

COMBATING CORRUPTION: THE HONG KONG EXPERIENCE

HUI Wing-chi*

Table of Contents

| | |
|---|-----|
| I. INTRODUCTION | 240 |
| II. HONG KONG'S ANTI-CORRUPTION EXPERIENCE..... | 241 |
| A. Anti-Corruption Work Prior to the Establishment of the ICAC | 241 |
| B. The ICAC..... | 243 |
| C. The Model at Work | 246 |
| D. Achievements | 249 |
| III. FACTORS OF SUCCESS | 250 |
| A. Independent Status | 251 |
| B. Comprehensive and Long-Term Strategy | 251 |
| 1. Effective Legal Framework | 251 |
| 2. Three-Pronged Approach..... | 252 |
| 3. Checks and Balances..... | 254 |
| C. Adequate Resources | 255 |
| D. Community Support..... | 255 |
| IV. CONCLUSION | 256 |

* Dr. Hui Wing-chi is a Research Project Manager in the Centre of Anti-Corruption Studies at the Independent Commission Against Corruption, Hong Kong Special Administrative Region.

COMBATING CORRUPTION: THE HONG KONG EXPERIENCE

HUI Wing-chi*

Abstract

Corruption is a universal phenomenon and no society is devoid of it. Although the world is not short of ideas on how to tackle corruption, the Hong Kong experience is frequently quoted as an epitome of success. Anti-corruption efforts have succeeded in Hong Kong because of the establishment of the Independent Commission Against Corruption ("ICAC") in 1974. Over the past 40 years, the ICAC has devoted itself to anti-corruption work, turning a pervasively corrupted place to one of the most corruption-free places in the world, and successfully upheld Hong Kong's core values of fairness and probity. ICAC's success is attributed to indispensable factors which can be interestingly summed up in the acronym – ICAC, where I stands for independent status, C for comprehensive and long-term strategy, A for adequate resources, and C for community support.

Keywords: ICAC, anti-corruption, integrity, Hong Kong experience

I. INTRODUCTION

Hong Kong suffered from pervasive corruption in the 1960s and 1970s. Bribery was regarded as a necessary evil and a way to get things done. The timely establishment and effectiveness of the Independent Commission Against Corruption ("ICAC") in 1974 contributed significantly to the development of "clean government"¹ and, as a result, Hong Kong has changed from a place where corruption was once a way of life and penetrated almost every thread of society to one of the most corruption-free places in the world.² Hong Kong has achieved spectacular success in overcoming flagrant corruption.³ In recent years, Hong Kong has consistently been rated as one of the least corrupt territories in the world on the Corruption Perceptions Index.⁴

This paper aims at summarizing the Hong Kong experience in combating corruption, particularly efforts of the ICAC and the factors contributing to its success. While the corruption problems in

¹ I. Scott, *Hong Kong's Independent Commission Against Corruption: The Evolving Model*, in A GLOBAL HANDBOOK OF RESEARCH AND PRACTICE IN CORRUPTION 401 (Graycar & R. Smith eds., 2011).

² Choi, J. W., *Institutional Structures and Effectiveness of Anticorruption Agencies: A Comparative Analysis of South Korea and Hong Kong*, 2 ASIAN J. POL. SCI. 195 (2009).

³ MELANIE MANION, CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG 2 (2004).

⁴ The Corruption Perceptions Index is an annual measurement assessing the perceived extent of corruption. It is compiled by Berlin-based Transparency International and based on expert ratings and surveys of business people.

other parts of the world may be different, it is believed that many corruption problems stem from common causes and may be eradicated by similar approaches.

II. HONG KONG'S ANTI-CORRUPTION EXPERIENCE

Hong Kong has a long history of tackling corruption but its anti-corruption efforts work because of the Independent Commission Against Corruption ("ICAC"), which was set up on 15 February 1974 after the enactment of the Independent Commission Against Corruption Ordinance ("ICACO"). The establishment of the ICAC marked the advent of a new comprehensive strategy to eradicate corruption and it "has changed much in Hong Kong that many regarded as unchangeable".⁵ Today, the ICAC is not only an anti-corruption enforcement agency *per se*, but also an institution spearheading and representing integrity.

The ICAC was an outcome of both evolution and revolution. It was not a product invented overnight. Its establishment came after several decades of government efforts to develop stricter and more severe legal measures against corruption.

A. Anti-Corruption Work Prior to the Establishment of the ICAC

Corruption was an endemic feature of colonial rule in Hong Kong for well over a hundred years. Beginning in 1858, various attempts were made to counter corruption.⁶ During 1858–1897, the bribery of civil servants in Hong Kong was a misdemeanor under the Common Law. The June 1897 gambling house scandal, which involved the police, soiled the reputation of the Civil Service as a whole and moved the legislature to enact the first law against corruption, the Misdemeanours Punishment Ordinance ("MPO") in 1898. The MPO defined a bribe as "any fee, perquisite, reward or gratification, whether pecuniary or otherwise, not payable or receivable by law" and made bribery an offence for both the person offering a bribe and the civil servant accepting it. However, the MPO was ineffective because it was applicable only to the civil servants and its definition was restricted to bribery only.⁷ Nevertheless, "in pre-1941 Hong Kong corruption was not in any sense a serious social problem" as "it did not give rise to great public concern, prolonged debate,

⁵ Ambrose Y.C. King, *An Institutional Response to Corruption: The ICAC of Hong Kong*, in HONG KONG: DILEMMAS OF GROWTH 115 (C.K. Leung, J.W. Cushman & G. Wang eds., 1980).

⁶ See QUAH JON S.T., *CURBING CORRUPTION IN ASIAN COUNTRIES: AN IMPOSSIBLE DREAM?* 237 (2011); see also Scott, *supra* note 1.

⁷ H.C. Kuan, *Anti-Corruption Legislation in Hong Kong – A History*, in *CORRUPTION AND ITS CONTROL IN HONG KONG: SITUATION UP TO THE LATE SEVENTIES* 15 (Rance P. L. Lee ed., 1981).

uninterrupted administrative action, and the spending of large sums of public money on its control”.⁸

To cope with the increase in corruption after World War II, the British colonial government enacted the Prevention of Corruption Ordinance (“POCO”), which was based on an equivalent law in Britain, and set up the Anti-Corruption Branch, which was later upgraded to the Anti-Corruption Office, in the then Police Force to handle the investigation and prosecution of corruption cases in 1948. The POCO identified two major types of corruption: corruption in office and corrupt transactions with an agent, and was applicable to legislators and employees of both public and private organizations. In addition, an advisory committee was established in 1956 to identify the government departments most susceptible to corruption and make recommendations for changes to the law, for example the Prevention of Bribery Ordinance (“POBO”), which was enacted in 1971, replacing the POCO. The differences between POCO and POBO were that there was a much more comprehensive treatment of corruption offences and the police were authorized to use much wider powers to investigate cases.

Despite these efforts, corruption was widespread and regarded as a way of life in the 1960s and 1970s. “Syndicated corruption, the satisfied customer variant, paying for convenience, protection rackets, extortion, squeeze, kickbacks, and commissions” had existed “in a primal state”.⁹ Indeed, corruption “infected” all government departments that “provided any opportunity for its occurrence”. According to de Speville, a former ICAC Commissioner, “every part of the public service was infected, especially the disciplined services, namely the police, the customs and excise service, the immigration department, the fire and ambulance services and the prison services”.¹⁰ Blair-Kerr described corruption at that time as “some get on the bus, others run alongside it, yet very few stand in front of it”.¹¹ It meant that it would probably start with an officer finding some cash in his personal locker. Then, it was up to him to accept it quietly and tacitly “get on the bus” of corruption, or he could, if he refused to accept the money, mind his own business and “run alongside” the bus, in which case he would become a virtual outsider and never expect to go far in his career. But worst of all was for him to “stand in front of” the bus, that was, to report corruption. It was simply

⁸ H.J. LETHBRIDGE, *The Emergence of Bureaucratic Corruption as a Social Problem in Hong Kong*, in HONG KONG: STABILITY AND CHANGE 214 (H.J. Lethbridge ed., 1978).

⁹ H. J. LETHBRIDGE, *HARD GRAFT IN HONG KONG: SCANDAL, CORRUPTION, THE ICAC* 82 (1985).

¹⁰ DE SPEVILLE, B., *Hong Kong: Policy Initiatives against Corruption*, in PARIS: ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT 11 (1997).

¹¹ A. BLAIR-KERR, *SECOND REPORT OF A COMMISSION OF ENQUIRY* 24 (1973).

suicidal in job terms and an invitation for victimization. As a result, law and order was under threat and the government faced a serious legitimacy crisis.¹²

The Godber corruption scandal was “a watershed in the history of corruption investigation and law enforcement in Hong Kong”.¹³ In 1973, the unexplained escape from Hong Kong of a corruption suspect, Chief Police Superintendent Peter Godber, provoked mass demonstrations and calls for quick and tough action by the government. The then newly arrived governor MacLehose responded to the public outrage by appointing a Commission of Inquiry under Justice Alastair Blair-Kerr to investigate the circumstances leading to Godber’s escape and review the effectiveness of the POBO. Blair-Kerr eventually recommended the establishment of an independent commission against corruption answerable directly to the governor. MacLehose was determined “to represent the cause of the people” and through the ICAC to launch a “silent revolution” to provide Hong Kong with “a clean society and a clean government”.¹⁴ The ICAC’s first important task was to bring Godber to justice. In 1975, Godber was found guilty of accepting a bribe and sentenced to four years in jail. Godber’s trail “marked the completion of an investigation that had lasted over five years, and the end of an era. Corruption itself had not ceased, but the days of blatant, bare-faced, institutionalised corruption and the ‘firm within a firm’ were over”.¹⁵

B. The ICAC

The ICAC is a statutory agency specializing in anti-corruption and committed to fighting corruption through an all-embracing strategy of effective law enforcement, education, and prevention to help keep Hong Kong fair, just, stable and prosperous. The building blocks of this strategy were based on the realization that cultural values play a vital role in defining the operational and practical meanings of corruption, and legal reforms, if they are to be effective, must be closely linked to those values.¹⁶

The establishment of the ICAC is guaranteed in Article 57 of the Basic Law of the Hong Kong Special Administrative Region. It

¹² Ambrose Y.C. King, *Administrative Absorption of Politics in Hong Kong: Emphasis on the Grass Roots Level*, in *SOCIAL LIFE AND DEVELOPMENT IN HONG KONG* 127 (Ambrose Y. C. King & Rance P.L. Lee eds., 1981).

¹³ IAN MCWALTERS, *BRIBERY AND CORRUPTION LAW IN HONG KONG* 34 (2003).

¹⁴ Kuan, *supra* note 7, at 41.

¹⁵ LETHBRIDGE, *supra* note 9, at 114.

¹⁶ See Cheung, Anthony B.L., *Combating Corruption as a Political Strategy to Rebuild Trust and Legitimacy: Can China Learn from Hong Kong?* 8 (2) INT’L PUB. MGMT. REV. 45 (2007); see also Jack M.K. Lo, *Controlling Corruption in Hong Kong: From Colony to Special Administrative Region*, 9 J. CONTINGENCIES CRISIS MGMT. 21 (2001).

receives its resources from the Government, and follows government rules and regulations in human and financial resource management, procurement of goods and services, training, accommodation management and provision of general administrative services. However, it is not part of the Civil Service. The ICAC functions as an independent organization in terms of power, structure, personnel and finance.

The ICAC is empowered by its enabling statute, the ICACO, to enforce the main anti-corruption legislation in Hong Kong, the POBO, and other anti-corruption provisions contained in the Elections (Corrupt and Illegal Conduct) Ordinance (“ECICO”).¹⁷ Misconduct in public office remains a common law offence.

In terms of organizational structure, the ICAC is headed by a Commissioner appointed by, and directly accountable to, the Chief Executive of Hong Kong Special Administrative Region. The Commission carries out its anti-corruption mission through the following three arms, each supported by an Administrative Branch.

(i) The Operations Department is the investigative arm of the ICAC. It is responsible for receiving, considering and investigating reports of alleged offences under the POBO, ICACO and the ECICO.

The ICAC is given wide-ranging powers to investigate government and business dealings. The ICACO sets the parameters of the ICAC investigations, the procedures for handling suspects and disposal of property connected with relevant offences, gives the ICAC the power of arrest, detention and granting bail, the power of search and seizure that are consistent with the power of arrest and detention, the powers of taking finger-prints and photographs, and the power of taking non-intimate samples. The ICAC is also vested with powers set out in the POBO, which can only be used in the investigation of POBO offences. The POBO gives the ICAC special powers of investigation (such as searching bank accounts, holding and examining business and private documents, and requiring suspects and any person to provide information about their property), and powers to detain travel documents and restrain disposal of property in order to stop the person from attempting to flee Hong Kong or laundering ill-gotten gains so as to avoid forfeiture by the courts.

(ii) The Corruption Prevention Department minimizes opportunities for corruption by examining practices and procedures of government departments and public bodies, identifying corruption loopholes, and making recommendations to reform work methods for

¹⁷ More information about the ICACO, POBO and ECICO can be accessed from the Bilingual Law Information System (www.legislation.gov.hk/eng/home.htm).

reducing the potential for graft. It also advises private sector organizations, upon request, on good business practices to minimize temptation and risks. The focus of the department is given to changing systems rather than people. To this end, corruption prevention specialists are dispatched to various government departments, public bodies and private organizations to examine their procedures and practices with a view to removing all loopholes for corruption. Assistance is also rendered when necessary to help departments produce codes and guidelines on staff conduct. The department is also involved in the early stages of policy formulation and in the preparation of new legislation to remove any opportunities for corruption.

(iii) The Community Relations Department is responsible for educating the public about the evils of corruption and enlisting public support for the ICAC. The work of the department could be divided into (a) making face-to-face contacts with different segments of the community to provide in-depth corruption prevention education services, and (b) publicizing anti-corruption messages through mass media. Every year, staff members of the department meet managers from the business sector, teaching staff and students, civil servants and representatives of overseas organizations, to educate them on the costs of corruption, anti-corruption legislation, relevant past cases, and the penalties and consequences of corruption. Such education helps people develop attitudes against corruption. The department has seven regional offices which reach out to local communities and serve as focal points for receiving corruption complaints and enquiries.

Apart from professionalism, the ICAC demands a high standard of integrity from its staff. Since its inception, an internal investigation and monitoring unit has been established to investigate breaches of staff discipline, allegations of corruption against ICAC officers and non-criminal complaints against the ICAC or its staff. All completed investigations are reported directly to the Commissioner. All investigations into allegations of corruption and related criminal offences against ICAC staff are referred to the Secretary for Justice for advice and all completed investigations are reported to the Operations Review Committee. Criminal complaints not relating to corruption are referred to the appropriate authority, usually the Hong Kong Police Force, for investigation. An independent ICAC Complaints Committee monitors and where appropriate reviews the handling by the ICAC of non-criminal complaints against the ICAC or its staff, and identifies any faults in ICAC procedures which lead or might lead to complaints.

In addition, all ICAC staff are expected to possess a passion and sense of mission in carrying out their duties. Officers of the ICAC

will at all times uphold the good name of the ICAC and adhere to the principles of integrity and fair play; respect the rights under the law of all people; carry out their duties without fear or favor, prejudice or ill will; act always in accordance with the law; not take advantage of their authority or position; maintain necessary confidentiality; accept responsibility for their actions and instructions; exercise courtesy and restraint in word and action; and strive for personal and professional excellence.

C. The Model at Work

Looking back on the anti-corruption work of the ICAC, it can be divided into four stages characterized by socio-economic conditions.¹⁸

In the first decade from 1974 to 1983, the challenges confronting the newly established anti-graft fighters were deep-rooted, syndicated and somewhat institutionalized corruption in the government. Relentless effort resulted in the graft fighters breaking the backbone of syndicated corruption and sending corrupt officials to the courts. By the mid-1980s, syndicated corruption was virtually driven out of the Government.

This decade was also the era of awakening. In the initial years of the ICAC, the majority of the population, particularly at the grassroots level, accepted bribery as a “payment for convenience,” albeit reluctantly. There was deep skepticism about the government’s sincerity in uprooting corruption. The ICAC’s promotion campaign was directed primarily at the low-income people, such as hawkers or manual laborers, who were most vulnerable to abuses. It highlighted their suffering and urged them to come forward. The catch phrase was “Report Corruption.”

In the second decade from 1984 to 1993, a trend emerged that the number of corruption reports in the private sector increasingly outnumbered that in the public sector. On average, 380 people every year were charged by the ICAC, with over 80 per cent of them related to private sector corruption. In this decade, Hong Kong suffered a prolonged period of economic recession. A number of large-scale corruption cases related to banking and financial fraud surfaced. In this regard, the ICAC maintenance of a level playing field for all investors was central to the continued economic wellbeing of Hong Kong. The public was firmly told that

¹⁸ So, Daniel P. H., Youxiao de Funtan Celü – Yanxu Fazhan (有效的反貪策略 – 延續發展), [Effective Anti-Corruption Strategies – An Evolving Process] (Feb. 28) (unpublished manuscript) (on file with the Seminar on the Development and Management of Anti-Corruption Systems in Hong Kong and Mainland China), available at <http://www.cacs.icac.hk/tc/events/files/Plenary%203%20SO%20Ping%20Hung.pdf>.

“Whichever way you look at it, Corruption doesn’t pay”. Corruption problems exposed by the ICAC investigations built up the government’s intention to regulate the hitherto largely ungoverned money and finance market. The Securities and Futures Commission and the Hong Kong Monetary Authority were set up respectively in 1989 and 1993. Their establishment paved the way for the strong and effective financial regulatory systems now installed in Hong Kong today, which have proven crucial in weathering economic downturns and sustaining Hong Kong’s position as Asia’s world financial center.

The third decade from 1994 to 2003 was a trying time. A few years before Hong Kong’s reunification with Mainland China in 1997, there were signs of a re-emergence of corruption in both the public and private sectors. This was attributable to the feelings of uncertainty prevailing in certain quarters about the future of Hong Kong. It developed into what some would call the “pre-1997 quick-buck syndrome.” Small groups of government officials ganged up in organized corrupt activity, a pattern not observed for almost 20 years. The moral fabric in certain business circles was also getting loose. In the five-year period from 1993 to 1997, an average of 300 persons per year were convicted of corruption or corruption related offences, a 25% increase over the previous five years. To placate a jittery Hong Kong, the ICAC put in for the first time a rather high-profile slogan: “Hong Kong’s Advantage is the ICAC”. The ICAC also strengthened partnerships with key stakeholders to prevent corruption. In May 1995, the ICAC joined forces with six major local chambers of commerce to establish the Ethics Development Centre, which further promoted corporate integrity and later helped Hong Kong guard against other corruption threats that came after the Asian Financial Crisis in 1997 and the epidemic in 2003.

As the ICAC entered its fourth decade in 2004, the Hong Kong economy was recovering. Contrary to the skepticism of some overseas media, controls against corruption in Hong Kong remained intact after reunification with the Mainland in 1997. Hong Kong’s world ranking in the Transparency International’s Corruption Perceptions Index rose from the 18th place in 1996 to the 15th in 2013. Meanwhile, China’s accession to the United Nations Convention against Corruption enabled the ICAC to further engage itself in the international law enforcement community to trace corrupt payments and illicit assets outside of Hong Kong. The ICAC is also an active member of the International Association of Anti-Corruption Authorities.

Effective anti-corruption work should keep pace with socio-economic development. As one may observe from the

aforementioned analysis, the focus of anti-corruption work of the ICAC has been redefined over time to meet new challenges:

(i) Shifting from a rule-oriented approach, in which sanctions were the principal deterrent, to a value-oriented approach, in which, although the rules remained important, more attention was paid to enhancing integrity and strengthening the role of personal values in preventing corrupt practices; and

(ii) Seeking greater collaboration with various sectors in the community. Not surprisingly, there was tension in the relationship between government departments, particularly the Hong Kong Police Force, and the ICAC in the early years, when the graft fighters were pulling senior government officers almost every day. However, a partnership has been established gradually. Co-operative channels between the ICAC and the Hong Kong Police Force such as the Police Corruption Prevention Group and the Operational Liaison Group have been set up for directorate officers of the two organizations to meet regularly on corruption prevention and operational matters. The ICAC has in recent years joined force with government departments to launch integrity programs amongst civil servants. Corruption Prevention Groups have been formed in all major government departments to strengthen systems and procedures to minimize opportunities for corruption. In the private sector, the Hong Kong Ethics Development Centre seeks to improve integrity on a long-term basis through the collaboration with Chambers of Commerce and professional organizations, and offers services to business organizations to help them prevent corruption.

Looking ahead, the ICAC faces new challenges, which in turn can evolve into opportunities:

(i) Globalization and information technology advancement have made corruption transnational and more sophisticated. These bring new challenges to the work of anti-corruption agencies worldwide, call for continuous efforts to upgrade their professional capability and forge effective partnerships. In addition to fighting corruption proactively through the use of intelligence-led investigations,¹⁹ the ICAC works closely with many overseas and Mainland law enforcement agencies in anti-corruption experience sharing and staff training. In addition, the ICAC set up the Centre of Anti-Corruption Studies in April 2009 to study trends of corruption, not just within local jurisdictions but regionally and internationally. The Centre also

¹⁹ Simon Y.L. Peh, Comm'r, Independent Commission Against Corruption, *The Need for Intelligence-Led Policing in the Investigation and Prevention of Corruption Practices* (Oct. 4, 2012), (transcript available at <http://www.icac.org.hk/en/acr/sa/sacgm/index.html>) (last updated Dec. 10, 2012).

serves as a platform for scholarly exchange and collaboration with international and Mainland organizations and academic institutions.

(ii) The cyber revolution is one big challenge. The digital age mainly belongs to the younger generations, yet they have been brought up without experiencing the ruinous consequence of unchecked corruption. The ICAC has thus made youths its priority target of integrity education. It ventures to reach youths through channels such as the youth website iTeen Camp, Youtube ICAC Channel, ICAC Weibo, iTeen Xtra on Facebook and Smartphone Apps, and by communicating with them in their cyberspeak.

D. Achievements

After 40 years, the ICAC has demonstrated that corruption can be effectively controlled, regardless of the background, status and position of the people involved, and has achieved the following successes:

(i) Corruption is under effective control: The ICAC has contributed in the last 40 years to making Hong Kong a world-renowned corruption-free society. The corruption situation in Hong Kong continues to be under effective control with no sign of deterioration. According to the ICAC's Annual Survey of 2013,²⁰ 65.1% of respondents considered corruption uncommon, and 74.8% of respondents expected less corruption or a stable corruption situation in the coming year.

(ii) A culture of zero tolerance of corruption: The ICAC has achieved no less than a silent revolution in the public attitude towards corruption in Hong Kong. The public no longer tolerates corruption as a way of life, and supports the fight against corruption. As shown in the Annual Survey 2013, the majority (82.7%) of the people surveyed considered corruption totally intolerable, 80.6% of the people sampled indicated that they would report corruption if they were aware that someone had committed corruption, 79.7% of the respondents considered the ICAC's anti-corruption work effective and nearly all respondents (95.3%) stated that the ICAC deserved their support.

(iii) A clean public sector: Hong Kong now has fundamentally a clean public service. In 1974, the ICAC's first year of operation, 86% of corruption reports related to government departments. With the ICAC's relentless efforts, syndicated corruption in the Government was virtually eradicated. In 2013, that figure was substantially reduced to 30%. Also, in 1974, 45% of corruption

²⁰ ICAC, Executive Summary of the ICAC Annual Survey (2013) (unpublished manuscript), available at http://www.icac.org.hk/en/useful_information/sd/sd/index.html.

reports concerned the police force,²¹ but in 2013 the figure was down to 9%.²² This was achieved not only through the vigilance of the ICAC investigators in pursuing the corrupt, but also through the successful promotion of a Code of Conduct and Declaration of Conflict of Interest Guidelines which have been adopted in all Government departments and public bodies. Employees of these departments are subject to ethical codes and a system requiring the declaration of pecuniary and private interests if they are in conflict with their official duties.

(iv) A vigilant private sector: The business sector, in the early years, resisted the ICAC for “meddling” in their affairs. After many years of education and publicity, today the ICAC joins hands with various chambers of commerce, professional bodies and related regulatory bodies to organize conferences, workshops, training programs and many other projects to raise awareness of business ethics. Business people in Hong Kong are now fully alert to the dangers of corruption and are vigilant against it. They realize that corruption hurts their reputations and businesses in the end.

The success of Hong Kong’s anti-corruption efforts is internationally recognized. Hong Kong has been ranked by the Heritage Foundation as the world’s freest economy for 20 consecutive years, and is ranked alongside London and New York as a top global financial center. In its National Integrity System Study Report on Hong Kong, Transparency International commented that “Hong Kong has established a sound anti-corruption system in both the public and private sectors. Corruption is well under control in Hong Kong”.²³ The Hong Kong-based Political and Economic Risk Consultancy remarked in its anti-corruption survey report that “Hong Kong’s ICAC is widely credited with doing a good job of fighting corruption in both the public and private sectors”.²⁴

III. FACTORS OF SUCCESS

As a frequently quoted epitome of success, many countries followed Hong Kong’s example in setting up a dedicated anti-corruption agency. However, many of them are far from being

²¹ ICAC, ICAC ANNUAL REPORT (1974), available at http://www.icac.org.hk/en/about_icac/p/icacar/index.html.

²² ICAC, ICAC ANNUAL REPORT (2013), available at http://www.icac.org.hk/en/about_icac/p/icacar/index.html.

²³ Jean Yves Le Corre, *National Integrity System Study Report on Hong Kong*, Transparency International Berlin 39 (2006), available at http://www.transparency.org/content/download/16359/218977/file/NIS_HongKong_2006.pdf.

²⁴ Political & Economic Risk Consultancy Ltd., *Corruption’s Impact on the Business Environment* 871 (Political & Economic Risk Consultancy, Paper No. 871, 2011).

effective and hence there are queries as to whether the Hong Kong model can be successfully applied to other territories. One of the critical success factors is whether there is a thorough understanding of the working of the Hong Kong experience before they model it. In taking stock of the ICAC's experience in the past four decades, the success of the ICAC is attributed to several indispensable elements, which can be interestingly summed up in the acronym ICAC, where I stands for independent status, C for comprehensive and long-term strategy, A for adequate resources, and C for community support.

A. Independent Status

Anti-corruption work can only be effective if it is truly independent and free from undue interference as it involves politically sensitive issues and may embarrass the government. The independence of an anti-corruption agency depends very much on whether there is real political will and commitment from the highest level of government in rooting out corruption.

The ICAC is established by law as an independent organization "under a civilian Commissioner, whose impartiality and freedom from official pressures and influence would be ensured by his position being separate from the Public Service".²⁵ Its operational independence is the single most powerful demonstration of the Government's determination to combat corruption. The Commissioner is accountable directly to the Chief Executive and this ensures that the ICAC is free from any interference in conducting their investigations. It is the dedicated agency specifically tasked with dealing with corruption but it has the support of the whole Government whenever required.

B. Comprehensive and Long-Term Strategy

Effective anti-corruption work requires a well thought-out, coherent, holistic and long-term strategy. In Hong Kong, this strategy consists of an effective legal framework, a three-pronged approach, as well as a robust system of checks and balances.

1. Effective Legal Framework

There must be a clear, consistent and effective legal framework in place to ensure the rule of law is upheld. A credible legal and a sound judicial system are vital to ensure success in law enforcement, including fighting corruption.

²⁵ HONG KONG LEGISLATIVE COUNCIL, OFFICIAL REPORTS OF PROCEEDINGS 400 (1974), available at <http://www.legco.gov.hk/yr73-74/h740130.pdf>.

Hong Kong has comprehensive legislation to deal with corruption. The POBO is the main anti-corruption legislation in Hong Kong. It is divided into five parts: Part I (Sections 1–2) deals with the interpretation provisions; Part II (Sections 3–12) with substantive offences; Part II (Sections 13–18) with power of investigation; Part IV (Sections 19–26) with evidence; and Part V (Sections 28–35) with miscellaneous provisions. In relation to substantive offences, prescribed officers are subject to Sections 3, 4, 5 and 10 of POBO, employees of public bodies (e.g. a power company, bus company, hospital, etc.) are subject to Sections 4 and 5, while Section 9 is designed for the private sector. Anti-corruption legislation is also found in some of the provisions of the ECICO, which applies to all conduct concerning an election, whether it is engaged before, during or after the election period, and whether it is engaged in Hong Kong or elsewhere as specified in the Ordinance. The ECICO contains seven parts: Part I (Sections 1–5) deals with preliminary provisions; Part II (Sections 6–21) with corrupt conduct; Part III (Sections 22–28) with illegal conduct; Part IV (Sections 29–32) with court proceedings; Part V (Sections 33–35) with electoral advertising; Part VI (Sections 37–41) with election returns; and Part VIII (Sections 42–49) with miscellaneous provisions.

The ICAC is responsible for enforcing the POBO and ECICO and empowered to investigate corrupt practices as described in the ICACO and POBO. After completion of investigations, the power to prosecute is vested with the Department of Justice which, under the leadership of the Secretary for Justice, is independent in deciding whether the results of the investigations should lead to prosecution. The separation of powers ensures that no case is brought to the courts solely on the judgment of the ICAC. Hence, a clean and dignified judiciary in Hong Kong rules independently on each and every case.

The legislation also provides the ICAC with the necessary authority to educate the public, examine the procedures and practices in the public sector, and advise on changes that are necessary to prevent corruption.

2. Three-Pronged Approach

The ICAC could not win the battle against corruption only by punishing the corrupt. It must also improve the bureaucratic systems and processes and bring about fundamental changes in public attitudes towards corruption. In this connection, as early as its establishment in 1974, the ICAC has been advocating its three-pronged approach to fight corruption via law enforcement, education and prevention. This three-pronged approach has contributed to the success in curbing corruption because it inculcates fear among corrupt offenders by enforcing the anti-corruption law

impartially, reduces opportunities for corruption by streamlining procedures and management processes to prevent corruption, and changes the population's attitudes towards corruption through community education and publicity.²⁶ The combination of these three prongs produces "an advantageous environment in which to counter corruption".²⁷

Many countries have adopted a similar approach but they are not as effective as Hong Kong on combating corruption. The key to success in Hong Kong is that these three prongs work together in a very closely coordinated way.²⁸

(i) Law enforcement: Detection and prosecution provides a strong deterrent against corruption, helping to reduce incentives to commit corruption. This makes corruption a high-risk crime. Law enforcement also serves a public education purpose, educating the public on what corruption is, the consequences of corrupt behavior, and the effectiveness of law enforcement, thereby encouraging people to report corruption. Analysis of the modes of corrupt practices and any systemic weaknesses in corruption cases also helps in the design of more effective preventive measures.

(ii) Prevention: Through regular system reviews, corruption risks and system loopholes conducive to corrupt practices can be identified, and controls and improvement measures can be added to the business processes to reduce such risks or plug these loopholes. Improvement measures may include increasing the transparency to facilitate external monitoring by customers, business partners and the public, or enhancement of internal controls such as segregation of duties, and supervisory and audit checks to facilitate the detection of corruption.

(iii) Education: The education of an integrity management program in a public organization would help to educate the employees about the consequences of corruption for both the organization and themselves, reduce their incentive to commit bribery, modify their attitude, reduce the rationalization of fraudulent behavior and encourage whistle-blowing. Public education would also help to reduce the public's tolerance to corrupt behavior and encourage them to report any corrupt behavior observed. Both

²⁶ CHEUNG, ANTHONY B.L., *Evaluation of the Hong Kong Integrity System*, in LOCAL INTEGRITY SYSTEMS: WORLD CITIES FIGHTING CORRUPTION AND SAFEGUARDING INTEGRITY 105 (L. Huberts, F. Anechiarico & F. Six eds., 2008).

²⁷ DE SPEVILLE, B., *The Experience of Hong Kong, China*, in *Combating Corruption*, in CURBING CORRUPTION: TOWARD A MODEL FOR BUILDING NATIONAL INTEGRITY 51 (R. Stapenhurst & S.J.K. Kpundeh eds., 1999).

²⁸ DE SPEVILLE, B., *OVERCOMING CORRUPTION: THE ESSENTIALS* 15–28 (De Speville & Associates ed., 2010).

whistle-blowing by fellow employees and reporting of corruption by the public facilitate the detection of corruption.

3. Checks and Balances

To ensure there is no abuse of its powers, the ICAC is subject to close scrutiny through:

(i) The Chief Executive and Executive Council: The ICAC is directly accountable to the Chief Executive and the ICAC Commissioner reports to the Executive Council on major policy issues.

(ii) The Legislative Council: The Council holds the authority of conferring and repealing the powers of the ICAC, and the ICAC Commissioner is required to answer to the Council concerning its funding and performance.

(iii) Independent Judiciary: The ICAC is required to seek prior court approval for exercising certain powers, and will carefully consider comments from the courts and conduct reviews on operational procedures to avoid misuse of power. An independent judiciary ensures that the ICAC does not step out of line.

(iv) Advisory Committees: There are four advisory committees comprising prominent citizens from different sectors of the community appointed by the Chief Executive and chaired by civilian members to oversee the work of the ICAC. The Advisory Committee on Corruption advises on Commission-wide policies and issues. The Operations Review Committee acts as a watchdog on the ICAC. It reviews each and every report of corruption and investigation, to ensure all complaints are properly dealt with and there is no “whitewashing”. The Corruption Prevention Advisory Committee oversees the work in enhancing practices and procedures to minimize opportunities for corruption. And the Citizens Advisory Committee on Community Relations advises on measures to foster public support in combating corruption and to educate the public against the evils of corruption.

(v) The Independent ICAC Complaints Committee: This committee monitors and reviews all non-criminal complaints against the ICAC or its staff. There will be an independent investigation if any complaint is lodged.

(vi) Mass Media: The ICAC is subject to close public scrutiny through the mass media.

(vii) Internal Monitoring: As aforementioned, there is an internal monitoring unit to investigate all allegations of corruption and related offences made against ICAC staff.

C. Adequate Resources

Fighting corruption is a prolonged war and resource intensive. The anti-corruption agency must be given sufficient funding and staff. In recent years, the ICAC operated on an annual budget slightly exceeding US\$100 million. With a total population of some 7 million people, Hong Kong is spending about US\$15 per capita to fight corruption, which is amongst the highest amount anywhere in the world.

The success of anti-corruption work in Hong Kong also relies on a strong complement of dedicated graft fighters. At present, the ICAC has about 1,300 staff. The ICAC offers a comprehensive and high-quality training program to its officers to ensure they have job-related professional knowledge and skills. New recruits will receive induction training tailored to the department in which they will serve. Induction courses include training in corruption education and prevention work; law and legal issues; and computers, media and presentation skills. Officers in the Operations Department also receive training in investigation techniques, cognitive interviewing, confrontation management and firearms. The ICAC Officers receive continuous professional development and refresher courses to strengthen their capacity and equip themselves for higher responsibilities. These courses include leadership skills, strategic management, handling changes and crises, command courses, knowledge of public affairs, policy-making and media communication. Individual officers will also be made to attend executive management development courses provided by major local or overseas academic institutions.

D. Community Support

The need to win the cooperation and trust of the public in the fight against corruption is of the utmost importance. However, it is a slow and painstaking process of transforming the public's attitudes from resigned tolerance to zero tolerance of corruption, winning the citizens' trust, and enlisting public support.

In order to raise and sustain the public's corruption prevention awareness, the ICAC launches comprehensive and long-term programs to proactively communicate a culture of probity and integrity, and promote and foster community support. These include community-based programs using mass media and specific programs for targeted sectors of the community, such as youth, business people, or professional and technical personnel in various fields. Outreach activities are also carried out through the operation of seven regional community offices.

Public identification with the cause is necessary. Fear of retaliation discourages people from reporting corruption and this necessitates the option of reporting in confidence as well as the protection of witnesses. The ICAC endeavors to ensure that no individual will be victimized for reporting corruption. First, the ICAC has a general rule that all pursuable reports of alleged corruption must be investigated. Second, the ICAC has enforced a rule of silence on all reports of corruption. It is an offence to disclose the names of persons being investigated until a search warrant is given or the persons are charged or arrested. Third, for highly sensitive cases, a comprehensive witness protection program is in place and, in extreme cases, enables witnesses to change their identities and relocate. It is worth pointing out that most corruption reports were anonymous before the ICAC was set up but now about 75% of the reports come from non-anonymous sources.

IV. CONCLUSION

The ICAC is often regarded as a model of the way in which efforts to prevent and control corruption should be organized and implemented. Its achievement in transforming Hong Kong from a place where corrupt practices were accepted to a place in which they are the exception has been widely admired. The success of the ICAC is attributed to its distinctive characteristics, including strong political will to combat corruption, independence from the government, a holistic legal framework, an all-embracing strategy of prevention, education and sanctions, adequate powers and resources, an internal monitoring unit and personnel of the highest moral caliber, a robust system of checks and balances, and strong community support. Moreover, the ICAC, like any other organization, has had to adapt to the changing socio-economic environment, and meet new challenges. The evolution of the ICAC over these 40 years could be well reflected by its publicity slogans, from "Report Corruption" in the 1970s, "Whichever way you look at it, Corruption doesn't pay" in the 1980s, "Hong Kong's Advantage is the ICAC" in the late 1990s, to the recent "Hong Kong – Our Advantage is You and the ICAC". This shows a shift from a rule-oriented approach to a value-oriented approach, and the ICAC's practice of seeking greater collaboration with various sectors in the community.