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The Hong Kong Anti-Corruption Model

Introduction

On the occasion of this seminar that marks the opening of the Centre of Anti-Corruption Studies I am indeed grateful for this opportunity to share with you the anti-corruption model in which we operate in Hong Kong; how this model has stood the test of time to fight corruption in this dynamic city and how we believe it will continue to do so far into the future.

I believe that for any anti-corruption agency to function it must first recognize the nature or the form that corruption takes and how it manifests itself within their society and ensure that it is equipped with the necessary statutory support and possess, in due proportionality, sufficient powers under which to act. It is pertinent to examine an anti-corruption set up in the context of the environment in which it comes into existence and operates.

Environment

The strong public demand

Before 1974 Hong Kong was plagued with corruption. It was rampant within the police and other disciplined services. It permeated all walks of life in the community of Hong Kong. It was a corrupt society that strangled free enterprise and made a mockery of government. The last straw came in 1973 when a senior police officer, Chief Superintendent Peter Godber, who fled Hong Kong while under investigation for corruption. The public perceived that he managed to do so only with corrupt assistance. Public demand for action against corruption turned hostile as thousands of citizens took to the streets to openly protest against the corrupt regimes they were forced to endure. The government had no choice. It had to act.

Government response

A Commission of Inquiry was established under the chairmanship of a senior judge and was tasked to investigate the Godber incident and to make recommendations on how to stem the tide of corruption.

Prior to the Commission of Inquiry the corruption scene, especially within the then Royal Hong Kong Police was likened to a bus –

> "Some got on the bus, others ran alongside it yet very few stood in front of it".

This was how some police officers would describe corruption in the force. It would probably start with an officer finding some cash inside his personal locker. Then it was up to him. He could quietly accept it and tacitly get on the bus of corruption, or he could if he refused to accept the money, mind his own business and quietly run alongside the bus. But worst of all he could stand in front of the bus, that is to stand up and report corruption. It was simply suicidal in job terms for him to do that and an invitation to victimization.

This Commission of Inquiry recognized the seriousness of the corruption problem in Hong Kong and the inability of the police to deal with it. It recommended that the task of investigating corruption be removed from the police and placed under the control of an independent agency. The Independent Commission Against Corruption (ICAC) was formed as a consequence.

The Hong Kong Anti-Corruption Model – New Institution, New Strategies

A. Political Will

For such a new organization to exist and to be effective, political will of the government to eradicate corruption is most important. In the early days there was a strong opposition force from those who regarded the ICAC as a second police force. Such sentiment was prevalent within the police and the hostility which was generated from our vigorous enforcement action had subsequently led to a 'revolt' by hundreds of policemen. Threatening to go on strike they chose to attack the ICAC headquarters. This led to a partial amnesty announced by the Government in November 1977. There was public perception that the government's determination to fight corruption was compromised as reflected by the significant drop in corruption reports made to the ICAC. It was also a severe blow to the morale of those who devoted themselves to the career of combating corruption.

It took some time for the momentum to be picked up again. And it was only possible with continuous government support, which included sufficient funding for the organization.

B. Good Law

The ICAC was established on 15 February 1974 with the enactment of the Independent Commission Against Corruption Ordinance. Being a statutory body, it was given an independent status in that the Commissioner, ICAC is answerable to the Chief Executive (CE) only. The Commissioner has the statutory responsibility to fight corruption through investigation, prevention and education. This holistic approach, or the 'three-pronged' strategy entails the work of the three functional departments namely the Operations Department, the Corruption Prevention Department and the Community Relations Department.

Investigation

The ICAC Ordinance and the Prevention of Bribery Ordinance provide members of the Operations Department with the necessary powers of investigation into corruption and related offences. Mr Ian McWALTERS, Deputy Director of Public Prosecutions in his presentation yesterday afternoon explained in detail the laws on bribery in Hong Kong and I do not intend to repeat them. Suffice it to say that our law tackles corrupt practices both within the public and private sectors. This comprehensive approach turns out to be effective and necessary as society develops the public expectation of a clean government and a level playing field in the conduct of business co-exists. In dealing with bribery, our law criminalizes both the act of the giver and the acceptor with equal punishment. This is absolutely essential if we are to instill and inculcate a culture of probity within our community. In investigation, the Commissioner is obliged by law to receive complaints alleging corrupt practices and investigate those which are practicable to pursue. He is expected to fight corruption without fear or favour regardless of the background, nationality or social standing of the alleged corrupt.

In view of the secretive and conspiratorial nature of corruption and bribery, the law gives us special powers of investigation which include, among other things, compelling a suspect or a third person to provide information under certain conditions. In recognition of the difficulty in bringing the corrupt to justice and to ensure public confidence in the ICAC, there are provisions which include legal presumptions and protection of confidentiality including the identity of a subject of investigation and the details of investigation.

Prevention

Whilst a strong deterrence against the corrupt is created through vigorous enforcement, our Corruption Prevention Department seeks to tackle corruption at source by proactively engaging government departments and the commercial sector to review procedures and practices conducive to corruption. They make recommendations, in the form of corruption prevention assignment reports, to plug corruption loopholes which are usually identified during the course of corruption investigation.

Education

In embarking on what was regarded as a 'Quiet Revolution', our Community Relations Department is tasked with the promoting of the image of ICAC as an independent and determined anti-corruption body and to ostracize the corrupt by instilling a culture of integrity in the community. They achieve this through various programmes that educate the public against the evils of corruption and by fostering and enlisting their support in reporting corruption. A popular publicity programme is the screening of the ICAC Drama Series with stories based on completed ICAC cases.

C. Professional Staff

While the most important asset of an organization is its people, it is particularly true for an anti-corruption organization as the senior judge who headed the Commission of Inquiry has aptly put it:

> "To combat corruption, good laws and good organization are essential, but I put my trust principally in the services of sound men."

Over the years, the ICAC has developed a comprehensive system of training for its officers at different levels from the three departments. In response to new demands for our investigators, specialized training is provided to them such as computer forensics and forensic accountancy. As a progressive agency, we greatly treasure the opportunity for experience sharing with our counterparts in other jurisdictions, through organizing international command courses and hosting international conferences. For your information, the ICAC will be hosting the 4th ICAC Symposium in December this year.

D. Checks and Balances

Given our independent status, our special powers of investigation and the legal provision to protect confidentiality of our investigation, one may wonder – "What watches the watchers?" There is indeed a set of checks and balances on the work of the ICAC, as follows:-

(i) ***Executive Council***

It represents a board of top advisers for the CE. The Commissioner, ICAC while directly answerable to the CE, is required to report to the Executive Council on major policy issues.

(ii) ***Legislative Council***

Apart from scrutinizing legislation affecting the ICAC, the legislature requires the Commissioner, ICAC to submit annual report to the Council and to answer questions on policy and funding matters.

(iii) ***Department of Justice***

The ICAC conducts investigation and the Secretary for Justice decides on prosecution, having regard to sufficiency of evidence and public interest. This separation of investigation from prosecution ensures objectivity in prosecution decisions.

(iv) ***Independent Judiciary***

The rule of law is supreme in Hong Kong. It represents the cornerstone of justice without which our anti-corruption work could not have gone off with a successful start in the early years. Throughout the years, the court acts as an independent arbiter in striking the right balance between enforcement needs and the protection of rights of an individual. No doubt public confidence in the ICAC can be reinforced by our being able to demonstrate the lawfulness of our actions.

(v) ***Media Support and Scrutiny***

I mentioned to you earlier about the 'Quiet Revolution' involving a cultural change from acceptance to intolerance towards corruption. The support of the mass media is necessary to enhance social awareness and to promote the image of the ICAC. That aside, the mass media also provides an

effective public scrutiny over our investigative work, in cases where legal challenges are raised in court regarding the legitimacy of our actions, which invariably carry prominent press coverage.

(vi) Advisory Committees and Independent Complaints Committee

Central to the system of checks and balances is the engagement of the community in overseeing our work through the four Advisory Committees —

a. **Advisory Committee on Corruption**
The Committee advises the Commissioner, ICAC on any aspect of the problem of corruption in Hong Kong. It includes review of policy issues concerning the ICAC, disciplinary action taken against its officers, considering annual budget and reporting to the CE any aspect of the work of the ICAC or any problem encountered by it.

b. **Operations Review Committee**
In a nutshell, the Committee receives from the Commissioner, ICAC information on all complaints of corruption made to the ICAC and the manner those complaints are dealt with as well as reports on corruption investigation.

c. **Corruption Prevention Advisory Committee**
The Committee mainly receives reports from the Commissioner, ICAC about practices and procedures of government departments, public bodies and the private sector which may be conducive to corruption and advises the Commissioner what areas should be examined and the degree of priority to be accorded to each.

d. **Citizens Advisory Committee on Community Relations**
This Committee mainly advises the Commissioner, ICAC measures to be taken to foster public support in combating corruption, to educate the public against the evils of corruption, and to monitor community response to the Commission's work and public attitudes towards corruption in general.

e. **ICAC Complaints Committee**
Last but not least, the ICAC Complaints Committee monitors and reviews the handling by the ICAC of non-criminal complaints against the ICAC and its officers. To enhance the transparency and accountability of the Committee, the report will be tabled at the Legislative Council and made available to the general public.

The chairpersons and members of these committees are appointed by the CE. They represent a broad spectrum of distinguished members of the community, including members of the Executive and Legislative Councils and professional bodies.

A Living Model for Sustainability

The effectiveness of any anti-corruption model can be measured against how the anti-corruption organization is being able to respond to changes in environment and to meet new social requirement. As you are aware, Hong Kong is a free society where the rule of law is upheld. So as society develops it can only be expected that there will be increasing demand for transparency and accountability on the ICAC.

As Director of Investigation (Government Sector) and having been with the Operations Department for over 30 years, I would like to share with you how we responded to those changes or demands for changes that mainly arose from challenges to our investigations and prosecutions. Here are some examples.

Challenges to the Law

You may be aware that there is an offence (Section 10) under the Prevention of Bribery Ordinance against a civil servant who is in control of assets disproportionate to his official emolument or who lives beyond his means. The offence involves the shifting of the burden of proof in requiring the accused to provide 'a satisfactory explanation' after the prosecution has successfully established a 'prima facie' case. It was challenged as being unconstitutional contrary to 'presumed innocence' under the Bill of Rights. It survived the challenge in the Court of Appeal and the reversal of burden of proof in the circumstances of 'proportionality' and 'nationality' was endorsed by the Privy Council before the re-unification.

As a result of our efforts to combat corruption over the last 35 years, corruption within the public sector has gradually evolved from simple and straightforward bribery transactions to the more sophisticated mode of misuse of public office for an advantage. This type of corrupt conduct is caught under the common law offence of Misconduct in Public Office, which has its origin in the 18th century. When prosecutions of this nature were first launched, the offence was challenged as being unconstitutional because of its wide ambit and uncertainty. The challenges were made to the Final Court of Appeal, which upheld the constitutionality of the offence and set out the ingredients of that offence. The judicial guidance has helpfully assisted the ICAC to effectively combat corruption as it evolves with development in society.

Challenges to Investigation and Strategies



In tackling police syndicated corruption in the seventies we relied almost entirely on the evidence of accomplices. Accomplices are tainted in nature as they have effectively agreed to turn prosecution witnesses in exchange for immunity from prosecution. They bring with them credibility problems and personal motives for giving evidence. In the early years, the ICAC experienced collapse of several trials because of unreliable witnesses.

Another difficulty arises in respect of admissions made by suspects. Even when there are full confessions, the ICAC still finds itself constantly challenged over issues such as whether the confession was made voluntarily or whether the admission of the confession would have a prejudicial effect which outweighs its probative value. In early nineties, the ICAC introduced a system of video-recorded interview with suspects in an effort to increase transparency and accountability. It caused initial apprehension on the part of the interviewing officers but soon they got over it with appropriate training given to them. Nowadays, the evidence of video-interviewing a suspect is favourably received by the court.

For successful prosecution, there was an increasing need to look for independent evidence and a new emphasis on our strategy emerged from reactive to proactive. With proactive strategy, we aim to unearth unreported corruption, in a belief that it demonstrates our determination to seek out and eradicate corruption whenever it exists and to bring to justice those involved in serious corruption.

Our proactive investigation usually involves the use of telecommunications interception (TI) and covert surveillance. Over the years, intelligence gleaned from TI, complemented by covert monitoring operations has generated invaluable information to assist in targeting and steering the investigation towards overt action. When coupled with the use of undercover operations, they provide the most useful and effective tool in cracking down on corruption and serious crime syndicates.

Our TI operations were based on a provision under the Telecommunications Ordinance which permits lawful interception with the approval of the CE. Covert monitoring operations were conducted under the concept of common law, i.e. a course of conduct is deemed to be lawful unless declared otherwise by law.

About three years ago, for the first time in Hong Kong, our covert operations were challenged as being unconstitutional under the Basic Law, which permits intrusion of a person's privacy only in accordance with a set of procedures prescribed by law. As a result, the whole regime of covert monitoring was changed in August 2006 with the enactment of the Interception of Communications and Covert Surveillance Ordinance (ICSO). The new law provides a clear and comprehensive framework for law enforcement agencies to follow in the conduct of convert surveillance as well as TI. It also provides judicial supervision on issue of authorization and a set of stringent safeguards to prevent possible abuse at all stages of the process when these powers are invoked. It establishes a Commissioner for ICSO as an external oversight authority.

To prepare the ICAC for the new regulatory regime, we have conducted training sessions and promulgated instruction manuals for our investigators. We stand ready to assist the Commissioner, ICSO in conducting reviews of our ICSO operations.

Over the years, through their challenges we have learned the lessons from success and failure. Surely, the legal challenges that were presented to the ICAC in our prosecutions have continuously reinforced in our investigators' mindset the concept of fair trial and the respect for the rule of law.

Before I conclude, I would like to tell you that in 2008, the Prevention of Bribery Ordinance was amended to impose restrictions on the CE in respect of any bribery acts of solicitation or acceptance of advantage and possession of unexplained property. Before the re-unification, the Governor of Hong Kong was not subject to the Ordinance. The amendment signifies the political will of the HKSAR Government in demonstrating its strong commitment to a clean government.

Conclusion

I hope I have explained to you the characteristics of the Hong Kong anti-corruption Model and how its investigation methods and strategies have continued to evolve to meet the changing public expectation. It is a pity that given the constraint of time I am unable to tell you how my colleagues in the other two departments have responded to various challenges and demands in their efforts to combat corruption. I am sure they will be very pleased to do so when opportunity arises.

We have indeed come a long way since our birth in 1974. Our holistic approach or the 'three-pronged' strategy is now internationally recognized as a successful and effective model for combating corruption. The strategy is enshrined in the UN Convention Against Corruption which up to now 133 countries have ratified.

As I said earlier, the professionalism and integrity of members of an anti-corruption organization is important. I would like to add that the strength of the organization lies in its staff members being able to respond to challenges and new requirement.

The Centre of Anti-Corruption Studies represents a new initiative to enhance professionalism by engaging various stakeholders and experts from the anti-corruption world for research and experience sharing. May I thank you all for joining us today and look forward to our continuous co-operation.