

INDEPENDENCE AND INTEGRITY OF JUDGES, PROSECUTORS AND ANTI-CORRUPTION OFFICIALS: THEIR ROLES IN HONG KONG'S FIGHT AGAINST CORRUPTION

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I. INTRODUCTION

A robust criminal justice system is vital to the success of a territory's anti-corruption work, and such success in turn guarantees a strong, fair and sustainable criminal justice system. To keep the criminal justice system fair, clean and effective in fighting corruption, it is important to safeguard the independence and integrity of the key component institutions, including the judiciary, the prosecution authority and the anti-corruption agency, as well as the individuals working in these institutions. The reason is that the principles of independence and integrity are the major pillars supporting the effective, unbiased and transparent operation of these institutions, which is a prerequisite for sustaining a fair and clean environment in the public and private sectors of the society. In the fight against corruption, investigation, prosecution and adjudication play the crucial role in bringing the culprits to justice and ridding the society of this harmful scourge. These institutions and their members, including judges, prosecutors and anti-corruption officials, must have enough authority and independence to perform their duties. If undue pressure is put on these institutions and their members, they will be unable to maintain impartiality and objectivity when discharging their mandates.

As judges, prosecutors and anti-corruption officials are vested with wide power, their integrity becomes particularly important. If they have any misconduct such as conflict of interest and abuse of authority, or even engage in bribery, there will be no other means to combat corruption effectively. This is definitely detrimental not only to the anti-corruption work, but also to the criminal justice system, the rule of law and ultimately the entire society. Therefore, it is equally important for judges, prosecutors and anti-corruption officials to uphold the highest standard of integrity in their conduct, behaviours and performance of duties.

It is the global consensus that the judiciary, the prosecution authority, the anti-corruption agency and their members must be free from interference and observe high standards of integrity when performing their duties. This consensus is enshrined in the United Nations Convention against Corruption (UNCAC), the only legally binding universal anti-corruption instrument. The Convention stipulates that the States Parties shall ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement and prevention, and that they shall be granted with the necessary independence (Articles 6 and 36). The State Parties shall also criminalize the use of physical force, threats or intimidation to interfere with the exercise of official anti-corruption duties by justice or law enforcement officials (Article 25(b)). In addition, the UNCAC contains provisions aiming to enhance the integrity of public officials. The State

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Parties shall set up codes or standards of conduct and anti-corruption measures for public officials (Article 8). In particular, there shall be measures to strengthen integrity and prevent opportunities for corruption in the judiciary and prosecutorial authorities (Article 11).

Hong Kong, which is a Special Administrative Region (SAR) of the People's Republic of China, has long adopted these universally accepted standards of non-interference with the work of the judiciary, the prosecution authority and the anti-corruption agency. Hong Kong also places great emphasis on maintaining the integrity of these institutions and their members. The city maintains its own legal system under the "One Country, Two Systems" framework. In relation to the fight against corruption, the Independent Commission Against Corruption (ICAC) is the territory's dedicated law enforcement agency with the statutory mandate to fight and prevent corruption. Apart from investigation, the ICAC achieves its mission through systemic prevention and community education. In addition, the Department of Justice (DoJ), which is the prosecutorial authority in Hong Kong, and the Judiciary play an essential role in eradicating corruption to ensure that Hong Kong has a clean and efficient public sector, a private sector with a level playing field and a society which values integrity and rejects corruption. The probity environment in Hong Kong is, to a large extent, attributed to the independence and integrity of these institutions, the features which have long been renowned worldwide.

This paper aims to explain, from the ICAC's perspective, how Hong Kong upholds and safeguards the independence and integrity of judges, prosecutors and anti-corruption officials, who are the key players in the fight against corruption. It contains three parts, each addressing an issue under this broad theme but with different focuses. The first part introduces Hong Kong's anti-corruption system, in particular the relationships among the judiciary, the prosecution and the anti-corruption agency in dealing with corruption cases. The second part discusses the multiple safeguards of the independence and integrity of these three institutions in performing their functions. The third part explains the roles of the ICAC in promoting integrity in the public sector, covering all government departments and public authorities on the law enforcement, prevention and education fronts.

II. DIVISION OF WORK AMONG THE JUDICIARY, PROSECUTION AUTHORITY AND ANTI-CORRUPTION AGENCY

Hong Kong's legal system is set out in the Basic Law of the Hong Kong SAR, the constitutional document of the territory that came into effect on 1 July 1997 with Hong Kong's return to the People's Republic of China.¹ The Basic Law, among other things, essentially preserves Hong Kong's legal system which has been in place before 1997, including the laws previously in force such as the common law and the statutory laws.² Under this legal system, investigation, prosecution and adjudication of corruption cases are taken care by distinct institutions, namely the ICAC, the DoJ and the Judiciary. Each of these institutions has its own mandate and functions independently to keep corruption under effective control.

¹ The Government of the Hong Kong SAR, "Some Facts about the Basic Law", <<https://www.basiclaw.gov.hk/en/facts/index.html>>.

² Article 8 of Basic Law stipulates that "[the] laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law and subject to any amendment by the legislature of the HKSAR".

A. Independent Commission Against Corruption

The ICAC is the dedicated agency in Hong Kong with statutory power to combat and prevent corruption through law enforcement, systemic prevention and community education. On the law enforcement front, the Commission's duties include receiving and considering allegations of corrupt practices, as well as investigating alleged or suspected offences. While most of the investigations start from corruption complaints made by members of the public, the ICAC has a proactive strategy to uncover cases of corruption which might otherwise have remained unreported.

The ICAC has full-fledged investigative powers under the law to conduct anti-corruption investigations. When it comes to prosecution of the offences under Part II of the Prevention of Bribery Ordinance, it requires the consent of the Secretary for Justice, who heads the DoJ. In practice, the ICAC seeks the advice of the DoJ before commencing any prosecution.³ The ICAC uses its investigative powers responsibly and in strict accordance with the law. As a measure of checks and balances, the investigative work of the ICAC is overseen by the Operations Review Committee, an advisory committee of the ICAC which comprises mostly independent citizens appointed by the Chief Executive of the Hong Kong SAR.⁴ All ICAC cases must be submitted to this Committee for scrutiny. In particular, the Committee scrutinizes reports on completed investigations before endorsing the recommendations of taking no further action by the ICAC. The ICAC also, on the Committee's recommendations, forwards reports on alleged misconduct of government officers to the government departments concerned for consideration of disciplinary and/or administrative action.

Law enforcement is only part of the legal mandate of the ICAC. To tackle corruption from a holistic angle, the problem should be addressed through deterrence, improvement in systems and procedures, as well as change in people's attitude and development of an anti-corruption culture in the society. Hence, apart from the Operations Department which investigates corruption, the ICAC has two functional departments specializing in systemic prevention and community education, respectively. They are the Corruption Prevention Department and the Community Relations Department. With these three departments, the ICAC tackle both the root causes and the symptoms of corruption.

B. Department of Justice

The DoJ is headed by the Secretary for Justice who has the ultimate responsibility for the prosecution of all offences, including corruption, in Hong Kong. The Department's prosecutorial function is carried out by the Prosecutions Division. The Division makes prosecutorial decisions, including whether to prosecute and, if so, what charges to lay and before which courts. Counsels of DoJ do not investigate cases or collect evidence as law enforcement officials do. Instead, they provide legal advice to the ICAC, as well as other law enforcement agencies and government departments, on matters related to prosecution, criminal law and procedure. They also conduct trials and most appeals in courts.⁵

³ ICAC, Hong Kong SAR, *ICAC Annual Report 2019*, p. 38, <<https://www.icac.org.hk/icac/annual-report/2019/>>.

⁴ ICAC, Hong Kong SAR, "Operations Review Committee", <<https://www.icac.org.hk/en/check/advisory/orc/index.html>>.

⁵ Department of Justice, Hong Kong SAR, "Our Legal System: Department of Justice", <https://www.doj.gov.hk/en/our_legal_system/doj.html>.

C. Judiciary

The Judiciary is responsible for the administration of justice in Hong Kong, and it operates criminal courts in which cases are decided and sentenced. All criminal proceedings, including those about corruption, commence in the Magistrates' Courts. More serious offences are transferred from the Magistrates' Courts to either the District Court or the Court of First Instance.⁶ A trial is to be heard by a magistrate, a district court judge or, in the case of the Court of First Instance, a judge and a jury. The prosecution and defendants may appeal to higher courts against court rulings. Depending on its nature, an appeal is to be heard in (i) the Court of First Instance by a judge, (ii) the Court of Appeal usually by a bench of three judges, or (iii) the Court of Final Appeal. The Court of Final Appeal is the highest appellate court in Hong Kong. It is sat by a bench of five judges, usually including the Chief Justice as the Chair, three permanent judges, and either one non-permanent Hong Kong judge or one judge from another common law jurisdiction.⁷

The fact that the ICAC, the DoJ and the Judiciary function independently in investigation, prosecution and adjudication gives sufficient checks and balances among these three key institutions. As a result, the fight against corruption is carried out in a fair and accountable manner. Such division of work also facilitates specialization and professionalism. As elaborated in the next part, the independence and integrity of these three institutions are protected by different levels of safeguards. These safeguards ensure the effective implementation of the anti-corruption work and the rule of law in Hong Kong.

III. MULTIPLE LEVELS OF SAFEGUARDS OF INDEPENDENCE AND INTEGRITY

Hong Kong has a clean and efficient public sector. Under this corruption-free environment, the independence and integrity of the Judiciary, the DoJ and the ICAC are protected at constitutional, legal, institutional, societal and international levels. The different levels of safeguards serve to empower these institutions to perform their duties effectively without fear, favour or bias.

A. Constitutional Framework

The Basic Law of the Hong Kong SAR, which sets out the constitutional framework for the territory's legal system, provides the most fundamental guarantee of the independence of the Judiciary, the DoJ and the ICAC. Under the Basic Law, Hong Kong is authorized by the National People's Congress, the top legislature of the People's Republic of China, to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication (Article 2).⁸ Under this fundamental principle, there are a number of articles in the Basic Law articulating unambiguously that Hong Kong's judicial, prosecutorial and anti-corruption authorities shall exercise their power free from interference.

⁶Judiciary, Hong Kong SAR, "Court Services & Facilities: Magistrates' Courts", <https://www.judiciary.hk/en/court_services_facilities/mag.html>.

⁷Judiciary, Hong Kong SAR, "Court Services & Facilities: Court of Final Appeal", <https://www.judiciary.hk/en/court_services_facilities/cfa.html>.

⁸Article 2 of the Basic Law stipulates "[the] National People's Congress authorizes the HKSAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law."

By virtue of Article 19, the courts of Hong Kong are vested with independent jurisdiction over all cases in the territory, except with restrictions imposed by the legal system and for those involving acts of state such as defence and foreign affairs.⁹ Article 85 stipulates that the courts shall exercise judicial power independently, free from any interference, and that members of the judiciary shall be immune from legal action in the performance of their judicial functions.¹⁰

The independence of the DoJ and the ICAC is enshrined in Articles 63 and 57. Under Article 63, the DoJ is empowered to “control criminal prosecutions, free from any interference”. Article 57 specifies that the ICAC “shall function independently and be accountable to the Chief Executive”.¹¹

In addition to this constitutional guarantee of the independence of these institutions, the Basic Law establishes mechanisms to govern the qualities, including the ethical standards, of judges and other public officers. Judges and other members of the judiciary shall be chosen on the basis of their judicial and professional qualities (Article 92).¹² Judges shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors (Article 88).¹³ It is worth mentioning that the Basic Law allows a judge to be removed for misbehaviour, provided that the prescribed stringent procedures have been followed, such as the requirement of forming a tribunal consisting of local judges (Articles 89 and 90).¹⁴ With this detailed arrangement, the Basic Law strikes a balance between the necessities to ensure judges’ integrity on one hand, and, on the other, the protection of judges from arbitrary removal, which is essential to maintaining the independence of the Judiciary.

⁹ Article 19 of the Basic Law stipulates that “[the] HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.”

¹⁰ Article 85 of the Basic Law stipulates that “[the] courts of the HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.”

¹¹ Article 63 of the Basic Law stipulates that “[the] Department of Justice of the HKSAR shall control criminal prosecutions, free from any interference. Article 57 stipulates that “[a] Commission Against Corruption shall be established in the HKSAR. It shall function independently and be accountable to the Chief Executive.”

¹² Article 92 of the Basic Law stipulates that “[judges] and other members of the judiciary of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.”

¹³ Article 88 of the Basic Law stipulates that “[judges] of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.”

¹⁴ Article 89 of the Basic Law stipulates that “[a] judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehavior, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehavior, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.” Article 90 of the Basic Law stipulates that “...[in] the case of the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the HKSAR, the Chief Executive shall, in addition to following the procedures prescribed in Articles 88 and 89 of this Law, obtain the endorsement of the Legislative Council and report such appointment or removal to the Standing Committee of the National People’s Congress for the record.”

The Basic Law also specifies the appointment and promotion of public officers including prosecutors and ICAC officers. Article 103 of the Basic Law requires that their appointment and promotion shall be on the basis of their qualifications, experience and ability. Moreover, Hong Kong's system of recruitment, employment, assessment, discipline, training and management for the public service which has been in place before 1997 shall be maintained.¹⁵ As further elaborated below, a robust system is in place within the DoJ and the ICAC to ensure a high level of integrity of their officers.

B. Legal Provisions

While the Basic Law prescribes the constitutional framework to uphold the independence and integrity of the Judiciary, the DoJ and the ICAC, there are a number of statutory and case laws on which a more detailed structure is developed for sustaining these two essential principles. For example, the Court of Appeal of Hong Kong emphasizes the prosecutorial independence of the Secretary for Justice and the DoJ in one of its judgments:

The prosecutorial independence of the Secretary for Justice is a linchpin of the rule of law... 'the decision whether any citizen should be prosecuted or whether any prosecution should be discontinued, should be a matter for the prosecuting authorities to decide on the merits of the case without political or other pressure' [Sir Robert Finlay, 1903]... these statements... reflect accepted and applied fundamental principle in this jurisdiction [i.e. Hong Kong] the continuation of which is preserved by the entire theme of the Basic Law as well, specifically, as by article 63.¹⁶

The anti-corruption laws discussed below serve to illustrate the legal safeguards of the integrity of judges, prosecutors and anti-corruption officials by outlawing specific misbehaviour in the public sector.¹⁷ The laws also reflect that the ICAC is empowered to discharge its duties independently.

1. Independent Commission Against Corruption Ordinance

The Independent Commission Against Corruption Ordinance (ICACO) gives the ICAC a statutory anti-corruption mandate and prescribes the Commission's powers and duties. The independence of the ICAC is stipulated in the ICACO that "[the] Commissioner shall not be subject to the direction or control of any person other than the Chief Executive" (section 5). The Ordinance also ensures the ICAC's financial stability through a provision that the expenses of the Commission shall be charged to the government's general revenue (section 4).

¹⁵ Article 103 of the Basic Law stipulates that "[the] appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained, except for any provisions for privileged treatment of foreign nationals."

¹⁶ *Re C (A Bankrupt)* [2006] 4 HKC 582 at 590; Department of Justice, Hong Kong SAR, *Prosecution Code*, paragraph 1.4, <https://www.doj.gov.hk/en/publications/prosecution_code.html>.

¹⁷ The anti-corruption laws of Hong Kong outlaw corruption in both the public and private sectors. For a more focused discussion, only the legal provisions concerning public sector corruption are included in this paper. Further information about the anti-corruption legislation can be found in ICAC, Hong Kong SAR, "Legal Empowerment", <<https://www.icac.org.hk/en/about/power/index.html>>; ICAC, Hong Kong SAR, "Anti-corruption Laws", <<https://www.icac.org.hk/en/law/law/index.html>>.

The Ordinance empowers the ICAC to investigate, among other things, bribery-related offences. Apart from that, the Commission has the purview to receive, consider and investigate complaints alleging corrupt practices, as well as to investigate government officers' conduct which is connected with or conducive to corrupt practices (section 12). More importantly, the ICAC performs these duties on its own. The Commission is not required to seek prior permission from any person or body before starting an investigation.

The ICACO also sets out the parameters of the ICAC investigations, procedures for handling suspects and the disposal of property connected with offences. The ICAC, for example, possesses powers to arrest and search suspects of corruption-related offences and, with court warrants, to search and seize their premises and detain their properties. The ICAC's powers of investigation are further strengthened by the POBO, under which the ICAC has the authority to access bank accounts and records, and with court orders, search and examine business and private documents. With judicial controls, the ICAC may require a suspect to furnish information of his property, expenditure, liabilities, and money or property sent out of Hong Kong. The ICAC may also require a suspect to surrender his travel documents and restrain him from disposing of his property. This legal empowerment allows the ICAC to perform its duties independently with adequate resources and powers.

Apart from the mandate in law enforcement, the ICACO stipulates that the ICAC has the duty to examine the practices and procedures of government departments and public bodies to identify corrupt practices, and to secure the changes of these practices or procedures to reduce corruption. The ICAC is also tasked under the Ordinance to educate the public of the evils of corruption, and to foster public support in combating corruption.

2. Prevention of Bribery Ordinance

The Prevention of Bribery Ordinance (POBO) is the main anti-corruption law in Hong Kong. Administered by the ICAC, it outlaws corruption in both the public and private sectors. By imposing specific legal sanctions on public officers' corrupt behaviours, including outright bribery, acceptance of restricted advantages in their private lives and possession of unexplained wealth and property, the Ordinance serves as a useful instrument governing the integrity of public officers.

Judges, prosecutors and ICAC officers are categorized as "public servants" and "prescribed officers" under the POBO. The Ordinance outlaws public servants' solicitation and acceptance of any advantage as an inducement to or reward for performing any act in their official capacity (section 4). Prescribed officers are further prohibited from soliciting or accepting any advantage without the general or special permission of the Chief Executive (section 3), even if such advantage is unconnected with the prescribed officers' official duties. The objective of this strict provision, which is an anti-corruption measure, is to prevent prescribed officers from falling into the trap of being sweetened up and compromising their integrity, even though the advantage concerned may be of very small value and may not be directly related to his/her official capacity.

To curb illicit enrichment by corrupt officials who receive bribes over a long period of time but whose assets cannot be linked to a specific corrupt dealing, the POBO provides that a prescribed officer shall be guilty of an offence if he/she maintains a standard of living or has assets not commensurate with his/her official emoluments and he/she fails to give a satisfactory explanation to the court (section 10).

3. Common Law Offence – Misconduct in Public Office

In addition to statutory laws, case law, or precedents, play an important role in the legal system of Hong Kong. Public officers' integrity deficit may take place in different forms, such as outright bribery, acceptance of advantages from work-related contacts, conflict of interest, as well as abuse of power, discretion and duties. As illustrated above, the POBO is capable of tackling outright bribery, acceptance of restricted advantages in prescribed officers' private lives and possession of unexplained wealth and property. However, some corrupt practices may be less definite but exhibit a tendency to undermine integrity seriously enough to attract criminal liability on part of public officers, and the POBO may not be wide enough in scope to redress these situations. In these cases, the common law offence of misconduct in public office comes into play.

This common law offence is necessarily cast in general terms because it needs to cover different forms of misconduct, no matter whether it takes place by act or omission. The offence is committed where:

- (i) a public official;
- (ii) in the course of or in relation to his public office;
- (iii) wilfully misconducts himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (iv) without reasonable excuse or justification; and
- (v) 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 those responsibilities.¹⁸

While the aforementioned statutory and case laws target specific offences, they can also be seen as the minimum integrity standard which government officers, judges, prosecutors, and ICAC officers must observe.

C. Institutional Arrangements

Legal provisions seek to protect the independence and integrity of the Judiciary, the DoJ, the ICAC and their members by outlawing specific illegal behaviours. However, there are some other misbehaviours or ethical issues which are not illegal per se, but may seriously affect the independence and integrity of the key players working in the anti-corruption system if not dealt with properly. To address these problems, government-wide rules and regulations and the institutions' internal guidelines and procedures are often as important as the legal provisions in ensuring the members' independence and integrity.

Over the years, the concepts of independence and integrity have already been embedded in these rules and guidelines. This can be illustrated in four areas, namely (i) recruitment and appointment, (ii) codes and regulations, (iii) discipline and sanction, as well as (iv) checks and balances mechanism.

1. Recruitment and Appointment

The Basic Law's requirements for establishing an independent system to appoint judges and judicial officers, as mentioned in the earlier part of this paper, is effected through the Judicial Officers Recommendation Commission (JORC) and the Judiciary's recruitment exercises. The JORC is a nine-member statutory body responsible for making

¹⁸ *Sin Kam Wah Lam Chuen Yip and Another v HKSAR* [2005] HKCU 672.

recommendations to the Chief Executive on appointment of most of the judicial offices in the Judiciary, from magistrates up to the Chief Justice.¹⁹ It is assisted by the Judiciary, which regularly conducts open recruitment exercises of judges and judicial officers except those in the appellate courts. Advertisements are placed on the Judiciary's website and newspapers. The Chief Justice appoints judges and/or judicial officers to a selection board, which considers the applications and submits its views to the JORC for consideration. The selection is based on the applicants' professional qualifications and experience, having regard to the relevant constitutional and legal requirements.

The JORC and the related mechanism ensure that judges and judicial officers are selected and appointed without the executive authorities' interference. In fact, one of the Permanent Judges of the Court of Final Appeal, who was long involved in the work of the JORC, remarked on the occasion of his retirement in 2013 that "I can bear witness to the fact that there has never been any interference from any quarter or any person in the appointment of judges. All my colleagues were appointed on their own merits."²⁰

The recruitment of prosecutors and ICAC officers is subject to stringent administrative procedures which ensure the appointees' high quality and the prevention of cronyism. The DoJ and the ICAC conduct their own recruitment exercises openly. The entry requirements, qualities expected and job duties are set out in the job advertisements posted in newspapers and on the institutions' websites. There is a clear, predetermined set of criteria for selecting the candidates. Before the formal appointment, the potential appointees have to undergo integrity checking, the complexity of which depends on the nature and rank of the post.²¹ Such processes may include checking the background of the candidate and his/her family, interviewing past employers and/or paying visits to the candidate's residence. These measures ensure that the appointees are of good character and high integrity.

2. Codes and Regulations

There are regulations, codes and guidelines in the Judiciary, the DoJ and the ICAC to prescribe the conduct of their members and provide guidance for the members to discharge duties. Independence and integrity are emphasized in these regulations. Some of the examples are quoted below:

- (i) The Judiciary has developed a *Guide to Judicial Conduct* for judges and judicial officers. "Independence", "Impartiality" as well as "Integrity and Propriety" are set as the three guiding principles for considering whether a judicial conduct is appropriate.²²
- (ii) Prosecutors and ICAC officers are bound by the government's Civil Service Code, in which six principles, namely "commitment to the rule of law", "honesty and integrity", "objectivity and impartiality", "political neutrality", "accountability for decisions and actions" and "dedication, professionalism and diligence" are set

¹⁹ The list of judicial offices under the purview of the JORC can be found in Schedule 1 of the Judicial Officers Recommendation Commission Ordinance.

²⁰ *Farewell Sitting for the Honourable Mr Justice Chan PJ (18 October 2013)* (2013) 16 HKCFAR 1012 at 1019.

²¹ Civil Service Bureau, Hong Kong SAR, "Integrity checking", <<https://www.csb.gov.hk/english/admin/conduct/136.html>>.

²² Judiciary, Hong Kong SAR, *Guide to Judicial Conduct* (2004), <https://www.judiciary.hk/doc/en/publications/gjc_e.pdf>.

as the core values of the civil service. In addition, the government has a comprehensive set of Civil Service Regulations, supplemented by circulars issued by the Civil Service Bureau, to govern and guide behaviours and conduct of civil servants and ICAC officers. Topics include conflict of interest, acceptance of advantages and entertainment, declaration of private investments, as well as the reporting of crime and corruption.

- (iii) The DoJ's *Prosecution Code* is a set of statements and instructions to guide prosecutors in conducting prosecutions. "Independence of the Prosecutor" constitutes the first chapter of the Code, which stresses that a prosecutor must not be influenced by, among a number of factors, the political and individual interest of the prosecutor.²³
- (iv) The ICAC has its own Commission Standing Orders (CSOs) regulating the conduct and discipline of its officers. The Code of Ethics in the CSOs specifies that ICAC officers are "to adhere to the principles of integrity and fair play" and "to carry out their duties without fear or favour, prejudice or ill will".

The requirements for handling properly conflict of interest can be used to demonstrate how these regulations and codes operate. Conflict of interest generally refers to the situation where an individual's private interest competes or conflicts with the interest of the institution which he/she serves or with the individual's official duties. Conflict of interest, no matter whether it is an actual, perceived or potential one, poses a threat to both independence and integrity of the public officer and the institution, and therefore must be handled properly. This issue is covered in the internal regulations for judges, prosecutors and ICAC officers in various ways.

For instance, prosecutors and ICAC officers must follow the government's guidelines on conflict of interest. The general principle is to avoid conflict of interest from happening in their performance of duties. In case such conflict is unavoidable, the officer in question must declare the conflict to his/her supervisors as soon as possible, and the officer should refrain from taking part in that task. Depending on the office and seniority which a person holds, there are additional requirements for preventing conflict of interest. Examples include declaration of private investments and restriction on outside employment after his/her service in the institution.

While there are common ethical issues which exist across the public sector, individual institutions may have their own concerns of members' integrity in particular areas. These concerns are often reflected in their internal regulations and daily work practices.

For example, the ICAC, as a law enforcement agency, places much emphasis on confidentiality of its investigative work. Confidentiality is a fundamental principle of the ICAC because any premature disclosure of information related to corruption cases will jeopardize the investigation and affects the reputation of a person who is the subject of complaint. The strict adherence to confidentiality also gives confidence to members of the public that they can make reports to the ICAC without any fear that their identities will be known by third parties. In fact, confidentiality is a legal requirement for the ICAC's

²³ Department of Justice, Hong Kong SAR, *Prosecution Code*, <https://www.doj.gov.hk/en/publications/prosecution_code.html>.

investigation. Section 30 of the POBO prohibits unauthorized disclosure of details about an investigation of POBO offences and the identity of the person being investigated. The confidentiality requirement is therefore built into the ICAC's internal regulations and daily practices. The ICAC Code of Ethics requires officers to "maintain necessary confidentiality". ICAC officers carry out duties, especially those related to investigation, according to the "need-to-know" principle. When handling corruption complaints, the identity of the complainant is treated in strict confidence. Only case officers or the designated officers are allowed to gain access to the information.²⁴

3. Discipline and Sanction

The integrity of judges, prosecutors and ICAC officers is also upheld through effective mechanisms to handle allegations of malpractices. The Judiciary has set up a system to receive and handle complaints against a judge's conduct (as opposed to a judge's judicial decision, which should be solved only through an appeal to the higher court). A member of the public may lodge his/her complaint in writing. The court leader whom the judge being complained works under will investigate the matter and take further action as appropriate, including bringing the matter to the attention of the Chief Justice and/or the JORC.²⁵ As mentioned above, the Basic Law allows a judge to be removed for misbehaviour, provided that the prescribed stringent procedures have been followed.

Prosecutors are subject to the same mechanism for handling disciplinary matters as that for other civil servants. If a civil servant, such as a prosecutor, contravenes the government regulations, the department concerned will follow up in accordance with the established procedures, such as departmental investigation, summary disciplinary action, and/or formal disciplinary hearings. If there is evidence that the civil servant has misconducted himself/herself or has been convicted of criminal offence, the department will take appropriate action, such as imposing suitable disciplinary punishments from verbal/written warning to dismissal.²⁶

The ICAC also has a comprehensive mechanism to monitor its officers' conduct and handle complaints against their malpractices. In particular, there is an internal investigation and monitoring group within the ICAC to investigate breaches of staff discipline and allegations against ICAC officers. Investigations into alleged corruption and related offences are referred to the Secretary for Justice for advice. When an investigation is completed, it will be reported to the Operations Review Committee for consideration. Other criminal complaints not relating to corruption are referred to the appropriate law enforcement authority for investigation. For non-criminal complaints against the ICAC or its staff, the progress of the investigation by the internal investigation and monitoring group is monitored by an independent ICAC Complaints Committee, which is formed by external members appointed by the Chief Executive.²⁷ The ICAC has procedures to administer

²⁴ ICAC, Hong Kong SAR, "Reporting Corruption – Frequently Asked Questions", <<https://www.icac.org.hk/en/rc/faq/index.html>>.

²⁵ Judiciary, Hong Kong SAR, *Complaints against a Judge's conduct*, <<https://www.judiciary.hk/doc/en/publications/complaintsjjoleaflet.pdf>>.

²⁶ Possible disciplinary actions include verbal warning, written warning, reprimand, severe reprimand, reduction in rank, compulsory retirement and dismissal. Department of Justice, Hong Kong SAR, "Press Release: LCQ9: Ensuring the Impartiality of Prosecutors", 4 December 2019, <<https://www.info.gov.hk/gia/general/201912/04/P2019120400439.htm>>.

²⁷ ICAC, Hong Kong SAR, *ICAC Annual Report 2019*, p. 54, <<https://www.icac.org.hk/icac/annual-report/2019/>>; ICAC, Hong Kong SAR, "ICAC Complaints Committee", <<https://www.icac.org.hk/en/check/complaint/index.html>>.

summary and formal disciplinary actions, depending on the gravity of the misconduct. In extreme cases, the Commissioner may terminate the appointment of an officer under section 8(2) of the ICACO if the Commissioner considers that the breach is of such a serious nature that it is in the interests of the Commission to do so.

4. Checks and Balances Mechanism

It is of utmost importance that judges, prosecutors and ICAC officers should be independent from interference when carrying out their duties. On the other hand, it is also legitimate for the society to have high expectation for them to act with integrity and proper conduct. The reason is that insufficient transparency and lack of checks and balances may lead to allegations of abuse of authority and trigger public mistrust. Moreover, the anti-corruption system will earn more public confidence if it is suitably monitored by the community and is capable of responding to legitimate expectations, including those on the integrity standard of its members. Such healthy interaction between the institutions and external parties may, in turn, further consolidate the independence and integrity of the anti-corruption system.

For example, while the ICAC is directly accountable to the Chief Executive, its Commissioner is required to answer to the legislature on policy and funding matters. In addition, there are four advisory committees to oversee different aspects of work of the ICAC. The Advisory Committee on Corruption oversees the general work direction of the ICAC and advises the Commission on policy matters in relation to the fight against corruption. The Operations Review Committee, the one mentioned above, oversees the investigation work of the Operations Department. The Corruption Prevention Advisory Committee advises the ICAC on the priority of corruption prevention studies and examines all the study reports prepared by the Corruption Prevention Department. The Citizens Advisory Committee on Community Relations advises the Commission on community education and engagement strategies and the work of the Community Relations Department. Most members of these committees are prominent citizens appointed by the Chief Executive, so that citizens' voice is channelled to the ICAC. In addition to the four advisory committees, the independent ICAC Complaints Committee, which monitors the handling of non-criminal complaints against the ICAC and its officers, is another part of the checks and balances mechanism to ensure the good conduct of ICAC officers.

D. Societal Expectation

The performance of the ICAC, as well as the entire criminal justice system, is subject to close public scrutiny. The vibrant mass media in Hong Kong constantly keeps a close eye on the work of public authorities, including the ICAC. The public also has a high expectation for the ICAC in properly discharging duties without bias and fear. In the Annual Survey 2020 conducted locally by an independent polling agency commissioned by the ICAC, 93.2% of the respondents consider that the ICAC deserves their support. 81.7% of the respondents are willing to report corruption to the ICAC, and 72.4% are of the view that the ICAC's anti-corruption work is effective.²⁸ While the favourable findings indicate the local community's great confidence in the ICAC, the survey itself serves as an important tool to measure the level of public support for the ICAC. It spurs the Commission to improve its performance and uphold its members' conduct, so as to meet the increasing expectation of the society.

²⁸ ICAC, Hong Kong SAR, "Findings of Survey 2020", <<https://www.icac.org.hk/en/survey/finding/index.html>>.

E. International Obligations

Hong Kong has to fulfil its international obligations to ensure the independence and integrity of its anti-corruption work. The UNCAC, as mentioned at the beginning of this paper, includes provisions for the independence and integrity of public officials, the judiciary, prosecution services and anti-corruption agencies. The Convention entered into force for China in 2006, and has since then been applied to Hong Kong. Hong Kong, being a special administrative region of China, is subject to the Convention’s implementation review mechanism. The first review on the implementation of Chapter III “Criminalization and Law Enforcement” and Chapter IV “International Co-operation” has been completed. The second implementation review cycle, focusing on Chapter II “Preventive Measures” and Chapter V “Asset Recovery”, is now underway.

International surveys also confirm the strong confidence of the global community in Hong Kong’s criminal justice and anti-corruption systems. Hong Kong is ranked the second highest in Asia in respect of the rule of law and control of corruption in the 2020 update of the Worldwide Governance Indicators of the World Bank Group.²⁹ It has the second highest score among Asian countries/territories under the indicator “judicial independence” of the World Economic Forum’s Global Competitiveness Report 2019.³⁰ In the World Justice Project’s Rule of Law Index 2020, Hong Kong is ranked the third in Asia for its overall rule of law performance.³¹ Its ranking in the relevant sub-factors of the Rule of Law Index is listed below:

Sub-factors	Hong Kong’s score (from 0 to 1)	Hong Kong’s ranking in	
		Asia	World
2.2 Government officials in the judicial branch do not use public office for private gain	0.94	2 nd	13 th
8.1 Criminal investigation system is effective	0.70	3 rd	3 rd
8.2 Criminal adjudication system is timely and effective	0.70	3 rd	12 th

²⁹ The Worldwide Governance Indicators report aggregate and individual governance indicators for over 200 economies for six dimensions of governance, namely (i) Voice and Accountability, (ii) Political Stability and Absence of Violence, (iii) Government Effectiveness, (iv) Regulatory Quality, (v) Rule of Law, and (vi) Control of Corruption. In the 2020 update, Hong Kong is ranked 18th and 17th globally (out of 209 countries/territories) in the dimensions of “Rule of Law” and “Control of Corruption”, respectively. Details can be found on the Worldwide Governance Indicators project website <<https://info.worldbank.org/governance/wgi/>>.

³⁰ The Global Competitiveness Report reflects the economic competitiveness of an economy by assessing the strength of institutions, policies and factors that determine the level of productivity of that economy. Hong Kong is ranked the 3rd most competitive place among 141 economies in the 2019 Report. Among the 103 indicators, Hong Kong is ranked the 8th globally in “Judicial Independence”. Details can be found in the Global Competitiveness Report 2019 website <<https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth>>.

³¹ The Rule of Law Index assesses the extent which countries / territories adhere to the rule of law in practice by examining eight factors, namely (i) constraints on government powers, (ii) absence of corruption, (iii) open government, (iv) fundamental rights, (v) order and security, (vi) regulatory enforcement, (vii) civil justice and (viii) criminal justice. In 2020, Hong Kong’s overall ranking out the 128 countries and jurisdictions surveyed is 16th. Details can be found in the Rule of Law Index 2020 website <<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>>.

Sub-factors	Hong Kong's score (from 0 to 1)	Hong Kong's ranking in	
		Asia	World
8.4 Criminal system is impartial	0.68	4 th	15 th
8.5 Criminal system is free of corruption	0.87	3 rd	11 th
8.6 Criminal system is free of improper government influence	0.58	3 rd	41 st

Source: World Justice Project's Rule of Law Index 2020

These positive findings not only reflect the capability of Hong Kong's criminal justice and anti-corruption systems of upholding integrity and effectiveness, but also serve as a constant reminder for Hong Kong to ensure that the Judiciary, the DoJ and the ICAC continue to remain impartial at the highest global standard when discharging their mandates.

IV. ICAC'S ROLES IN PROMOTING INTEGRITY IN THE PUBLIC SECTOR

The ICAC adopts a holistic approach to bring culprits to justice by law enforcement, to minimize possibilities of corruption by systemic prevention, and to entrench a probity culture in the society by community education. This three-pronged strategy is deployed to support all institutions in the public sector, including those in the criminal justice system, to uphold their members' integrity.

In addition to enforcing the anti-corruption law stringently to create a deterrence effect, the ICAC has implemented comprehensive prevention and education initiatives to assist the public sector, including the Judiciary and the DoJ, in preventing corruption and promoting an integrity culture. The ICAC conducts in-depth corruption prevention studies into various work areas of government departments and public organizations, covering different policy initiatives, legislative proposals, operational and administrative procedures and practices, licensing, regulatory and enforcement regimes. Since its establishment in 1974, the ICAC has completed more than 4,000 studies to help these institutions, including the Judiciary and the DoJ, minimize corruption risks, enhance governance and strengthen staff integrity mechanisms.

The ICAC also promotes the culture of integrity in government departments through trainings, educational materials and awareness raising projects. For example, the ICAC organized the "Ethical Leadership Programme" in collaboration with the Civil Service Bureau. Under this Programme, each government department, including the Judiciary and the DoJ, has designated a senior official as "Ethics Officer". These Ethics Officers map out ethics management strategies based on the departments' needs and priorities, and take charge of implementing integrity-related activities within the department. As a co-initiator of the Programme, the ICAC supports the government departments and their Ethics Officers to raise anti-corruption awareness within the departments. For example, thematic seminars are organized to update the Ethics Officers on topical issues related to staff integrity and corruption risks. The Ethics Officers may adopt materials developed by the ICAC, such as corruption prevention guides, educational cartoons and feature articles, in the staff integrity training of their departments. An intranet portal has also been set up for the ICAC and the Ethics Officers to share the information, reference materials, experience and best practices on promoting integrity.

In addition to working through Ethics Officers, the ICAC arranges anti-corruption training talks and workshops for around 30,000 civil servants every year. These training activities feature topics like anti-corruption laws and common corruption risks. Ethical challenges such as conflict of interest, misuse of authority, undesirable association with people of dubious background, and supervisors' accountability in managing the integrity of their staff, are also discussed. Government departments are encouraged to arrange anti-corruption training for their staff members regularly, so that the entire workforce can be kept reminded of the importance of upholding high ethical standards. The ICAC also developed an "Integrity Management e-learning Platform for Civil Servants", encompassing learning modules on the anti-corruption laws and ethical scenarios. Civil servants can access it any time through the government-wide online learning portal.

All the above initiatives aim to help build up a robust anti-corruption system in the public sector, in which possibilities of corruption are minimized, and members' awareness against corruption is maximized.

V. CONCLUDING REMARKS

This paper tries to illustrate, from the ICAC's perspective, how Hong Kong safeguards, at multiple levels, the independence and integrity of judges, prosecutors and anti-corruption officials, which are crucial to the territory's fight against corruption. In addition to the constitutional framework and legal provisions which set out the high-level guarantees of independence and integrity, each institution within the anti-corruption system has its significant role to ensure that it functions in a fair, just and unbiased way. The interplay of other safeguards, including the checks and balances mechanism, ICAC's anti-corruption measures, and most importantly the consensus and aspirations of the society, also helps sustain the independence and integrity of the judicial, prosecutorial and anti-corruption authorities in Hong Kong.