

EFFECTIVE MEASURES TO INVESTIGATE PROCUREMENT RELATED CORRUPTION & FRAUD

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I. INTRODUCTION

Procurement of goods and services is an area most vulnerable to corruption and fraud, often involving huge loss of government revenue. In order to effectively investigate the related crime, one needs to understand the “modus operandi” of the corrupt offenders in the process so as to focus on areas where evidence can be discovered.

Procurement related corruption usually takes the form of the suppliers offering money, entertainment and other advantages to public officials in return for assistance or favour in the various stages of the procurement process. Advantages offered include provision of lavish entertainment, sexual services; invitation to gambling, offering gifts and extending loans and other favours.

As the corrupt offenders are invariably smart criminals. It is not possible to list out all the clandestine methods they could have employed. Some common corruption opportunities that can be identified in the procurement process are:

Requisition Stage:

- public officials drawing up a requisition specification in favour of a particular supplier, e.g. quoting brand name & model number which only the specific supplier can have ready stock.
- public officials splitting the amounts in the purchase orders so that they can exercise their authority to approve, whereas the full amount would require approval of high authority
- public officials allowing unqualified supplier to be included in the “approved suppliers list”
- public officials inflating the budget price to make room for illegal commission

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Since his retirement in 2002 he has been invited to 25 countries in a total of 220+ missions to share his anti-corruption experience. In particular, he has assisted a number of countries to set up their new anti-corruption agencies, including Mongolia, Cambodia, Serbia, Mauritius and Timor Leste.

He is a member of the UNODC Anti-corruption Expert Group (2006), Visiting Lecturer of the International Anti Corruption Summer Academy (2011 & 2012), Regional Coordinator (Asia) of the International Association of Anti Corruption Authorities; Honorary Anti Corruption Advisor to the Office of the Ombudsman of the Philippines and the Mongolian Independent Authority Against Corruption; Visiting Professor of the National Prosecutors College & four other universities in China. He is also the Past Chairman of the Chartered Management Institute, Hong Kong Branch.

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, 13 annual courses have been organized and it has attracted over 350 delegates, mostly senior officials of anti-corruption agencies, coming from 38 countries. He received the “Outstanding Teacher Award” from the University in 2006.

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 ICAC in the fight against corruption in Hong Kong. He was appointed as the Justice of the Peace (JP) in 2016.

Inviting quotation/tender stage:

- public officials leaking prices quoted by other competitors to a certain bidder, so that a lower quote can be made before the stipulated deadline
- public officials tampering with the quotations/tenders after the deadline in favour of a certain bidder.
- public officials conspiring with a bidder to submit false tenders/quotations so as to meet the minimum requirement of quotations/tender bids
- public officials assisting a certain bidder in the preparation of quotation/tender to fit in with the confidential set of criteria

Evaluating & Awarding Stage

- public officials showing favour to a certain bidder or making a biased decision not based on set criteria and merit
- public officials modifying the criteria and weightings in favour of a certain bidder after the quotations/tenders have been received
- Failing to declare conflicts of interest

Receipt of Goods & Services

- Supplier providing short delivery or sub-standard goods
- Supplier providing false certificate on quality of goods
- Public officials failing to report the substandard or short delivery of goods or to take appropriate action and sanction against the supplier
- Public officials over-rating the supplier's performance to enable the supplier to be favourably considered in future procurement exercises

In some cases, corruption takes the form of nepotism where the public officials show special favour in awarding procurement tenders to suppliers owned by his close relatives or personal friends.

In cases of fraud, where public officials may not be involved, it often takes the form of submitting quotation/tenders with false particulars and certificates, so as to score higher marks in the assessment. There are also cases where the approved suppliers conspire together to submit pre-determined prices so as to avoid competitions amongst themselves.

II. DIFFICULTIES OF INVESTIGATING CORRUPTION

Procurement related corruption and fraud is regarded as one of the most difficult crimes to investigate. It is by nature a secretive crime and often involves just two satisfied parties, so there is no incentive to divulge the truth. There is no scene of the crime nor fingerprints to follow up. 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 are intelligent and professional and know how to cover up their trails of crime. In this modern age, the sophisticated corrupt offenders will make full advantage of the loopholes across jurisdictions in the bribe payments 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.

A. 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:

- a. Independent — procurement related corruption can involve very senior public officials and hence the 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.
- b. Adequate investigative power — Because such 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, conduct surveillance and undercover operations, 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. I must hasten to add that there is an elaborate check and balance system to prevent abuse of such wide power.

- c. 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 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 now have come to accept it as the right balance between press freedom and effective law enforcement.
- d. 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.
- e. 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 law enforcement agencies in the world to introduce the interview of all suspects under 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 just 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.
- f. 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. What appears to be minor in the eyes of the authority may be very serious in the eyes of the general public!

B. Understanding the Process of Corruption

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

1. Softening up process — it is quite unlikely that a public official would be corrupt from his first day in office. It is also unlikely that any potential bribe-offerer would approach any public official to offer a 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 public official, for example, inviting him to dinner and karaoke etc. Thus, the investigator should also attempt to discover evidence to prove that the public official 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 public official and in return offer a bribe to him. 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 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. Act of 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 examine all the documents and witnesses relating to the full process of the procurement, in order to ascertain whether any of the abuse of process described in the earlier paragraphs can be found.

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 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.

C. Methods to Investigate Corruption

Investigating corruption can broadly be divided into two categories:

- a. Investigating past corruption offences
- b. Investigating current corruption offences

D. 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 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 explanation and if appropriate, the suspects’ home and office can be searched for further evidence. Normally further follow-up investigation is necessary to check the suspect’s explanation or to go through the money trails as a result of evidence found during searches. The investigation is usually time-consuming.

E. 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 catch the corrupt red-handed. In appropriate cases, with proper authorities obtained, surveillance and telephone intercepts can be mounted on the suspects and suspicious meetings can be monitored. A co-operative party can be deployed to set up a meeting with a view to entrap 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 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 2/3 of the sentence of those corrupt offenders who are prepared to provide full information to ICAC and to give evidence against their 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.

F. Investigation Techniques

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

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

G. 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:** a central point to collect, collate, analyse and disseminate all intelligence and investigation data, otherwise there may be major breakdowns 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, a computer can be an extremely useful aid to investigation. On the other hand, a computer is also a threat. In this modern age, most personal and company data are stored in 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 a sophisticated money trail 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.
- **Witness Protection Section:** 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 armed protection, safe housing, new identity and overseas relocation. Some of these measures require legislative backing.

III. CONCLUSION AND OBSERVATION

In conclusion, the success factors for an effective investigation of procurement related corruption and fraud 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 & dedicated investigators who need to be particularly conversant with the procurement process and its corruption and fraud opportunities. They should also be effective in interviewing techniques and financial investigation
- More use of proactive investigation methods, such as telephone intercepts, surveillance and undercover operations
- Ensure strict confidentiality of corruption investigations, with a good system of protection of whistle-blowers and key witnesses
- International co-operation in mutual legal assistance and tracing of corrupt proceeds