

Hong Kong's Fight Against Corruption Has Lessons for Others

By Anna Wu

Hong Kong is a success story in its fight against corruption. It now has a credible and effective Independent Commission Against Corruption, a clean and transparent administration and an efficient and competitive business environment. A three-pronged approach through enforcement, prevention and education was adopted over the last three decades to fight corruption and the transformation has been tumultuous.

This success is recognized internationally. It is important for emerging economies, in particular, to see that corruption can be rolled back and that clean government and freedom to compete are the engines of growth. As the economies in mainland China and Hong Kong become more interrelated, there is continuing need for ICAC and the mainland China authorities to share experience and strategies and to increase collaboration.

In the 1950s and 1960s, corruption was fuelled by the massive influx of immigrants from mainland China which stretched all public resources and the regulatory systems to the limit. Bribing officials for priority treatment was common and corruption was endemic. It was a way of life. Paying “tea money” for services was regarded as a “custom” and not bribery.

Mrs. Lee, now in her late 60s, remembers the endless tipping when she was in a public hospital giving birth to her child. The hospital charged two Hong Kong dollars a day, so did the amahs, at every twist and turn. On the way to the delivery room, the amahs might change hands at each corner and another two dollars would be needed.

The collection and distribution of bribes were institutionalized in the police force. The saying was that once you joined the Police Force, you would find money in your drawer. Every form of public service was affected. The ambulance person would demand tea money before picking up a sick person. Firemen would negotiate payment before turning on the water hose. Restaurants not paying a bribe would find themselves in a long uncertain wait for licenses. Unsafe buildings would be certified fit for occupation through the back door.

Anti-corruption law was first enacted as early as 1897 but, for a long time, the police were expected to investigate themselves. As it happened, the police themselves were in control of syndicated corruption, both within and outside the force. They sheltered vice, gambling and drug establishments. Reporting corruption to the police was dangerous since, very often, informants and complainants were often fearful for their lives as they did not know if the person receiving the report was himself corrupt.

The trigger point came when Peter Godber, a Chief Superintendent of Police who was under investigation for suspected corruption fled to the United Kingdom in June 1973. This

enraged the public and students took to the streets. The “Fight Corruption, Arrest Godber” campaign started.

The ICAC was established on February 15, 1974 by Governor Murray MacLehose. A year later, Godber was extradited to Hong Kong and imprisoned. By July 1977, the Commission was able to report to the governor that no major corruption syndicates were known to exist within government.

However, a few months later, in November 1977, off-duty police officers stormed the ICAC headquarters in protest. They demanded an amnesty. To defuse this crisis, an amnesty, excluding heinous crimes and a few other exceptions, was given for offenses committed before January 1 1977.

In the aftermath of the attack on the ICAC, the government quickly moved to clean up the police and to build public respect for the force. Measures were put in place to attract a new crop of younger and cleaner officers.

Throughout the years up to and beyond the transfer of sovereignty in 1997, the ICAC has continued to enjoy independence from the government. The commission has the authority to appoint, manage and dismiss staff. All allegations of corruption and related criminal offences against ICAC officers are investigated by a special unit in the ICAC that acts on the advice of the Secretary for Justice and the Operations Review Committee, which consists of members appointed by the Chief Executive.

The Commissioner is appointed by the Chief Executive and is accountable to him and him alone. The ICAC reports regularly to the Executive Council and tenders formal reports to the Legislative Council. Article 57 of the Basic Law, the mini-constitution of Hong Kong, entrenches the role of the ICAC as an independent body accountable to the Chief Executive.

The first Commissioner was Sir Jack Cater, who became the Chief Secretary after he left the commission. His successors included both retired and serving civil servants. The last commissioner appointed by the British colonial government and the three Commissioners appointed since 1997 have all been serving civil servants. Two returned to the civil service, one became a Secretary—the equivalent of a minister, a political appointment—and the fourth is still in office.

Without a doubt, these were all exemplary individuals respected for their integrity. However, the political landscape in Hong Kong has changed dramatically in recent years and the community is becoming more and more demanding on issues of accountability and transparency. The policy of appointing civil servants as commissioner, especially someone who would be returning to the civil service, warrants review.

Allegations of election corruption, conflict of interest; misuse of public funds and resources by politicians and officials, favoritism, cronyism and collusion between big business and government are not infrequently made.

These are all within the remit of the ICAC. The commission is also often called upon to set up preventive measures on major projects. These could be anti-corruption strategies for government departments or examination of work procedures or tendering and procurement exercises to remove corruption - prone areas. ICAC’s involvement in corruption prevention

for the Chek Lap Kok airport construction is one example and it is likely that it will become involved in all future major public-private partnership projects.

As the system of government evolves, the executive arm of government will become increasingly politicized. The Chief Executive will become more and more involved in election politics and the ministers are assuming political accountability. The Chief Executive himself has volunteered to be covered under new anti-corruption laws. This makes it even more important for the Commissioner to transcend politics and government.

The core complainants in the early days of the ICAC were predominantly victims of corruption. Confidentiality of the complainant's identity, protection of witnesses and the power to receive anonymous complaints contributed significantly to the success of the ICAC. It is bound to investigate all complaints received and cannot waive or drop investigations save where a complaint is not pursuable, is not within its jurisdiction or is not substantiated.

In the early years, about two-thirds of the reports were anonymous. This has now shrunk to under one third, reflecting a much greater degree of public confidence. In recent years, public confidence in the ICAC has been consistently high. The profile of reports has changed from complaints primarily against public sector officials to increasing complaints about corruption in the private sector.

Socio-economic factors have produced different types of corruption at different times. The flood of illegal immigrants from mainland China and Southeast Asia in the 1960s resulted in bribes by those desperate to remain in Hong Kong. Another form of corruption stemmed from the massive public housing scandals in the 1970s caused by the 'build cheap and build quick' syndrome as putting up low cost housing was a top priority. When the Hong Kong economy started to become buoyant in the 1980s, there was a surge in illegal rebates, commercial fraud and finance-and-bank-related corruption. And, in the 1990s when there was a bubble economy, the over-heated construction market again led to scandals and corruption. Different circumstances provided different backdrops to different forms of corruption but they were all grist for the ICAC's mill.

As cross border trade and human traffic increased between Hong Kong and mainland China and elsewhere, jurisdictional problems arose with the need to gather evidence and locate witnesses as well as hunt down suspects both inside and outside Hong Kong. These are made more problematic when crime, like trade, has gone global and high tech.

Cooperation with the mainland began in the 1988 with the mutual case assistance scheme. This provides reciprocal aid in gathering evidence and securing witnesses. Significant cases have been cracked through cooperative efforts on this basis. However, this is an administrative measure and not a legal or juridical framework. Hopefully it will not be too long before this arrangement is formalized and put on a proper legal footing.

As the corruption trends changed over the years, the ICAC's public education efforts also changed. In the early years, they were focused on the evils of corruption and encouraging citizens to report public sector corruption. From the 1980s on, campaigns focused on business ethics and the need for a level playing field as a result of the surge in private sector corruption.

The ICAC's remit is confined to investigation—decisions on whether to prosecute are taken by the Department of Justice. The commission has five oversight and advisory bodies which offer advice on overall policies of the Commission as well as provide oversight to its three functional departments—operations, prevention and community relations.

The Operations Review Committee monitors all ICAC investigations. No investigation may be terminated without its approval. It receives status reports on all cases and monitors investigations, people on bail and court cases. The Committee directs follow up investigations and referrals of cases which can include advice for internal disciplinary actions or administrative reform.

Over the years, ICAC cases have exposed major areas of risk.

The Yaumati fruit stalls case in 1978 resulted in 26 retired and serving civil servants being charged with accepting bribes of HK\$10,000 per day to protect drug trafficking activities in the district.

In 1982, 26 public housing blocks built in the 1960s and 1970s were found to be substandard. Conviction was secured on the evidence of a former employee of a construction company who had helped distribute bribes at the time.

The Carrian case, exposed in 1983 and concluded in 2000, was the biggest corporate collapse in Hong Kong involving loss of HK\$6.6 billion. It involved the murder of the internal auditor of the Malaysian government's Bank Bumiputra, sent from Kuala Lumpur to Hong Kong to investigate questionable loans advanced by its Hong Kong finance company to Carrian. The chairman of the finance company fought extradition from the United Kingdom for seven years. The chairman of Carrian, the chairman of the Bank Bumiputra's finance company, its director and alternate director ultimately pleaded guilty to corruption and fraud offences.

The Overseas Trust Bank was on the brink of collapse in 1985. Bad debts ran into HK\$700 million and the government stepped in to avoid a run on banks. ICAC investigation resulted in the bank chairman, the chief general manager and the senior general manager all pleading guilty to corruption and fraud offences.

The chairman and committee members of the Hong Kong Stock Exchange were involved in "biscuit sharing"—acceptance of preferential allocation of shares for listing of companies. This was exposed around the time of "Black Monday"—the global stock market crash on 19 Oct 1987. Ronald Li, the then chairman, was arrested and subsequently convicted and imprisoned for corruption together with others.

In 1989, Warwick Reid, Deputy Director of Prosecutions of the Legal Department, now known as the Department of Justice, was suspected of accepting bribes and thwarting ICAC prosecutions. He was jailed for 8 years and ordered to surrender HK\$12 million.

In 1999, 24 persons were charged for letter of credit scams in relation to Guangnan (Holdings) and its subsidiaries, a listed group in Hong Kong backed by the Guangdong Provincial People's Government. Sixteen were convicted. Warrants against 25 persons are still outstanding and a mainland citizen was convicted in 2003.

Many of the court cases have resulted in systemic change in governance. From institutionalized corruption, Hong Kong has moved on to institutionalizing ethics through corporate governance, transparent procedures and ethical practices.

In 1978, the ICAC pioneered the concept of Supervisory Accountability which required the supervisors to take responsibility for their subordinates' grave blunders and repeated mistakes. This resulted in better accountability and monitoring of the civil service.

The ICAC now sits on the Police Force Anti-Corruption Strategy Steering Committee to advise on strategies to foster integrity. After the substandard piling scandals of the construction industry in the late 1990s, the ICAC introduced a series of corruption prevention measures. Through the joint efforts of the ICAC and the banking industry, the Banking Ordinance was amended to prohibit directors from taking any action with an intention to defraud, or accepting advantages as rewards for inducing the bank to approve loans. In 1995, the ICAC and six major chambers of commerce in Hong Kong collaborated in the setting up of the Hong Kong Ethics Development Centre to provide ethical management consultancy services to local enterprises.

An important component in the ICAC arsenal of powers is the offence of unexplained wealth. The burden is on the civil servant to explain his wealth and his standard of living if it is not commensurate with his official earnings. This legal device enables the ICAC to deal with cases where substantial bribes received cannot be linked to a specific act of corruption.

On May 26, 2005, the Court of Final Appeal confirmed the conviction of Sin Kam Wah, a senior superintendent of police, for misconduct in public office. He accepted sexual favors as a public officer in command of one of the departments of the police tasked to investigate vice offences. The first instance court judge stated, "It is the clearest of cases of 'keeping sweet' corruption where advantages are given to someone in authority, without asking for a quid pro quo at the time the advantage is given, but building a store of goodwill to provide a basis for future corrupt demands."

Corruption by nature is secretive and conspiratorial. Rarely would there be an untainted witness. The special provisions relating to unexplained wealth and the common law crime of misconduct in public office capture those who would otherwise fall through the cracks. The advantage of the common law offence is that it is adaptive to change and is built on the fundamental tenet that a public officer must not abuse his authority.

A recent challenge for the ICAC is the court decisions on the lack of legal basis to conduct covert surveillance. This has resulted in several court failures for the ICAC. Ever since 1997, the government had been urged to put its house in order. The judgment of the case involving Leung Kwok-hung, a legislator and activist known as "Long Hair," brought against the Hong Kong government, was issued on 2 Feb. 2006. The court made it clear that covert surveillance and interception of telecommunications in Hong Kong was inconsistent with the basic constitutional guarantees of privacy and freedom of communication. In an unprecedented move, the judge suspended his own judgment for six months to allow the government to bring in new legislation. But the question is: Can a judge make legal, even for six months, a situation that he himself declares to be illegal? This aspect of the judgment is currently under appeal.

Anti-corruption work must be backed up by resources and unflinching political commitment from the top to reform the administration. Hong Kong had to pay a price by granting an amnesty to the police in the early years. Ironically the amnesty provided a break from the past so that Hong Kong could move on. Also required was a reliable legal system. Without robust prosecutions and balanced judgments from the courts, ICAC investigations would come to naught.

The ICAC was established to create and maintain a level playing field and to prevent the subversion of the public interest through the abuse of power. Embodied in the work of the ICAC are the values of transparency, due process and fair play. These are the norms of justice and of accountability of the administration and they underpin economic development.



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