

TACKLING CORRUPTION: THE HONG KONG EXPERIENCE

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I. INTRODUCTION

The Independent Commission Against Corruption (or ICAC), is an independent dedicated agency tasked to tackle corruption in Hong Kong. Today, Hong Kong is an international financial and service centre with world-class facilities and infrastructure. One of the pillars of its success is a corruption-free government and a level playing field for business. In fact, the ICAC has gone a long way in achieving this hard-earned success.

II. BAD OLD DAYS – CORRUPTION AS A WAY OF LIFE

Corruption was a big problem in 1974, the year when the ICAC was born. Indeed, corruption tales could easily be traced back to the middle of the last century, if not earlier. Before World War II the triads (criminal gangs) in Hong Kong were already collecting protection money from the wealthy, with the assent of the police. There were then some 65,000 triad members under the control of five families; this amounted to well over ten times the size of the police force. During the War, the triads profited from collaborating with the invaders. After liberation, they continued to run vice, drug and gambling rackets. More than two million people arrived in Hong Kong between 1944 and 1950 and “the crowded Colony was chaotic.”¹

Post-war Hong Kong was also a land of many opportunities. Economic recovery in the West created added demands for manufacturers from relatively cheaper sources. The mainland of China adopted a closed-door policy, and the wars first in Korea and later Vietnam further eliminated sourcing options for the West. Strategically located in the heart of South East Asia, and with a seemingly endless influx of cheap labour, Hong Kong suddenly emerged as an ideal production base both for an aspiring breed of local entrepreneurs, and foreign companies looking for off-shore investment. It was at this time that Hong Kong earned the reputation of a tourism paradise as “the Pearl of the Orient.”

The fateful blend of chaos and bloom resulted in some economic miracles, but also runaway corruption. Often the management systems would find themselves unable to cope up with the exploding demands. Bribes were seen by the unscrupulous as the key to a short-cut. By the 1960s, graft was widespread in the public sector. Vivid examples included:

- firemen negotiating for ‘water money’ before they would turn on the hose at a fire site;
- ambulance attendants demanding ‘tea money’ before picking up sick persons;
- even a hospital ‘amah’ would stretch out her hand for tips before bringing a patient a bedpan or a glass of water.

The average citizen knew that offering bribes to the right person would facilitate an application for public housing, schooling and other public services, and ‘tea money’ was quite necessary for the average learner in a motor car to pass a driving test.

Hong Kong can now claim that it has one of the most efficient police forces in the world, practically at all times. Almost from the day the Hong Kong Police Force was formed, it has been the single most important factor for the maintenance of law and order. Yet in the early years, law enforcement and bribe-taking went hand-in-hand. Corruption was once rampant within the Force. Front-line officers did, as a matter of routine,

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¹ Attributed to Kevin Sinclair, a New Zealand reporter who worked in Hong Kong for many years, including for The Star, Hong Kong Standard and the South China Morning Post.

systematically cover up the criminal activities which they were tasked to eliminate. The worst times were the post-war years when rumours had one police detective sergeant lamenting: “I woke up in the morning and could not find my slippers. They were hidden beneath the layers and layers of floating bank notes that were in my bedroom.”

Public discontent finally reached boiling point when, in the early 70s, thousands of people took to the streets after a Chief Police Superintendent fled Hong Kong while under investigation by the relevant authorities. The people wanted him back to face trial. Facing a governance crisis, the Hong Kong Government took the grave decision to set up a dedicated and independent anti-corruption agency – the ICAC. The ICAC was to bring back from London the wanted person who was subsequently jailed in Hong Kong for four years. Things were set to change.

III. NEW CULTURE – “ANTI-CORRUPTION CAPITAL OF THE WORLD”

Those were the days. Now Hong Kong has transformed itself from a graft-plagued city into a place distinguished by its strong anti-corruption regime. To quote the Secretary General of Interpol, Mr Ronald Noble, Hong Kong has become “the anti-corruption capital” of the world.

According to Heritage Foundation’s 2010 Index of Economic Freedom, Hong Kong is rated as the world’s freest economy for the 16th consecutive year, out of 179 economies assessed. The assessment is based on various factors, including business freedom and freedom from corruption. The Corruption Perceptions Index released by Transparency International in November 2009 shows that Hong Kong remains the 12th least corrupt place, among 180 places polled.

Syndicated corruption in government departments has long been eradicated. The percentage of reports alleging government corruption had substantially dropped from 86% in 1974 to about 37% in 2009. The proportion of reports against police corruption also drastically decreased from almost 50% in the early years to slightly over 10% nowadays.

Due to a growing awareness of the damaging effect of corruption on business, the private sector has become more forthcoming in referring suspected cases to us. The proportion of private sector corruption reports increased from about 13% of the total in 1974 to over 60% in recent years. Nowadays, as a place which provides a fair business environment, Hong Kong attracts investors.

More importantly, the collective attitude towards corruption has fundamentally changed. As the first ICAC Commissioner Sir Jack Cater said: “there can be no real victory in our fight against corruption unless there are changes of attitude throughout the community.”

In the space of three decades, a new culture – a culture of probity – has evolved and taken root in our community. The following indicators may illustrate the magnitude of changes in the social values and culture of our society.

A. Low Public Tolerance of Corruption

In sharp contrast with public thinking 30 years ago, Hong Kong people nowadays adopt “near to zero” (if not “zero”) tolerance towards corruption. The Annual Survey conducted in 2009 affirmed this observation. On a 10-point scale (where 10 represents total acceptance and 0 represents total rejection), the average score of public tolerance of graft in the business sector was as low as 1.6, while the tolerance level for government corruption was even lower – only 1.1.

B. Non-anonymous Reports

Another indicator is the public’s increased willingness to divulge their identities in reporting corruption cases to us. In the 1970s, only one-third of complaints were lodged non-anonymously. The figures surged to 50% in the 1980s and to over 70% in recent years. Such changes not only reflect our people’s intolerance towards corruption but also their growing trust in the ICAC.

C. Partnership

Meanwhile, the close partnership fostered between the anti-corruption agency and various sectors in the community also demonstrates a fundamental change in the public's attitude towards corruption.

Today, most government departments are no longer afraid of exposing the 'black sheep.' They have become more forthcoming in referring suspected corruption cases to the ICAC and regularly seek assistance in corruption prevention.

The ICAC has in recent years joined forces with the policy bureau overseeing civil service matters and various government departments to launch integrity programmes amongst civil servants. Corruption Prevention Groups have been formed in all major government departments to strengthen systems and procedures to minimize opportunities for corruption.

The business sector, in the early years, resisted the ICAC for meddling in their affairs. Today, the ICAC works hand-in-hand with various chambers of commerce, professional bodies and related regulatory bodies to organize conferences, workshops and many other projects to raise awareness of business ethics.

In 1995, the ICAC set up the Ethics Development Centre under the auspices of six major chambers of commerce to promote business ethics on a long-term basis. It has so far offered advice and assistance to over 16,000 persons from local and overseas organizations.

D. Public Support

The local community now fully appreciates the benefits of freedom from corruption. From the Annual Surveys conducted in the last 10 years, each year up to 98% to 99% of the respondents expressed support for the anti-corruption cause.

E "Quiet Revolution" through an Holistic Approach

How have these miraculous changes come about? In the words of the former Governor who founded the ICAC, it took nothing short of a "Quiet Revolution" to bring about these changes in the society.

To achieve this quiet revolution, the ICAC has from the beginning adopted a three pronged strategy of attacking corruption on all fronts. When the agency was first set up in 1974, it embraced a holistic approach in the fight against graft: rigorous law enforcement goes hand-in-hand with preventive measures in plugging corruption loopholes in policies and systems and community education aimed at changing people's attitude towards corruption.

This comprehensive strategy has been hailed by Transparency International (TI)'s Global Corruption Report as an effective world model in fighting corruption.

F. Rigorous Law Enforcement

In the early days of the ICAC, the public was sceptical about the effectiveness of the newly formed agency. To achieve a real deterrent, rigorous and heavy attacks were launched against the corrupt in the first few years. No stone was left unturned. A number of corrupt senior government officials, or "big tigers" as described by the local media, were netted, prosecuted and sent to jail. As a result, corruption rackets, which existed in government departments, were quickly crushed.

These rigorous enforcement actions sent a strong message to our citizens that the Government was determined to stamp out corruption, and that the ICAC meant business.

As the corruption situation in the government improved, the ICAC spared no efforts in combating corruption in the private sector. Under Hong Kong laws, the ICAC has to investigate bribery cases involving both the public and private sectors.

Throughout these years, the ICAC continued, undaunted, to impartially pursue the corrupt. Wealthy businessmen, chairmen and senior executives of listed companies, high ranking officials, legislators and influential politicians have been brought to justice for committing corruption or related offences.

Nowadays, the ICAC continues to be respected by the general public as a highly effective law enforcement agency, which discharges its duties without fear or favour, and pursues each and every case regardless of the background and position of the offenders.

G. Corruption Prevention

Enforcement work goes side-by-side with prevention efforts. The Corruption Prevention Department of the ICAC has a statutory responsibility to minimize opportunities for corruption in government departments and public bodies. This is done primarily through conducting assignment studies to examine the relevant practice and work procedures of government departments and public bodies, to revise their work methods if they are conducive to corruption, and to make recommendations against abuse.

There are three basic principles behind the recommendations on corruption prevention:

- **Procedural Simplicity:** Providers of public services are advised to adopt the simplest procedures possible for processing applications for their services. They are also advised to adopt the clearest criteria possible to determine approval or otherwise. The purpose is to reduce queue up time and minimize human discretion and therefore to take away the incentive to bribe;
- **Transparency:** The public must be informed of their right to service and the ways and means to lodge a complaint if they are not satisfied with the service they get; and
- **Accountability:** The system should enable each public officer to be held accountable for what he or she does at work or for his or her omissions.

The Corruption Prevention Department adopts a ‘partnership approach’ vis-à-vis Government departments and public bodies, and would advise them to install within their organizations a “Corruption Prevention Review Mechanism” to conduct regular reviews covering procurement or licensing matters, or other operational procedures. Client departments are also encouraged to set up an “Integrity Steering Committee” to look into matters pertaining to the integrity of staff. The Integrity Steering Committees have worked very well, especially in the Disciplined Services Departments, including the police and customs. They promote a healthy lifestyle and help their staff to handle financial matters, including cases of serious indebtedness. They have contributed to a decline in complaints against the public sector.

The Corruption Prevention Department also provides consultative services to the Government for the formulation of new legislation, policies and procedures to ensure that corruption prevention safeguards are built in at the early stage. Furthermore, it acts as an adviser to the Civil Service Bureau of the Hong Kong Government in the compilation and review of the Hong Kong Civil Service Regulations.

The Civil Service Regulations require all government officials to maintain a high level of integrity. Civil servants are required to observe a Code of Conduct. There are strict regulations restricting the acceptance of gifts or loans. All government officials are required to declare their investments on their first appointment to the Civil Service. On assignment to a senior or sensitive post, an officer may be required to update their declarations on a regular basis. Investment restrictions are also imposed on the holders of certain positions to avoid possible conflicts of interest. Public officers are not allowed to use confidential or unpublished information obtained in their official capacity to make profits. Failure to meet these requirements will render an officer subject to disciplinary action, dismissal from the service, and, in serious cases, criminal proceedings.

H. The Power of Education

The Community Relations Department, the third constituent department of the ICAC, is vested with the responsibilities of:

- educating the public against the evils of corruption; and
- enlisting and fostering public support in combating corruption.

The public sector does not survive on its own, separate from the community. Public sector integrity can be established and sustained only if the general public demand, treasure and support a probity culture for the public sector and also for themselves. The Community Relations Department’s work programme to educate the broader public and the Commission’s task to strengthen public sector integrity are, therefore, mutually reinforcing.

Public education aside, the Community Relations Department also makes dedicated efforts to help enhance integrity in the public sector. Such efforts include:

- Developing Codes of Conduct for government officials in respective departments and for the staff of public bodies;
- Conducting “experience-sharing sessions” using real-life case studies to illustrate how public officers in their everyday work may come across corruption pitfalls;
- Introducing an “Ethics Officer Programme” to Government departments and public bodies, whereby a senior officer in each organization will be assigned as an Ethics Officer to plan and oversee anti-corruption strategies for the organization. Regular meetings are arranged for Ethics Officers from different organizations to discuss ethical management issues.

The ICAC’s work on enforcement, prevention and education complement each other. Practical experiences gained from the investigation and detection of significant cases are carefully studied and analysed. The results are used not only to construct preventive measures for the relevant organizations; representative cases are also used as the bases for an action drama series. To date, the ICAC has, in collaboration with a TV station, produced 13 series of action-packed anti-corruption stories, broadcast to millions of viewers in Hong Kong and abroad.

I. The Laws

Given its Commonwealth heritage, bribery has been an offence in Hong Kong from as early as 1898, with the enactment of the Misdemeanours Punishment Ordinance (MPO). The MPO was replaced in 1948 by the Prevention of Corruption Ordinance (POCO). In 1971, the POCO became the Prevention of Bribery Ordinance (POBO), with new offences, heavier penalties and stronger investigative powers written into its provisions.

The POBO aims to maintain a fair and just society by protecting the legitimate interests of public institutions and employers, and by inflicting punishment on the unscrupulous and corrupt. It addresses corruption in the public and private sectors.

In Hong Kong, the public sector comprises the Hong Kong Government, and a host of Public Bodies, including the Legislative Council, Executive Council, District Council, and boards and committees appointed by the Chief Executive or the Chief Executive in Council, or specified in the Prevention of Bribery Ordinance, such as public utilities companies, regulatory agencies and advisory committees on different policy areas, etc. Officers working in the public sector (Public Officers), are expected to uphold a high standard of integrity to carry out their duties in the best interest of the community, and are therefore subject to more stringent legislation than ordinary citizens in the private sector. Amongst the Public Officers, government officials, being civil servants, are, first and foremost, required to observe more stringent rules than the appointees to and staff of the public bodies.

Section 3 of POBO, which applies to government officials alone, is a blanket prohibition against all acts of soliciting or accepting advantage unless special permission has been granted by the relevant authority. This applies even if the act of soliciting or acceptance is unconnected with the officer’s official duty. Offenders are liable to a fine and imprisonment for one year.

Section 4 of POBO deals with bribery and it applies to both government officials and staff of public bodies. It prohibits them from soliciting or accepting any advantage offered as an inducement to or reward in connection with the performance of their official duties. Any person offering such an advantage also commits an offence. The requirement of “connection with official duty” means that the level of proof for conviction is much higher for Section 4 than Section 3, and so are the penalties. The maximum penalties for Section 4 offences are a heavy fine and imprisonment for seven years.

Section 10 deals with possession of unexplained property and, again, it applies to government officials alone. Section 10 stipulates that it is an offence for a government officer to maintain a standard of living, or to possess or control assets which are not commensurate with his or her official emoluments, unless he or she can give a satisfactory explanation to the court. This provision appears to be at variance with the notion of presumed innocence usually expected under the common law. However, it is time-honoured and has been

proven highly effective for use against hardcore corrupt officials believed to have been receiving bribes over a long time but whose assets could not be linked to any specific corrupt deal. The highest penalty for this offence is a 10 year custodial sentence plus fine and restitution.

Private sector corruption is governed by Section 9 of POBO which makes it an offence for any agent to, without lawful authority or reasonable excuse, solicit or accept an advantage, or any person to offer an advantage to an agent as an inducement to or reward for or otherwise on account of his or her (a) doing or forbearing to do, or having done or forborne to do any act in relation to his or her principal's affairs or business; or (b) showing or forbearing to show, or having shown or forborne to show favour or disfavour to any. The maximum penalties for Section 9 offences are a heavy fine and imprisonment for seven years.

The POBO is not bad law, but any law is only as good as it is enforced. Before the establishment of ICAC in 1974, fighting graft was the sole responsibility of the Anti-Corruption Branch (ACB) of the Hong Kong Police Force. The Head of ACB was an official three substantive ranks below the Commissioner of Police. The total strength of the ACB was no more than 200 (actual strength 178 against an establishment of 217), relative to the total police strength of 16,500 in 1974. Furthermore, the most notorious corruption suspects were found from within the police force at that time. No surprise, therefore, that the ACB's performance was less than effective.

In Hong Kong, the anti-corruption horizons changed definitely with the enactment of the "Independent Commission Against Corruption Ordinance" in February 1974. Notably:

- the ICAC Ordinance would have a Commissioner appointed, who, one of the non-politically appointed Principal Officers, would carry as much authority and be of a status equivalent to that of a full-fledged Policy Secretary or the Commissioner of Police;
- the ICAC was to operate independently. Independence means, as prescribed in the law, that the Commissioner of the ICAC "shall not be subject to the direction or control of any person other than the Chief Executive (the Governor of Hong Kong at that time)"; and
- right at its inception, the ICAC was given the legal powers, the policy support, and the resources it needed to pursue its tasks.

Initially the ICAC had 682 officers (actual strength 369), three times that of the Police Anti-Corruption Branch. As of today, the Commission comprises 1,360 officers, operating on a budget of HK\$701 million, approximately 0.3% of the Government's total expenditure.

IV. SUCCESS FACTORS

If there is a measure of success in the anti-corruption work of the ICAC, it should be attributed to the persistent and concerted efforts of the community as a whole. In taking stock of ICAC's experience in the past three decades, several factors are considered to be particularly important in our war against corruption. They can be interestingly summed up by the name – ICAC.

I for Independence – The ICAC operates independently from the rest of the government. Its independence is guaranteed by the Basic Law, our mini-constitution, which states that the Commissioner is directly accountable to the Chief Executive of the Hong Kong Special Administrative Region Government. This special status enables the ICAC to discharge its duties impartially, without fear or favour, and is instrumental in gaining the trust of the public.

C for Commitment – The Hong Kong Special Administrative Region Government has been firmly committed to the anti-corruption cause, and renders full support to the ICAC. In Hong Kong, there is strong anti-corruption legislation governing both the public and private sectors. At the same time, the ICAC is given adequate investigative powers to effectively enforce the law, and sufficient financial resources to discharge its duties.

A for Accountability – To inspire public confidence and support, the ICAC maintains a high degree of accountability. Since its inception, an elaborate system of checks and balances has been put in place. Central to this system is the establishment of independent advisory committees to monitor various aspects of our

work, including the investigation of each and every case.

C for Community Support – Last but not least, throughout its history, the ICAC has had the community's strong support as a major motivating force in fighting corruption. Ninety per cent of our corruption reports come from the public, and a majority of the complainants are ready to reveal their identities. The public's readiness to assist the ICAC is crucial to successful investigations and bringing the corrupt to justice.

V. CASE STUDIES

As mentioned earlier, the success of ICAC in Hong Kong is partly attributed to its rigorous enforcement actions. The following three cases offer a glimpse of its hard work in the past few decades.

A. Case 1 – Senior Government Counsel Bribery Case

In 1990, an acting Deputy Director of Public Prosecutions in the then Legal Department (now the Department of Justice) accepted bribes to pervert the course of justice due to heavy debts incurred from investment losses in a fruit orchard in New Zealand. Despite attempts to circumvent ICAC investigation and despite sneaking out of Hong Kong, he could not escape the long arm of the law. The doggedness and perseverance of ICAC investigators eventually brought him to justice.

The ICAC commenced its investigation after receiving intelligence from an informant. The ICAC found that assets of the former government counsel had jumped by more than HK\$1 million in one year while his annual official income was only around HK\$500,000.

After a three-month investigation, it was decided there was no point in delaying any longer since the former government counsel was handling several major commercial fraud cases at that time. To stop him from influencing the prosecutions of those cases, he and his accomplices - two private lawyers, were arrested. Though they were later released on ICAC bail, they were required to surrender their travel documents to the ICAC.

The news came as a shock to the legal profession and the general public. The government counsel, high-up in the top echelon of the Legal Department, was in charge of the Commercial Crime Unit of the department that advised on prosecutions relating to major commercial frauds in Hong Kong. The community was shaken to see such a senior official suspected of accepting bribes to pervert justice. The news also raised the eyebrows of British Parliament members who wrote to express their grave concern over the case and urged the Hong Kong government to ensure that the then Attorney General would handle the case impartially.

Making sure justice was done, the ICAC deployed a task force headed by an Assistant Director of Operations, and five other top investigators, to the investigation. Determined to uphold impartiality, the government appointed an independent lawyer from private practice to provide the ICAC with legal advice and assist in the prosecution of the case. And a two-year long daunting battle for justice was on.

The ICAC applied to the then Attorney General to suspend the former government counsel from duty pending further investigation and issued notices under Section 14 of the Prevention of Bribery Ordinance to require him to explain, within 28 days, where his financial resources had come from.

At that juncture, even though the ICAC had his passport, he looked relaxed, as if nothing had happened. He even told everybody he would return to his homeland shortly. It seemed he was confident of walking away from this. He exhausted every possible means to circumvent ICAC investigation. He even claimed that his arrest was a result of a personality clash with ICAC officers over a case he had handled with them earlier on.

Finding ways to get off the hook, the former government counsel first applied to extend the deadline of explaining his assets for another 28 days by claiming that most of his assets were outside Hong Kong. He then applied to the court to get his passport back to return to New Zealand to spend Christmas with his family. The court approved his application, but the ruling was overturned after the ICAC filed an appeal to the High Court.

The most difficult task for investigators was to unearth his assets that had already been transferred out to many different places overseas. The former government counsel even directed his solicitors and banks in New Zealand not to divulge any information relating to his financial status to anybody without his approval. Since the investigations had to be conducted in places that were beyond the jurisdiction of the ICAC, task force members had to overcome many hurdles and race against time to gather sufficient evidence before the expiry of the 56-day deadline. The ICAC investigators shuttled between different areas of New Zealand during the period to conduct extensive inquiries.

With the help of the New Zealand police, the ICAC investigators went to the culprit's orchard to search for evidence. Upon arrival at the orchard, it was found the culprit's parents had already burned all the bank statements, documents and correspondence of the culprit, leaving a huge area of burnt grass at the back of the orchard. But in one corner of a drawer of his parents' bedroom, investigators managed to find a cheque stub with the name "Berry Export" and a code written on it. With the stub, it was then possible to follow a trail of illegal assets covered up by the culprit.

Berry Export turned out to be a shell company used by the former government counsel to conceal his ill-gotten wealth. It was through this company he transferred, to Singapore, his first bribe to a bank account opened under the maiden name of his mother. With this crucial piece of evidence in hand, the ICAC task force was able to follow the asset trail.

After a three-week stay in New Zealand, the task force confirmed that the former government counsel had assets of more than HK\$16 million, including bank balances of NZ\$2.4 million, three lots of land in New Zealand and an orchard. The official emoluments in the 15 years he worked in the Legal Department came to about HK\$4.8 million. The way he covered up the ill-gotten gains was to bury the money in more than 25 bank accounts in different countries, including New Zealand, Australia, the United Kingdom, Taiwan, etc, under the names of relatives and Berry Export. The money was believed to have included the backhanders paid by the two lawyers in private practice in order to secure assistance from the former government counsel in getting their clients acquitted.

The discovery of Berry Export was a breakthrough in collecting evidence against the former government counsel. That was where the whole investigation turned. The former government counsel learnt from his family we had this piece of information in hand. He then realized he could not fool around any more nor could he cover up his corrupt practices.

At the scheduled day when the former government counsel was required to explain his financial resources, he did not show up. ICAC officers believed he had jumped bail and left Hong Kong.

Subsequent ICAC investigations revealed that he, with the assistance of a private lawyer who was an auxiliary police chief inspector, had fled to Huizhou on the Mainland via Macao. He then used a false passport to sneak back to Hong Kong from Guangzhou, and then flew to Manila. There was no extradition agreement between Hong Kong and the Philippines at that time.

Knowing there was no extradition agreement between Hong Kong and the Philippines, the fugitive government counsel was confident that he could remain free and then sneak back to New Zealand. Such smug calculations worked for only a while since the Immigration Department of the Philippines had already amassed sufficient information to plan the counsel's arrest.

The fugitive counsel, who had been lying low in the hills of Manila, was seen frequenting a bar in the city. The Philippines' Immigration Department, with the help of Manila police, arrested him at the bar on March 29, 1990.

Since the Philippines' Immigration Department was authorized by law to deport any person who entered the country with a false passport, the fugitive counsel was sent back to Hong Kong the day after his arrest.

When he arrived at the Hong Kong Airport under the escort of Philippine Immigration Officers, he was immediately arrested by ICAC officers, who handcuffed him and took him to the Central Magistracy under high security. He was then charged for failing to explain his source of income in accordance with the

Prevention of Bribery Ordinance and was put under ICAC custody pending a trial.

Weighed down by three months on the run, he looked relieved on his return to Hong Kong. He was very co-operative from the moment of arrest. He confessed the entire truth of how he received bribes and how he absconded. Owing to the additional evidence collated by the task force, he was charged with possessing financial assets disproportionate to his present or past official emoluments, contrary to Section 10(1)(b) of the Prevention of Bribery Ordinance. The total assets under his control were worth about HK\$16.1 million, including about HK\$2.3 million he held for a corrupt third party. Excluding loans and the official emoluments, the value of the unexplained assets came to more than HK\$12 million.

Wanting to reduce his imprisonment, he pleaded guilty and agreed to give evidence against other defendants as a tainted witness. He was then detained in the ICAC Detention Centre for debriefing the whole corrupt arrangement.

That was the first time a defendant was kept in the ICAC Detention Centre for a prolonged period to give evidence. The ICAC task force had foreseen the possibility that this arrangement would be challenged, so it had taken every preparation for this eventuality. Before he began to serve his sentence in the centre, the task force carried out a detailed comparison between the detention regulations and facilities of the Correctional Services Department (CSD) and that of the ICAC, and took all precautions to ensure the treatment of the former government counsel was the same as that of inmates at prisons.

After an almost two-year court battle, the two private lawyers, a barrister and a solicitor, were finally convicted of bribing the former government counsel with intent to influence the trial of court cases. They were sentenced to seven years' imprisonment. After an appeal, the barrister was further sentenced to an additional two years' imprisonment while the solicitor's sentence was remitted to five years.

Another solicitor, who had received the former government counsel in Macau and assisted him in his escape, was charged with helping the counsel to avoid arrest and prosecution. Convicted of perverting the course of justice, the solicitor was sentenced to four years' imprisonment. The former government counsel, who was earlier sentenced to eight years' imprisonment and was ordered to repay HK\$12 million to the government in restitution, was then sent to Siu Lam Prison to serve the rest of his sentence. He was given a one-year remission of imprisonment by the then Governor.

The former Chief Justice Ti-Liang Yang handed down the punishment and said "This case demonstrated the determination of the government in the fight against corruption and upholding the integrity of the judiciary. Regardless of how senior a defendant in his official position and whatever his nationality, the case will be dealt with impartially."

B. Case 2 – Short Piling Case

Hong Kong has a large population in a limited territory. This shortage of land naturally means, however, that land prices are high, and that people often have to lavish their lifetime's savings on buying an apartment. If a hard-earned apartment turned out to be substandard, the owner would be devastated. "Jerry-building" (substandard construction) for quick profit could turn people's dreams of owning a safe, comfortable home into a life threatening nightmare.

In 1997, Hong Kong embarked on a massive public works programme. Although Hong Kong's economy had been impacted by the Asian financial turmoil that began in October 1997, public housing construction remained intensive from 1998 on. A series of scams related to substandard works, including short piling, soon surfaced. In three years from 1998 to 2000, the ICAC initiated 142 prosecutions in cases of corruption and fraud involving substandard construction works.

Instances of non-compliance in construction works for public housing gradually came to light from 1999 on. In December 1999, a monitoring survey indicated abnormal foundation settlement at two buildings that were still under construction at a public housing estate. Experts were called in to carry out independent investigations. They found that out of 36 large-diameter bored piles for two buildings, only four met the requirements. Twenty-one were shorter than the prescribed length by two metres to 15 metres, while 11 were resting on soft mud instead of bedrock. In other words, an astonishing 90 percent or so of the bored

piles in these two buildings failed to comply with standards and the already extensive superstructure was being supported by the only 10 percent of bored piles that were fully compliant.

When the short piling was discovered, the two buildings had already been constructed up to their 33rd and 34th floors respectively. The case aroused huge concern in the community. Eventually in March 2000, the Housing Department (HD) announced that the two buildings would be demolished in the interests of safety. In this one incident alone, public funds amounting to some HK\$650 million had been squandered.

It is frightening to contemplate the fact that if the short piling had not come to light, as many as 656 households would have been placed in grave peril. The site was eventually turned into a leisure park.

1. ICAC Investigation

In October 1997, HD invited tenders for the necessary piling works from 27 contractors on their approved list. Company 'A', a known experienced construction industry contractor, was the successful bidder for the piling works of all five buildings.

The other main player in what would turn out to be a major scam was Contractor 'B'. In February 1998, Company 'A' subcontracted the works to Contractor 'B' immediately on being awarded the contract by HD. As the entity that had signed the contract with HD, Company 'A' should clearly have informed HD of the subcontracting arrangements which they had entered into. Yet they never once disclosed this arrangement. Throughout the entire construction period, the role of Contractor 'B' as a subcontractor was concealed.

Contractor 'B' began piling works at the site in February 1998 using a vibrator that did not have sufficient force to drive the temporary casings down to the founding level required by the contract. On top of this, the contractors were coming up against a number of soil problems.

In an attempt to arrest this soil collapse, Contractor 'B' purchased quantities of the proprietary soil stabilizer Super Mud (a chemical for strengthening the concrete) to reinforce those pile shafts without installing temporary casings. The use of Super Mud was not in the method statement for the works. Given the length of pile shafts without temporary casings, the Super Mud served little useful purpose.

In mid-June 1998, Contractor 'B' was troubled by financial problems and stopped using Super Mud. Although construction problems were mounting, Contractor 'B' continued to ignore them and forged ahead because the contract stipulated a fine of \$170,000 per day for any work delay. Since the soil collapse situation was never improved, the depth of many of the pile shafts was reduced, and as a result the related piles were shorter than stipulated.

Faced with a project riddled with problems, major delays and the prospect of a huge fine, Contractor 'B' took the final step of resorting to a number of blatantly illegal acts, which were later revealed in the operation, that they thought would cover up the non-compliant piling works.

After the severe short piling of these two buildings was discovered, HD reported to the ICAC in December 1999, suspecting corruption. Two weeks later, Company 'A' also reported to the ICAC, alleging that the works involved corruption.

HD told the ICAC that they would be holding a press conference on 9 January 2000 in order to calm public concern as quickly as possible. They said that they would use this conference to announce that they would be stopping the construction of the superstructure for the two buildings.

The ICAC realized that once this news broke, their investigations would be compromised to a considerable extent. They now had only 10 odd days to master all the intricate details of the case if they were to catch all the suspects in one dragnet.

Another hurdle which the investigators had to overcome was the intricate technical knowledge involved in construction works. They had to learn about pile construction procedures in particular and the essentials of the various processes, including checking methods. If the investigators could not learn the ropes in time, how could they ever hope to uncover all the fraudulent tricks?

To speed up the investigation, the ICAC temporarily attached a professional construction engineer working in the Corruption Prevention Department to the Operations Department. He proved a veritable walking encyclopaedia, providing prompt professional advice on a number of highly technical piling construction issues. Within days, the investigators were absorbing new knowledge of piling works. As the press conference loomed ever nearer, it was a real race against time.

On 8 January 2000, just one day before the press conference, the ICAC commenced arrest operations and searched a number of places in the territory for two consecutive days. A hundred investigators were deployed in the action, 21 search warrants were executed and eight persons were arrested, including three HD officers, two ex-directors and three staff members of Contractor 'B'. They were alleged to have committed corruption and conspiracy to defraud by using short piles to save construction costs in relation to the foundation works. During the operations, the ICAC seized a large amount of documents and exhibits. Four shipping containers were needed to hold the substandard concrete cores alone.

The investigators had to interview all the suspects and witnesses and examine the seized documents, progress records, and test records all within a very short space of time. The records seemed flawless, however, and the investigators realized that they would now have to search for clues by reading between the lines.

The short piling scam mainly involved three people who quickly became known as the "Contractor 'B' Trio"—two ex-directors of Contractor 'B' together with the site agent who was responsible for overseeing the foundation works.

During interrogation, the two ex-directors and the site agent put forward various excuses and denied the allegations. The site agent as well as the HD staff members, however, agreed that they had lunched together but that all the lunch bills had been properly recorded. For convenience' sake, these bills would first be settled by Contractor 'B' and the HD site staff would later pay for each meal on a monthly basis. They had played mahjong once and also twice visited karaoke bars together, sharing the costs among them. They strongly denied any corrupt dealings and said this had nothing to do with any short piling.

There was insufficient evidence to support the alleged corruption. The ICAC investigation could still move forward, however, because, pursuant to Section 10(5) of the ICAC Ordinance, if an investigation into corruption leads to a suspicion that other offences (such as conspiracy to defraud) may have been committed, the ICAC has the legal power to continue pursuing such a lead.

It soon came to light that some of the site staff were aware of construction irregularities during the seven months when Contractor 'B' was in charge of the work. A site foreman employed by Contractor 'B' told an ICAC investigator that, because the project was progressing so slowly, he had been instructed to drive the temporary casings to a depth of only 20 to 30 metres below ground, rather than to founding level. He also said that he knew that two ex-directors of Contractor 'B' had ordered the workers to use Super Mud to stabilize the walls of excavated shafts without installing temporary casings for support.

The site foreman also pointed out that a few months after construction started, two to three lorry loads of concrete were left over after workers had cast the concrete into two pile shafts. This was unusual because the volume of concrete ordered ought to have matched the amount required to create piles of the prescribed depth. Such a large excess could mean only one thing: the pile shafts were shorter than prescribed, and so could not hold the correctly ordered amount of concrete.

An engineer stated that the two ex-directors and the site agent had told him to have workers shorten the measuring tape that would be used to measure the actual length of the pile. This became known as the "magic measuring tape."

One piling worker revealed that this young engineer had asked him to drill the pile to at least 40 metres when taking core samples. When the worker reported that the drilling had been impeded by blockages within the pile, the engineer instructed him to tidy up the drill hole and shorten the tape before HD staff measured the length of the pile.

In line with the contract, Contractor 'B' employed a quality control engineer to inspect every item of works to ensure compliance. The quality control engineer told ICAC investigators that he was supposed to conduct quality control at the site, but in fact spent most of his time at another construction site of Contractor 'B'. He admitted that he had signed a number of confirmation documents without having actually checked the quality of the works. He was merely a rubber stamp.

Although the staff of Contractor 'B' had revealed their modus operandi, the two ex-directors who had masterminded the scam were loud in their denials. The site agents, who had been involved in yet another short piling scam, had been found guilty of one count of conspiracy to defraud. Thereafter, the site agent told the ICAC through his lawyer that he was willing to testify against the two ex-directors concerning this case.

Similarly, the site foreman and the assistant engineer also became tainted witnesses, and testified in the case.

The case was heard in the High Court. In sentencing, the judge pointed out that the conspiracy to defraud engaged in by the two ex-directors had caused HD to lose a huge amount of public funds. He said that the cover-up of substandard piles by the defendants was detrimental to the construction works and endangered the public. Further, deterrent sentences had to be handed down because, given the limited land resources in Hong Kong, members of the public could well invest their life savings in housing.

In the end, the two ex-directors were convicted of one count of conspiracy to defraud and sentenced to 12 years in jail.

Nine HD staff members failed to perform their duties at the site. During the construction period, three HD site officers turned a blind eye to the non-compliance of foundation works. They approved the works without checking properly and failed to report progress to the project engineer. Disciplinary action was taken against them by the Civil Service Bureau. The other six staff members were transferred to other posts.

Company 'A' had dishonestly subcontracted works to Contractor 'B', which was not an approved contractor on the HD list, and they had not stationed a representative on site to supervise the construction works. When Company 'A' took over the project from Contractor 'B', they continued to employ the same team to manage the project, thus further covering up their malpractice.

HD took punitive action against Company 'A', including permanently delisting Company 'A' from its list of approved contractors for constructing large diameter bored piles and demolition, and prohibiting its sister company from undertaking any works for HD for two years.

The Government was deeply concerned about the short piling scam, and set up an independent committee to critically review the whole issue. The committee published its report on 25 May 2000 and recommended a number of improvement measures.

2. Responsive Measures

The Corruption Prevention Department of the ICAC, in conjunction with HD and related Government departments, subsequently formulated anti-corruption preventive measures to plug loopholes. These measures included:

(i) *Strengthening of Works Supervision*

A works supervision plan should be formulated before the commencement of works. Under the plan, professionals should be involved in monitoring major procedures and the frequency of inspections should be specified. All records relating to the works should be properly maintained.

(ii) *Specifying Testing Procedures*

Testing procedures, including how tests should be monitored, how frequent they should be, and the detailed nature of samples for testing, should be clearly specified. In particular, tight controls should be implemented over the extraction of samples and their secure storage and transport.

(iii) *Monitoring Subcontractors*

Contracts should include probity clauses covering such matters as codes of conduct and guidelines on

conflicts of interest. The terms of the contracts should be so phrased as to deter main contractors and subcontractors from turning to corruption and malpractice.

(iv) Enhancing Staff's awareness of Corruption Prevention

Site supervisors' understanding of the Prevention of Bribery Ordinance should be improved and their ethical standards enhanced.

To tackle the series of short piling scams that had come to light since 1999, the ICAC set up a 45-man task force in February 2000 to investigate reports of corruption involving short piles and jerry-built construction works. The aim was to seek to begin investigations as early as possible so that timely remedial measures could be taken before it was too late.

The number of corruption reports received by the ICAC concerning the construction industry has dropped since 2002, from a high of 295 reports in 2001 to 114 reports in 2007. This decline indicates that positive progress has been made in building a culture of integrity in the construction industry.

C. Case 3 – A Hong Kong Listed Company Case

As an international financial centre, the probity of Hong Kong's stock market and financial institutions is extremely important. Any attempt to undermine the integrity of the financial markets has an enormous impact on the well-being and prosperity of our community. Allegations of bribery and corruption in listed companies, especially where senior management are involved, are particularly difficult to investigate due to the complicated accounting and paperwork trails that need to be examined in order to collect enough evidence for a prosecution.

This case concerns a corruption allegation against the senior officials of Company 'K', a listed company in Hong Kong. Company 'K' was the third largest television manufacturer and had over 200 sales offices in mainland China. Its market capitalization was worth over HK\$4 billion at that time.

The key persons in this case are two brothers, respectively the chairman and an executive director of Company 'K', and their mother, Madam Lo.

In January 2001, Company 'K' issued a cheque for HK\$500,000 in favour of a Mr Wong. The payment voucher and accounting records disclosed such payment as "consultancy fee". The cheque and payment voucher were signed by the chairman.

During the same month, the executive director signed a four-year service contract on behalf of Company 'K' with retrospective effect from November 2000 with Wong for procurement of business for Company 'K'.

Under the contract, Wong was entitled to receive a commission of 1% of the procurement amount and share option (a right to buy the shares at a fixed price, usually below the market price of the shares) of 25 million shares of Company 'K' exercisable in four years at a price which was one-sixth of the share price of Company 'K' at that time. Between April 2001 and May 2003, Company 'K', through a bank account in Macao, paid Wong over HK\$50 million by 10 cheques.

The investigation, including a fund tracing exercise, revealed that most of the money ended up in the bank accounts held in the name of Madam Lo, after being laundered through a convoluted route. The proceeds of a HK\$500,000 cheque payment, after depositing into Mr. Wong's bank account, which was controlled by Madam Lo, were either withdrawn by Madam Lo or transferred to bank accounts of the former chairman and Madam Lo.

The HK\$50M in Mr. Wong's bank account in Macao was transferred to bank accounts of Madam Lo and accounts in Mr. Wong's name held with securities trading companies controlled by Madam Lo as well.

The share options were deposited into Mr. Wong's securities trading account and sold at the market at threefold its original price. At that juncture, there was evidence to show that the chairman and executive director might have, through the corrupt assistance of Mr. Wong, stolen money from the company.

An operation was then mounted. The chairman and the executive director remained silent while Madam Lo was not in Hong Kong. Mr. Wong admitted that he was not an employee of Company 'K' and did not receive any commission, consultancy fee or share option. He only worked for Madam Lo to deal with rental matters at a monthly salary of HK\$10,000.

During the search of Madam Lo's residence in Hong Kong, cheque books pre-signed by Mr. Wong were found. Mr. Wong claimed he was told by Madam Lo to sign the cheque books and the service contracts without knowing the contents.

The chairman and the executive director were later charged with conspiracy to steal and conspiracy to defraud in respect of the consultancy payments made from Company 'K' to Mr. Wong's accounts, purely based on circumstantial evidence.

The trial, which lasted for over six months, involved expert witnesses on China's legal system from both prosecution and defence, owing to the defence case that two former high ranking Chinese government officials were appointed as consultants for Company 'K' but they were unwilling to sign a service contract or to have their names revealed in the contract.

The defence produced a number of documents to support their case, including a series of handwritten letters written by the former officials to the chairman to prove their employment during the material time.

The defence also made reference to an agreement signed by one of the former officials and Madam Lo, in the presence of a lawyer, Mr. Xin. The agreement purported to support the defence case and protect the two former officials in getting rewards from Company 'K'.

The defence also revealed that the two former officials travelled from the office of Company 'K' in Hong Kong to the lawyer's office in Shenzhen, China, on 11 January 2001, to sign the agreement.

With the testimony of the expert witness, the defence case appeared to sound reasonable under the Chinese legal system and made it a perfect defence.

The relentless efforts of the prosecution team uncovered two pieces of questionable evidence tendered by the defence. One concerned a letter sent by one of the former officials to the chairman dated 10 April 2001.

The authenticity of the letter itself could not be challenged. However, the manufactured date of the envelope containing the letter was found to be January 2002.

It was also transpired from the passport of one of the former officials that he left Shanghai, China and travelled to the United States of America on 3 January 2001 and did not return to Hong Kong or China until 15 January 2001. This movement record made it impossible for him to be present in the meeting of signing the agreement on 11 January 2001.

The trial judge cast doubts on the evidence adduced by the defence and eventually convicted the chairman and executive director who were both sentenced to six years' imprisonment.

When handing down the verdict, the trial judge commented that it was one of the most serious commercial crimes of its nature, dealing as it does with the privileged position that both defendants had betrayed their obligations to the company and its shareholders in the most grievous ways.

VI. CORRUPTION AS A LUBRICANT OF CRIME

The Hong Kong legislation against business corruption is relatively straightforward. It is stipulated in Section 9 of the Prevention of Bribery Ordinance, as mentioned in paragraph 44 above, that any secret commission, kickback, or other advantages given to, or solicited or accepted by an agent without his or her principal's consent would be an offence. In reality, the battle against business corruption is never that simple. Corruption, by its very nature, is normally interwoven with other criminal activities. As illustrated

in the last case study, they are all facilitated by corruption in one form or another.

In a “traditional” corruption related crime scenario, the role of corruption would have been quite clear. A suspect may offer advantages to individuals who are in a position to help him or her to achieve a particular goal which, in the context of economic crime, would be some kind of fraud or malpractice aiming at obtaining private gain or causing loss to others. The corruption acceptor, more often than not, is not a participant of the fraud or malpractice, i.e. he or she would only provide a service upon accepting a reward but that whether or not the offeror eventually achieves his or her goal would not be of the acceptor’s concern. This scenario can be conveniently termed as “service-based corruption.”

As time passes, the role of corruption is now very much blended with the fraudulent scheme, that is to say, corruption becomes part and parcel of the criminal activities as a whole. In the scenario of a modern economic crime, participants of which often include professionals such as legal practitioners, accountants, or others with in-depth knowledge of a particular field, each of whom would provide advice or put up efforts to assist the mastermind of the criminal plot to achieve his or her goal. In doing so, they are promised advantages not on a piece-meal or service basis, but that rewards would be conferred upon the success of the plot, i.e. they become a member of the criminal syndicate and share the ill-gotten gain as and when the plot succeeds. Corruption in this kind of scenarios can be termed “entrepreneur-based”. Had their criminal activities been successfully checked by the authority and the whole group of suspects brought to justice, they would likely face some kind of global charges of conspiracy to defraud or other related offences rather than corruption. In such scenarios corruption only serves as a lubricant to facilitate the smooth operation of the plot but does not sufficiently reflect the criminality of the suspects. This changing role of corruption in crime has rendered detection increasingly difficult, as the suspects would be in a much more cohesive relationship than those in the “service-based” cases.

VII. KEY TO SUCCESS

As emphasized by the former United Nations Secretary General, Mr Kofi Annan, who said at Palermo on the occasion of the opening of the United Nations Convention against Corruption for signing, “if crime crosses all borders, so must law enforcement.” One key factor attributed to the success of the above investigations is the excellent international co-operation between law enforcement agencies to help trace corrupt proceeds and locate fugitives. Another key factor is to foster public support – both in terms of intelligence provided for investigation and confidence in the organization as a whole.