisdictional and it is important that you can obtain international assistance in the areas such as locating witnesses and suspects; money trails, surveillance, exchange of intelligence, arrest, search and extradition, and even joint investigation and operation.

### **F. Professionalism**

All the investigators must be properly trained and professional in their investigation. The HK ICAC strives to be one of the most professional law enforcement agencies in the world. ICAC is one of the first agencies in the world to introduce the interview of all suspects under video, because professional interview technique and the need to protect the integrity of the interview evidence are crucial in any successful corruption prosecution. The investigators must be persons of high integrity. They must adhere strictly to the rule of confidentiality, act fairly and justly in the discharge of their duties, respect the rights of others, including the suspects, and should never abuse their power. As corruption is so difficult to investigate, they need to be vigilant, innovative and be prepared to spend long hours to complete their investigation. The ICAC officers are often proud of their sense of mission and this is the single most important ingredient of success of the ICAC.

### **G. An Effective Complaint System**

No anti-corruption agency is in a position to discover all corrupt dealings by itself. They rely heavily on an effective complaint system. The system must be able to encourage quality complaints from members of the public or institutions, and at the same time, deter frivolous or malicious complaints. It should provide assurance to the complainants of the confidentiality of their reports and if necessary, offer them protection. Since the strategy is to welcome complaints, customer service should be offered, making it convenient to

report corruption. A 24 hour reporting hotline should be established and there should be a quick response system to deal with any complaints that require prompt action. All complaints, as long as there is substance in them, should be investigated, irrespective of how minor is the corruption allegation. What appears to be minor in the eyes of the authority may be very serious in the eyes of the general public!

#### **H. Understanding the Process of Corruption**

It should be helpful to the investigators to understand the normal process of corruption, and through which the investigators would be able to know where to obtain evidence to prove the corrupt act. Generally, a corrupt transaction may include the following steps:

##### 1. Softening-up Process

It is quite unlikely that a government servant would be corrupt from his or her first day in office. It is also unlikely that any potential bribe-offerer would approach any government servant to offer a bribe without building up a good relationship with him or her first. Thus there is always a “softening up process” when the bribe-offerer builds up a social relationship with the government servant, for example, inviting him or her to dinner and karaoke, etc. Thus the investigator should also attempt to discover evidence to prove that the government servant had accepted entertainment prior to the actual corrupt transaction.

##### 2. Soliciting/Offering of Bribe

When the time is ripe, the bribe-offerer would propose to seek favour from the government servant and in return offer a bribe to him or her. The investigator should attempt to prove when and where this had taken place.

##### 3. Source of Bribe

When there is agreement for the bribe, the bribe-offerer would have to withdraw money for the payment. The investigator should attempt to locate the source of the funds and whether there was any third person who assisted in handling the bribe payment.

##### 4. Payment of Bribe

The bribe would then be paid. The investigator should attempt to find out where, when and how the payment was effected.

##### 5. Disposal of Bribe

On receipt of the bribe, the receiver would have to dispose the cash. The investigator should try to locate how the bribe was disposed, either by spending or depositing into a bank.

##### 6. Abuse of Power

To prove a corruption offence, you need to prove the corrupt act or the abuse of position in return for the bribe. The investigator needs to identify the documents or other means proving his or her abuse of authority.

The task of the investigator is to collect sufficient evidence to prove the above process. He or she needs to prove “when”, “where”, “who”, “what”, “how” and “why” on every incidence, if possible.

However this should not be the end of the investigation. It is rare that corruption is a single event. A corrupt government servant would likely take bribes on more than one occasion. A bribe-offerer would likely offer bribes on more than one occasion and to more than one corrupt official. Hence it is important that the investigator should seek to look into the bottom of the case, to unearth all the corrupt offenders connected with the case.

#### **V. METHODS OF INVESTIGATING CORRUPTION**

Investigating corruption can broadly be divided into two categories:

- A. Investigating past corruption offences;
- B. Investigating current corruption offences.

### **A. Investigating Past Offences**

The investigation normally commences with a report of corruption and the normal criminal investigation technique should apply. Much will depend on the information provided by the informant and from there, the case should be developed to obtain direct, corroborative and circumstantial evidence. The success of such investigation relies on the meticulous approach taken by the investigators to ensure that no stone is left unturned. Areas of investigation can include detailed checking of the related bank accounts and company ledgers, obtaining information from various witnesses and sources to corroborate any meetings or corrupt transactions, etc. At the initial stage, the investigation should be covert and kept confidential. If there is no evidence discovered in this stage, the investigation should normally be curtailed and the suspects should not be interviewed. This would protect the suspects, who are often public servants, from undue harassment. When there is a reasonable suspicion or evidence discovered in the covert stage, the investigation can enter its overt stage. Action can then be taken to interview the suspects to seek their explanation and if appropriate, the suspects' homes and offices can be searched for further evidence. Normally, further follow-up investigation is necessary to check the suspects' explanations or to go through the money trails as a result of evidence found during searches. The investigation is usually time-consuming.

### **B. Investigating Current Corruption Offences**

Such investigation will enable greater scope for ingenuity. Apart from the conventional methods mentioned above, a proactive strategy should always be preferred, with a view to catching the corrupt red-handed. In appropriate cases, with proper authorities obtained, surveillance and telephone interception can be mounted on the suspects and suspicious meetings monitored. A co-operative party can be deployed to set up a meeting with a view to entrapping the suspects. Undercover operation can also be considered to infiltrate a corruption syndicate. The pre-requisites to all these proactive investigation methods are professional training, adequate operational support and a comprehensive supervisory system to ensure that they are effective and in compliance with the rule of evidence.

As mentioned above, corruption is always linked and can be syndicated. Every effort should be explored to ascertain if the individual offender is prepared to implicate other accomplices or the mastermind behind the scheme. In Hong Kong, there is a judicial directive to allow a two thirds reduction of the sentence of those corrupt offenders who are prepared to provide full information to ICAC and to give evidence against the accomplices in court. The ICAC provides special facilities to enable such "resident informants" to be detained in ICAC premises for the purpose of de-briefing and protection. This "resident informant" system has proved to be very effective in dealing with syndicated or high-level corruption.

## **VI. INVESTIGATION TECHNIQUE**

To be a competent corruption investigator, an official should know many investigation techniques and skills. The following are the essential ones:

- Ability to identify and trace persons, companies and properties;
- Interview technique;
- Document examination;
- Financial investigation;
- Conducting a search and arrest operations;
- Physical and technical surveillance;
- Acting as undercover agent;
- Handling informers;
- Conducting an entrapment operation;
- Witness protection.

I will try to cover the key investigation techniques.

### **A. Interview Technique**

As corruption is a secret crime involving parties who are often sworn to a code of secrecy and silence, a successful corruption investigator should always be a good interviewer, to break the code of silence. Interview technique always forms a very important part of the professional training of corruption investigators. Interview techniques should include the following elements:

- Proper preparation and planning before the interview: the interviewer must study the case thoroughly: the background of the interviewee, the available evidence against him or her, the list of question areas, etc. He or she should then formulate the structure of the interview.
- Ability to deal with reluctant witness: it is fully understandable that the interviewees in corruption cases are reluctant to come forward in the interview. The interviewer must have the ability to identify the reasons behind the interviewee's reluctance, whether it is due to his or her dislike of the agency, fear of intimidation, fear of going to court, his or her relations with the corrupt offenders, etc, and to use the appropriate strategy to win his or her co-operation;
- Ability to build rapport: by putting the interviewee at ease in a hospitable environment, giving him or her reassurance, and handling him or her with patience and sympathy;
- Need for active listening and to be flexible in the line of questioning, depending on what the interviewee has said;
- Maintain eye-contact and watch the body language, which often give you clue as to the truthfulness of what the interviewee is saying. Always attempt to test the truth and to identify the motive of the statements made by the interviewee;
- If the interviewee is prepared to relate the full version, ensure that maximum details are obtained – when, where, who, what and how, in chronological sequence, and most important of all, who else is also involved in the corruption;
- Always retain control in the interview.

## **B. Professional Investigative Support**

In order to ensure a high degree of professionalism, many of the investigation techniques can be undertaken by a dedicated unit, such as the following:

### 1. Intelligence Section

The intelligence section is a central point to collect, collate, analyse and disseminate all intelligence and investigation data, otherwise there may be major breakdown in communication and operations

### 2. Surveillance Section

The surveillance section is a very important source of evidence and intelligence. The Hong Kong ICAC has a dedicated surveillance unit of over 120 surveillance agents and they have made a significant contribution to the success of a number of major cases.

### 3. Technical Services Section

This section provides essential technical support to surveillance and operations.

### 4. Information Technology Section

Rapidly advancing telecommunications techniques have created a threat to corruption investigation. Corrupt negotiation can be carried out without personal contact. It can be done through email, mobile phone, fax, all without trace. Corrupt transactions via e-banking can, with a switch of button, transfer money to overseas accounts. Paper documentation is often replaced by computer records protected by unbreakable passwords. In extreme cases, professional hackers are employed to break into the computer systems of the anti-corruption agencies to find out the progress of investigations. Counter-surveillance and counter-interception techniques are often engaged to neutralize the law enforcement effort.

However, modern information and telecommunications technology can be a great asset in corruption investigation, such as:

- Telecommunications and other technical equipment used in surveillance;
- Capability to intercept all types of telecommunication including mobile phones, Internet, fax, etc.;
- Speaker identification techniques for production of intercepted evidence;
- Mobile/Internet/ CCTV records;
- Computer forensics;
- Computer intelligence analysis techniques;
- Major enquiry/operations computer systems.

### 5. Financial Investigation Section

Corruption investigations these days often involve sophisticated money trails of proceeds of corruption,

which can go through a web of off-shore companies and bank accounts, funds, etc. It is necessary to employ professionally qualified investigative accountants to assist in such investigation and in presenting such evidence in an acceptable format in court.

6. Witness Protection Section

ICAC has experienced cases where crucial witnesses were compromised, one even murdered, before giving evidence. There should be a comprehensive system to protect crucial witnesses, including 24 hour armed protection, safe housing, new identity and overseas relocation. Some of these measures require legislative backing.

## VII. CONCLUSION AND OBSERVATION

In conclusion, the success factors for an effective corruption investigation include:

- An effective complaint system to attract quality corruption reports;
- An intelligence system to supplement the complaint system and to provide intelligence support to investigations;
- Professional and dedicated investigators who need to be particularly effective in interviewing techniques and financial investigation;
- More use of proactive investigation methods, such as entrapment and undercover operations;
- Ensure strict confidentiality of corruption investigation, with a good system of protection of whistleblowers and key witnesses;
- International co-operation.

It is obvious that corruption and organized crime are getting more and more difficult to investigate. The offenders have taken full advantage of the high technology and cross-jurisdiction loopholes. Conventional investigation methods and current legal systems may not be adequate to win the battle against the corrupt. We should adopt a more proactive approach in investigation, such as in the wider use of undercover operations and the use of telephone interception, and to this end, we need to strike the right balance between effective law enforcement and protection of human rights and privacy.