
VISITING EXPERTS' PAPERS

INVESTIGATION OF MONEY LAUNDERING AND CORRUPTION

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I. SHORT HISTORY OF THE ICAC HONG KONG

Let me explain briefly about the Hong Kong ICAC which has a particularly interesting history and story to tell. It was established in 1974 at the time when corruption was widespread, and Hong Kong, as a British Colony, was probably one of the most corrupt cities in the world. Corruption was a way of life and there was at that time a particularly close “business” association between law enforcement agencies and organized crime syndicates. Nearly all types of organized crimes, vice, gambling and drugs, were protected. As a taxi-driver, you could even buy a monthly label to stick on your taxi’s windscreen and it would give you immunity from any traffic prosecution. Such was the scale of open corruption in Hong Kong. When the ICAC was set up at that time, very few people in Hong Kong believed that it would be successful. They called it “Mission Impossible”. Within three years, the ICAC smashed all the corruption syndicates in the Government and prosecuted 247 government officers, including 143 police officers, amongst whom some were labelled “Million Dollar Detective Sergeants”!

The United Nations research on corruption described Hong Kong as a success model in fighting corruption. So, what is our secret of success? To me, there are five factors:

First. There is top political will to eradicate corruption, which enables the ICAC to become a truly independent agency, directly responsible to the very top, i.e. the Chief Executive of Hong Kong. This ensures that the ICAC is free from any interference in conducting their investigation, and can get on with its task without fear or prejudice.

Second. The strong political support was translated into financial support. The ICAC is probably one of the most expensive anti-corruption agencies in the world. Their annual budget amounted to US \$90M, about US \$15 per capita. You may wish to multiply this figure with your own country’s population and work out the anti-corruption budget that needs to be given to the equivalent of the ICAC! However, looking at the budget from another angle - it represents only 0.3% of Hong Kong Government budget or 0.05% of Hong Kong’s Gross Domestic Product (GDP). I think you will agree that such a small “premium” is a most worthwhile investment for a clean society.

Third. The ICAC enjoys wide investigative power. Not only are they empowered to investigate corruption offences, both in the Government and private sectors, they can investigate all crimes which are connected with corruption.

Fourth. The ICAC strives to be highly professional in their investigation. The ICAC was one of the first agencies in the world to videotape interviews of all of its suspects; they have a dedicated surveillance team with over 120 specially trained agents who took surveillance as their life-long

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career. The ICAC has a number of other specialized units such as witness protection, computer forensics and financial investigation.

Finally. The ICAC adopts a comprehensive “three-pronged” strategy in fighting corruption, i.e. through deterrence, prevention and education. All three are important but in my view, deterrence is the most important. That is the reason why in the ICAC’s total establishment of over 1,300 staff members, over 900 of them work in the Operations Department, responsible for investigating corruption. Nearly all of the major corruption cases I have dealt with were committed by people with high authority and wealth. For 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, for they would weigh the fortune they could get from corruption with the chance of them being discovered. 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, which is the Mission of the ICAC Operations Department—to make corruption a *high risk crime*. To do that, you need a professional investigative force.

II. CORRUPTION AND MONEY LAUNDERING

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. Police officers have been arrested and convicted for corruptly assisting vice and gambling operators; Customs officers have been arrested for colluding with drug traffickers and smugglers of various kinds; Immigration Officers for assisting illegal immigrants; hotel and retail staff for perpetuating credit card fraud. In regard to money laundering, The ICAC has come across incidences where bank staff, finance market operators, accountants, lawyers, casino managers corruptly assist the organized crime syndicates to launder proceeds from crime. In these cases, the ICAC needs to investigate not only corruption, but also some very sophisticated organized crime syndicates and professionals

A. What is Money Laundering?

Criminals of every kind - from drug traffickers, smugglers, illicit arms dealers to corrupt officials - must launder the money flowing from their crimes to conceal such proceeds from being the target of investigation and seizures. They make their ill-gotten wealth look clean by moving it around, and legitimizing it in the world’s financial systems. Attacking criminals where it hurts - in their pockets - by preventing them from profiting from their crimes is an effective deterrent. Combating money laundering is therefore of paramount importance in suppressing serious and organized crimes.

B. Money Laundering in Hong Kong

Like other international financial centres, Hong Kong is not immune from the risk of being used by criminals to launder their illicit proceeds. Our open economy makes detection of transfer of illicit funds even more difficult. Notwithstanding this, Hong Kong has been vigilant in safeguarding the stability and integrity of our financial sector against such risks. Proactive actions have also been taken against money laundering, both domestically and on the international front.

In Hong Kong, a person commits a money laundering offence if he deals with any property, knowing or having reasonable grounds to believe that it represents any person’s proceeds of drug trafficking or an indictable offence.

C. Stages of Money Laundering

There are three stages of money laundering:

1. Placement - disposing of the funds, e.g. using cash carriers or false identities to open bank accounts for deposits; use of offshore accounts so that the original owners cannot be traced.
2. Layering - distancing the funds from the source, e.g. further transfers of funds amongst layers of bogus accounts or use of shell companies to create a bogus business transaction.
3. Integration - merging the funds and placing them into the economy, e.g. integrate with legitimate business through creative accounting such as false invoices, over or undervalue of goods, or in the pretext of a loan payback.

D. Hong Kong's Anti-Money Laundering framework

Over the years, Hong Kong has built up a robust and comprehensive anti-money laundering framework as described below. The framework has continuously been strengthened by a number of measures and initiatives on the legislative, enforcement and regulatory fronts.

1. Legislation - The Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance are the two main pieces of legislation to combat money laundering.
2. Law enforcement - Police, Customs and the ICAC.
3. Financial regulators - Hong Kong Monetary Authority, Insurance Authority, Securities and Futures Commission.
4. International co-operation - Hong Kong being a member of the Financial Action Task Force on Money Laundering (FATF).
5. Criminal Justice System - the courts.

E. Hong Kong Anti-money Laundering Legislation

Money laundering in Hong Kong is enforced through two pieces of legislation:

1. Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405;
2. Organized and Serious Crimes Ordinance, Chapter 455

Which cover the following offences/measures:

- Dealing with the proceeds of crime - a person commits an offence if he deals with any property, knowing or having reasonable grounds to believe that the property directly or indirectly represents any person's proceeds of drug trafficking or an indictable offence. Maximum penalty - 14 years and a fine of HK \$5 million.
- Reporting suspicious transactions - where a person knows or suspects any property represents or is connected with proceeds of a drug trafficking offence or an indictable offence, he shall as soon as it is reasonable for him to do so, disclose that knowledge or suspicion to an authorized officer. Maximum penalty - Three months imprisonment and a fine of HK \$50,000.

- Control of banks, money changers and remittance agents - requiring them to register their business with the police, identify customers for transaction over HK \$20,000 and keep transaction records for six years.
- Enforcement power :
 - (i) Search warrant
 - (ii) Production Order
 - (iii) Restraint Order- permits the making of a restraint order if a person has been arrested for an organized crime
 - (iv) Confiscation Order

After the events of 11th September, 2001, the United Nations (Anti-terrorism Measures) Ordinance was enacted in July 2002 to implement, among others, the more pressing elements of the FATF's Eight Special Recommendations on Terrorist Financing and the mandatory elements of the United Nations Security Council Resolution 1373 relating to measures for the prevention of terrorist acts.

F. Law Enforcement

Anti-money laundering and countering terrorist financing legislation are principally enforced by the Police and Customs. The two agencies jointly operate the Joint Financial Intelligence Unit which collects suspicious transaction reports, analyses and disseminates intelligence for follow up investigations for the purpose of prosecution of money laundering and terrorist financing offences. So far, over HK \$380 million (US \$48.7M) have been confiscated since the enactment of the two anti-money laundering laws. As at 30 April, 2003, a total of HK \$1,172 million of proceeds of crime was under restraint orders. In addition, HK \$101 million has been ordered to be confiscated and was pending recovery from the defendants. To enhance international co-operation, Hong Kong has shared with foreign jurisdictions, on four occasions, confiscated assets related to drug trafficking, involving the total amount of HK \$57 million.

G. International Cooperation

Hong Kong plays an active role in international cooperation in anti-money laundering in the following areas:

- Signatories to multilateral treaties such as the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), 2000 UN Convention against Transnational Organized Crimes (the Palermo Convention), etc.
- Provides mutual legal assistance to other jurisdictions under the Mutual Legal Assistance in Criminal Matters Ordinance and to surrender fugitive offenders under the Fugitive Offenders Ordinance in respect of money laundering and terrorist financing offences. At present, Hong Kong has signed 14 agreements under the Mutual Legal Assistance in Criminal Matters Ordinance and 13 agreements under the Fugitive Offenders Ordinance.
- Liaison network with the World Bank, International Monetary Fund (IMF), Asia Pacific Economic Cooperation (APEC), Interpol and World Customs Organization (WCO).
- As a member of the Financial Action Task Force on Money Laundering (FATF), an inter-governmental body established in 1989 which sets standards, and develops and promotes policies to combat money laundering and terrorist financing. It also monitors international implementation of standards through self-assessment, mutual evaluations and identification of non-cooperative

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countries. It comprises 31 countries and governments, the European Commission and the Gulf Cooperation Council. Hong Kong is an active member of FATF and in recognition of Hong Kong's efforts against money laundering, it was selected as the President of the FATF for the period from 1 July 2001 to 30 June 2002. The Commissioner for Narcotics, as the coordinator of Hong Kong's anti-money laundering efforts, represents Hong Kong in this role.

H. Major Initiatives Launched during Hong Kong's Presidency of FATF

Under the presidency of Hong Kong, the FATF made considerable progress in the fight against money laundering and terrorist financing, the latter role was taken up after the events of September 11, 2001. Some of the major accomplishments included a comprehensive review of the FATF Forty Recommendations against money laundering, formulation of the Eight Special Recommendations on Terrorist Financing, and a worldwide global programme of engagement, and enhanced collaboration with the IMF and the World Bank.

I. Asia Pacific Group on Money Laundering

Hong Kong is also a founding member of the Asia Pacific Group on Money Laundering (APG). The Group was set up in 1997 with the aim to facilitate adoption, implementation and enforcement of internationally accepted anti-money laundering standards by jurisdictions in the region. As an active member contributing to the Group's work, Hong Kong is a co-chair of the APG Working Group on Alternative Remittance and Underground Banking Systems.

III. DIFFICULTIES IN INVESTIGATING CORRUPTION AND MONEY LAUNDERING

Both corruption and money laundering are difficult crimes to investigate, due to the fact that they are by nature secretive crimes and often involve only satisfied parties. The offenders are often highly educated, professional and high-powered who know how to cover up any trail of their crime and who are often in a position to make others keep the code of silence to abort any investigation. These days, the offenders often take advantage of the high technology in communication, the ease and freedom of the transfer of funds, the banking practice that supports secrecy, the availability of nominee accounts and in exploiting the loopholes created by cross jurisdictional problems, making investigation even more difficult.

A. Prerequisites for an Effective Investigation

There are several prerequisites to an effective investigation:

1. Independence - corruption investigation can be politically sensitive and embarrassing to the Government. The investigation can only be effective if it is truly independent and free from undue interference. This depends very much on whether there is a top political will to fight corruption in the country.
2. Adequate investigative power - Because corruption is so difficult to investigate, you need adequate investigative power. The HK ICAC enjoys wide investigative power, such as power to check bank accounts, requiring suspects to declare their assets, requiring witnesses to answer questions under oath, restraining properties suspected to be derived from corruption and holding the suspects' travel documents to prevent them from fleeing the jurisdiction.

3. Adequate resources - investigating corruption and money laundering can be very time-consuming and resource intensive, particularly dealing with cross jurisdictional cases.
4. Confidentiality - it is crucial that all investigation should be conducted covertly and confidentially, before overt 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 until there is clear evidence of their corrupt deeds. Hence in Hong Kong, we have a law prohibiting anyone from disclosing any details of an ICAC investigation until arrests and searches have been made. The media once described this as a “press gag law” but they now come to accept it as a right balance between press freedom and effective law enforcement.
5. International mutual assistance - many 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.
6. Professional - 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. Over the years, the ICAC has developed a comprehensive training programme to enhance the investigators’ skill in the following professional areas :
 - General investigation techniques
 - Interview techniques, including under video recording
 - Financial Investigation Techniques
 - Search
 - Surveillance
 - Undercover operations

B. Public Reporting System

Any success in law enforcement always starts with a comprehensive public reporting system and aims at encouraging the public to report and assist in investigating crime. A good reporting system should take into consideration the following criteria:

- Publicity to encourage public reporting
- Provide customer service to complainants
- Measures to deter frivolous or malicious complaints
- Establish policy on anonymous reports
- Enforce strict confidentiality on the reports
- Measures to protect whistle-blowers
- Provide a quick response to the reports
- Establish a fair procedure for handling the reports, with checks and balances against abuse
- Establish a system of accountability to the complainants

C. Methods of Investigation

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 an investigation relies on the meticulous approach taken by the investigators to ensure that “no stone is left unturned”. Areas of investigation could include detailed checking of the related bank accounts and company ledgers and obtaining information from various sources to corroborate any meetings or corrupt transactions etc. When there is a reasonable suspicion to act, the suspects' home and office should be searched for further evidence and all related parties should be properly interviewed.

E. Investigation of 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 offenders red-handed. Surveillance and telephone interception should be mounted on the suspects and suspicious meetings monitored. A cooperative party can be deployed to set up a meeting with a view to trap the suspects. Undercover operations can also be considered to infiltrate into a crime syndicate. The prerequisite 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.

F. Asset Tracing

One most important investigation technique in corruption and money laundering investigation is asset tracing. The key to this is a painstaking accounting approach to examine and follow the money trail in the following areas:

- bank accounts of the alleged offenders and their relatives
- remittance
- companies and nominee companies
- stocks, shares and funds
- properties
- source of expenditures

As soon as there is reasonable suspicion, a period of surveillance on the alleged offender to identify his lifestyle, followed by a thorough search of his home, office, safe deposit box, car and personal belongings should be conducted so as to obtain the necessary clues to identify where his assets have been hidden.

G. Resident Informant

One unique feature of corruption investigations is that the investigators must not be content with obtaining evidence against one single offender. 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 of the corruption. 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 the ICAC and to give evidence against the accomplices in court. The ICAC provides special facilities to enable such “resident informants” to be detained in ICAC premises for the purpose of de-briefing and protection. This “resident informant” system has proved to be very effective in dealing with syndicated or high-level corruption.

H. Investigative Support

Apart from the core investigation units, there should be strong operational support units, and the following are essential for the reasons given:

- Intelligence Section

As a central point to collect, collate, analyze and disseminate all intelligence and investigation data, and the upkeep of indices for ready cross reference.

- Surveillance Section

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

- Technical Services Section

This section provides essential technical support to surveillance and operations.

- Information Technology Section

It is important that all intelligence and investigation data should be managed and analyzed by computer as an aid to investigation. In this modern age, most personal and company data are stored on computers and investigators must possess the ability to break into these computers seized during searches to examine their stored data. Computer forensics are regarded as vital for all law enforcement agencies worldwide these days.

I. Financial Investigation Section

The corruption investigations these days often involve a sophisticated money trail of proceeds of corruption, which go through a web of offshore companies and accounts, funds etc. It is necessary to employ professionally qualified investigative accountants to assist in such investigation and in presenting such evidence 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 hours armed protection, safe housing, a new identity and overseas relocation. Some of these measures require legislative backing.

IV. CASE STUDIES

A. Senior Public Prosecutor Corruption Case

A very senior public prosecutor, at the time holding the position as the Acting Deputy Director of Public Prosecutor, was found to have excessive assets of HK \$16 million believed to have been derived from corruption: including bank balances of NZ \$2.43 million; three lots of land in New Zealand and an orchard farm. Enquiries revealed how he had laundered his corrupt proceeds through the following countries:

- TAIWAN: he bought gold in H.K., then sold it in Taiwan and kept the money in a Taiwanese Lawyer's account. Transferred the money to N.Z. via a bank account of a HK lawyer.

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- LONDON: he drew money from Taiwan via a Taiwanese lawyer. He transferred the money to an account in H.K. before transferring it to other overseas accounts.
- HONG KONG: transferred money to his mother's account in Singapore and his family in N.Z. Bought gold using money transferred back from Singapore and Taiwan.
- VANUATU PACIFIC: kept money in two trust funds, one of which was for his children.
- NEW ZEALAND: money to his family's bank account; invested in orchard business, buying three lots of land in Tauranga.
- AUSTRALIA: kept money from H.K. in his sister in-law's account.

He was subsequently convicted of corruption offences and sentenced to eight years imprisonment, with HK \$12 million of his assets forfeited.

B. Illegal Passport & Money Laundering Syndicate

The ICAC smashed an international illegal passport and money laundering syndicate in recent years. The syndicate members included a Customs Senior Inspector, two Immigration Officers, a Principal Immigration officer, who was the head of Immigration of an African Country, a bank manager and a casino operator. This syndicate arranged illegal passports, including diplomatic passports from various foreign countries for sale to people who wanted to emigrate to the US. The syndicate could also assist in laundering illegal money. The ICAC succeeded in infiltrating into the syndicate through an ICAC officer acting undercover. At the critical stage, the ICAC also enlisted the assistance of a Russian speaking undercover officer from a US law enforcement agency to pose as a member of a Russian organized crime group. All the key figures were apprehended and subsequently convicted. This is a classic example of international cooperation, and the mutual assistance that should be developed in undercover operations.

C. Counterfeit Credit Cards (CCC) - HK Joint Operation with Tokyo/Seoul

Counterfeit credit card (CCC) fraud continues to be a lucrative source of revenue for organized crime groups. In 1992, Hong Kong was responsible for 32% of the world's credit card fraud. Now Hong Kong is only responsible for 2% of the fraud. This type of fraud is often facilitated by corrupt retail staff who steal the genuine credit card information from customers and pass them to the syndicate for making counterfeit cards. In 2000, the ICAC assisted the Tokyo Metropolitan Police Department in eradicating a crime syndicate from Hong Kong which uttered CCCs in Japan. Tokyo Police, in appreciation of the ICAC efforts, presented us with a Certificate of Appreciation. In March 2001, information was received that four members of a CCC syndicate were organizing a trip to Seoul, South Korea, where they intended to utter CCCs manufactured with data they captured in Hong Kong and elsewhere. A team of ICAC officers travelled to Korea to assist the Seoul Metropolitan Police in the identification of the suspects. The criminals were arrested in Seoul. In Hong Kong, simultaneous actions were taken, resulting in the seizure of credit card data and computer software used in the manufacture of CCCs. The leader of the syndicate was charged with CCC offences in Hong Kong and sentenced to a term of imprisonment. These two cases were typical international syndicates with operations stretching through a number of jurisdictions. In recognition of the ICAC's success in CCCs investigation, an ICAC Chief Investigator was awarded "Law Enforcement Officer of the Year" by the International Association of Financial Crime Investigators in America. This is another example of successful international cooperation.

D. Cigarette Smuggling Case

The ICAC carried out a protracted investigation which lasted for three years from 1993 to 1996 into a cigarette smuggling syndicate. Its members included ex-customs officers, a senior manager of an international tobacco company, a number of established cigarette traders and senior triad members of Wo On Lok Triad Society. The investigation revealed bribe payments of over US \$4.2M (HK \$33M) paid by the syndicate to the senior manager of a tobacco factory to ensure an unlimited supply of cigarettes to facilitate smuggling into China. During the course of the investigation, a key member of the syndicate, who had earlier agreed to assist ICAC in the investigation, was found brutally murdered and dumped in the harbour in Singapore. His murder was suspected to be carried out by five members of the Wo On Lok Society. In the end, three members of the syndicate were convicted of bribery, murder or perverting the course of justice charges. Three persons are still wanted on warrant. This is one of the most serious organized crime cases investigated by the ICAC.

E. Hong Kong Jockey Club Race Fixing Case

Horse racing is a very popular game in Hong Kong and the total amount of bets placed by punters at each race meeting is in the tune of tens of million of dollars, one of the highest in the world. Hong Kong Jockey Club is keen to maintain the integrity of racing. In a joint investigation with the Jockey Club, the ICAC succeeded in unearthing a case of race fixing involving a number of jockeys who were bribed by an off-course betting syndicate with a triad background. The total amount of bribes paid to riders for not letting their mounts run to the best of their ability exceeded US \$180,000 (HK \$1.4 million) in a single race. This amount of money is only a drop in the ocean compared to the revenue the syndicate gets in illegal bookmaking. Seven persons were prosecuted and three jockeys and two civilians were subsequently found guilty of bribery and gambling offences, and sentenced to substantial terms of imprisonment. Unfortunately, the ICAC was not able to get to the head of the syndicate simply because there was a missing link with no one prepared to provide the necessary evidence against the head. This is the difficulty of investigating organized crime groups.

F. Soccer Match Fixing Case

Betting on soccer match results used to be illegal in Hong Kong, although it is now legalised. The ICAC investigated a case involving an illegal international soccer bookmaking syndicate. The syndicate was involved in illegal soccer betting on international matches and also 'fixed' the outcome of local football matches. This was achieved by bribing key players in the team. A corrupt police sergeant was bribed to assist the illegal operation in Hong Kong. This was a particularly difficult case to investigate. To begin with, no aggrieved individuals came forward to complain. Secondly, the syndicate's operation is transnational. Bets accepted in Hong Kong were then placed with a major bookmaker in Malaysia through a middleman in Singapore, and all financial transactions were conducted through an 'underground' banking system. To add to the complexity of the case, all bets were recorded on a sophisticated computer programme which was capable of total erasure through a push of a button on the keyboard. The ICAC carried out a strike operation on the first day of the World Cup Final in 1998 and managed to break into the premises so swiftly that the operator was so shocked that he was unable to push the crucial button on time. Nonetheless, it still took a long process of computer forensics to retrieve the evidence from the computer and have it admissible as evidence in court. This investigation resulted in the arrest and conviction of eight individuals in Hong Kong. Five footballers were sentenced to terms of imprisonment ranging between 12 and 22 months, the police sergeant was jailed for four years, and the head of the syndicate and his 'lieutenant' were each sentenced to two years' imprisonment. The need to upgrade ourselves in information technology is obvious if we want to tackle sophisticated organized crime.

V. CONCLUSION AND OBSERVATIONS

It is obvious that corruption and organized crimes are getting more and more difficult to investigate. The offenders have taken full advantage of high technology and cross jurisdiction loopholes. The conventional investigation methods and the current legal system may not be adequate to win the battle against the corrupt. We should adopt a more proactive approach in investigation such as the wider use of undercover operations and the use of telephone interception.

I would like to give my personal observation on the following areas:

A. A Strong Partnership Approach

15. The ICAC sees great value in a strong partnership approach with other local law enforcement agencies, including the Police, Customs, and Immigration Department in Hong Kong. In the old days, when the ICAC arrested a government official, this might not be welcome by his head of department, who blamed the ICAC for bringing scandal to his department. "Don't wash your dirty linen in public" is outdated and can only encourage corruption. If the dark days of corruption teach us anything, it is that turning a blind eye to corruption simply will not do. The problem will only grow bigger. I am pleased to note that heads of departments, particularly the law enforcement agencies, today have changed that attitude and are taking a proactive strategy in order to tackle corruption. Indeed, many of the ICAC's most successful cases originated from their proactive approach or as a result of joint investigations. To effectively deal with a sophisticated organized crime group and its money laundering activities, it is highly recommended that a multi-disciplinary task force approach be adopted, drawing together investigators from the police, ICAC, Customs, Tax, legal counsel, forensic accountants, asset management experts and major case management technological support. Such a multi-disciplinary approach enables adequate power and expertise to be available to deal with the equally professionally supported organized crime groups.

B. Adequacy of the Criminal Justice System

Corruption is a secret crime and there is a need to break the secrecy if we want to find out the truth. The present system in Hong Kong which basically follows the old UK one, allows the suspect to exercise their right of silence when questioned under caution. If they have a lawyer, the first thing the lawyer will advise them is to maintain his right of silence. When the case comes to court, the offender will have ample time to concoct a story, which does not allow the prosecution sufficient time to verify its truthfulness. In the end, it defeats the objective of the criminal justice system in enabling full facts to be presented to the court so as to arrive at a fair verdict. Under the new UK caution system, the suspects are now warned that any delayed response to questions may prejudice their defence in subsequent legal proceedings. The new caution reads like this, "*You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.*" I believe this new caution strikes a better balance between the human rights of suspects and the public interest to investigate crime. Alternatively, we should also consider adopting the Continental system where the suspect can be interviewed by examining magistrate where he cannot exercise any right of silence.

C. Telephone Interception

It is no longer a secret to the criminal world that most law enforcement agencies have access to telephone interception in their investigation. There appears to be two broad ways in dealing with telephone interception in different countries. In the United States, Canada and Australia, telephone interception requires judicial approval and its products can be used as evidence in court. In the UK and Hong Kong, telephone interception is approved by the Government but cannot be used as evidence in any courts. Experience over the world proved that telephone interception is an extremely useful tool in

investigating high level organized crime and corruption and its production in court often forms the crucial evidence against the mastermind offenders. To deprive the use of telephone interception evidence in court is in my view simply to hamper the effective investigation and prosecution of major corrupt offenders.

Consideration should also be given to introducing new legislation to protect whistle-blowers, witness protection, and allowing a greater degree of entrapment to facilitate successful undercover operations, and the international mutual assistance in corruption investigation and money laundering.

D. International Mutual Investigative Assistance in Criminal Matters

We all appreciate that organized crimes this day have no boundary and international cooperation is vital. However, at present, we rely heavily on mutual legal assistance which have restrictions on areas of cooperation and at the same time require strict judicial procedure which is often a time consuming and complicated process. We need to act faster than criminals and there should be a more efficient mechanism amongst law enforcement agencies to call for and obtain assistance at short notice. The United Nation is now in the process of drafting a U.N. Convention on Fighting Corruption. I hope that it will enable closer international cooperation amongst anti-corruption agencies. I believe the time has come for an international association of anti-corruption agencies to be formed under the U.N.'s auspices to enhance international liaison.