

EFFECTIVE INVESTIGATION OF CORRUPTION CASES: THE HONG KONG EXPERIENCE

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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 devoted 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

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He joined the ICAC shortly after its inception in 1975, and hence had witnessed and participated in the successful battle in transforming Hong Kong from one of the most corrupt places to one of the cleanest cities. He retired as the first local Deputy Commissioner and Head of Operations in 2002, after having led the Commission through the smooth transition of sovereignty from a British Colony to China in 1997 despite international pessimism.

Since his retirement in 2002, he has been invited to 25 countries and 13 provinces in China to provide professional anti-corruption consultancy, lectures, and to conduct anti-corruption seminars and workshops. He has taken up a number of anti-corruption projects with the UNDP, UNODC, World Bank, Asian Development Bank, European Commission, etc. He has assisted a number of countries to set up their new anti-corruption agencies.

In Hong Kong, he assisted the Hong Kong University in designing the world's first International Postgraduate Certificate Course in Corruption Studies, and he is the Adjunct Professor and Honorary Course Director. Since the first launch in 2003, 11 annual courses have been organized, and it has attracted over 300 delegates, mostly senior officials of anti-corruption agencies, coming from 35 countries. He lectured as a Visiting Expert annually (2002-2008 & 2011-2013) at the International Corruption Control Training Course of the United Nations Asia & Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in Japan. In 2011 & 2012, he was the only Asian Visiting Lecturer at the International Anti Corruption Summer Academy Course in Vienna.

His publications include "Comparative Studies of the Anti corruption system in 38 jurisdictions – HKU SPACE 10th Anniversary Commemorative Book on the Postgraduate Certificate in Corruption Studies, 2012", Co-author of the book "Practice Meets Science – Contemporary anti-corruption dialogue Volume 1" published by the International Anti-Corruption Academy (2011), and "365 Stories to my daughters" in 2007. He has set up his own homepage at <http://www.kwok-manwai.com> to share his experience through publication of his writings, speeches and media interviews.

In the Hong Kong National Day Honour List, Mr. KWOK was awarded the ICAC Distinguished Service Medal (IDS) by the Chief Executive in 1998 and the Silver Bauhinia Star (SBS) in 2002, in recognition of his contribution to the success of the ICAC in the fight against corruption in Hong Kong. On 1st November 2013, he was presented with the Honorary University Fellowship by the Open University of Hong Kong, in recognition to his contribution and education in the anti-corruption field in Hong Kong and internationally.

them, they have certainly been educated about the evil of corruption and they may also be subject to a certain degree of corruption prevention control. But what inspired them to commit corruption? The answer is simply greed, as they would weigh the fortune 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, and there are no fingerprints and no eye-witnesses to follow up with. 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 up their trails of crime. 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 make full advantage of the loopholes across jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants and computer experts in their clandestine operations to help them launder their corrupt proceeds.

III. CORRUPTION AND ORGANIZED CRIME

Corruption rarely exists alone. It is often a tool to facilitate organized crimes. Over the years, the ICAC has 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 the 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:

1. Independent — 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 a 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.
2. 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 on 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 sectors, 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.

3. Adequate Resources — investigating corruption can be very time-consuming and resource intensive, particularly if the cases involve cross jurisdictional aspects. 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 be 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.
4. Confidentiality — it is crucial that all corruption investigation should be conducted covertly and confidentially, at least before an arrest is ready to be made, 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 until there is clear evidence of their corrupt deeds. Hence in Hong Kong, we have a law prohibiting any one, including the media, from disclosing any details of ICAC investigations until overt action such as arrests and searches have been taken. The media once described this as a "press gag law" but they have now come to accept it as a right balance between press freedom and effective law enforcement.
5. 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.
6. 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. The ICAC is one of the first agencies in the world to introduce the interviewing of all suspects on video, because professional interview techniques 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.
7. An Effective Complaint System — No anti-corruption agency is in a position to discover all corrupt dealings in the society 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 on 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 the corruption allegation might be. What appears to be minor in the eyes of the authority may be very serious in the eyes of the general public!

V. UNDERSTANDING THE PROCESS OF CORRUPTION

It should be helpful to the investigators to understand the normal process of corruption, 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 first day in office. It is also unlikely that any potential bribe-offerer would approach any government servant to offer bribe without building up a good relationship with him first. Thus there is always a “softening up process” when the briber-offerer would build up a social relationship with the government servant, for example, inviting him to dinner, 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 the 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. The investigator should attempt to prove when and where this had taken place.
3. Source of the 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 funds and whether there was any third person who assisted in handling the bribe payment.
4. Payment of the 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 the 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 the money or depositing it into a bank.
6. Act of Abuse of Power — To prove a corruption offence, you need to prove the corrupt act or the abuse of position was done in return for the bribe. The investigator needs to identify the documents or other means proving his abuse of authority.

The task of the investigator is to collect sufficient evidence to prove the above process. He 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 for more than one occasions 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.

VI. METHODS TO INVESTIGATE CORRUPTION

Investigating corruption can broadly be divided into two categories:

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

A. Investigating Past Corruption Offences

The investigation normally commences with a report of corruption, and the normal criminal investigation techniques 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 transaction 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 explanations and if appropriate, the suspects' home and offices can be searched for further evidence. Normally further follow-up investigation is necessary to check the suspects explanation or to follow 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 a greater scope for ingenuity. Apart from the conventional methods mentioned above, a proactive strategy should always be preferred, with a view to catch the corrupt red-handed. In appropriate cases, with proper authorities obtained, surveillance and telephone intercepts can be mounted against the suspects and suspicious meetings monitored. A co-operative party can be deployed to set up a meeting with a view to entrap the suspects. Undercover operations can also be considered to infiltrate into a corruption syndicate. The pre-requisite to all these proactive investigation methods is professional training, adequate operational support and a comprehensive supervisory system to ensure that they are effective and in compliance with the rules 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. In Hong Kong, there is a judicial directive to allow a reduction of two thirds of the sentence of those corrupt offenders who are prepared to provide full information to the ICAC and to give evidence against the accomplices in court. The ICAC provides special facilities to enable such "resident informants" to be detained on the ICAC's 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.

VII. INVESTIGATION TECHNIQUES

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

- Ability to identify and trace persons, companies and properties
- Interview techniques
- Document examination
- Financial investigation
- Conducting search & arrest operations
- Surveillance and observation
- Acting as an undercover agent
- Handling informers
- Conducting an entrapment operation

VIII. 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:

- **Intelligence Section:** as a central point to collect, collate, analyze and disseminate all intelligence and investigation data, otherwise there may be a major breakdown in communication and operations
- **Surveillance Section:** 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 significant contributions to the success of a number of major cases
- **Technical Services Section:** provides essential technical support to surveillance and operations
- **Information Technology Section:** It is important that all investigation data should be managed by computer for easy retrieval and proper analysis. In this regard, computers can be extremely useful aids to investigation. On the other hand, computers are also a threat. In this modern age, most personal and company data are stored on computers. The anti-corruption agency must possess the ability to break into these computers seized during searches to examine their stored data. Computer forensics is regarded as vital for all law enforcement agencies worldwide these days

- **Financial Investigation Section:** The 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 investigations and in presenting such evidence in an acceptable format in court.
- **Witness Protection Section:** The ICAC has experienced cases where crucial witnesses were compromised, with one even murdered, before giving evidence. There should be a comprehensive system to protect crucial witnesses, including 24-hour arms protection, safe housing, new identity and overseas relocation. Some of these measures require legislative backing.

IX. 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