

Fifth ICAC Symposium

**“Old Challenge, New Approach –
Fighting Corruption in a Changing World”**

Opening Address

“Enhancing Values in a Rule Based Environment”

**Dr Timothy H M Tong
Commissioner
Independent Commission Against Corruption
Hong Kong, China**

The Honourable Chief Justice Ma, Madam Hu, Mr Kessler, Distinguished Guests, Ladies and Gentlemen,

A warm welcome to you all to this Fifth ICAC Symposium under the theme of “Old Challenge, New Approach – Fighting Corruption in a Changing World”. The world has witnessed quite some changes since our last symposium held three years ago. Back then we were gripped by the aftermath of a greed culture, characterised by the pursuit of big bonuses through the promotion of dangerous derivative products. Many corporate financial giants were driven into abnormality, if not bankruptcy. It came an unprecedented global financial tsunami, inflicting heavy losses upon victims worldwide. In a different vein, we have also seen the collapse of regimes, notably in North Africa and the Middle East, an embodiment of failure to meet people’s emphatic demand for clean governance.

2. If something positive has come out of it: communities all around the world have become more and more conscious and critical of the consequences of corruption. We now face calls for greater accountability and corporate governance in our financial institutions, and equally greater calls for transparency and integrity in the public sector.

3. Hong Kong well understands these challenges. The establishment 38 years ago of the Hong Kong Independent Commission Against Corruption (or ICAC in short) brought about a sea change, from a society entrenched with rampant and syndicated corruption to one of the cleanest places in the world.

4. The ICAC has achieved this through its three-pronged strategy to fight corruption; first, robust enforcement; second, through systematic corruption prevention aiming to root out graft-conducive work procedures; and third, we use multifaceted programmes to educate all peoples in all walks of life away from corruption.

5. From the outset, we learnt that the law must be vigorously enforced across the board, regardless of the social status or position of the suspected persons. Corrupt high officials, top management of public organisations, and senior executives of listed companies have been brought to book. Our work has been and will continue to be vibrant, determined, focused and unbiased. Such is the history and evolution of the ICAC. But as with times gone by, and no doubt

with times to come, we will continue to encounter changes to the nature and form of corruption.

6. Investigations and studies in recent years are giving rise to an inspiring debate on the question of “shortfalls” or “gaps”. The central question is whether there is a “shortfall” between public expectations of the standards of integrity especially those of senior public officials, and what the ICAC is able to do in law enforcement terms. To answer, we propose that there is no shortfall when we deal with quid pro quo bribery. The public demand effective and robust law enforcement and in that regard the ICAC can meet the demand. We have strong legislation proscribing bribery and effective powers to obtain information and evidence.

7. That said, corruption is an offence which develops and in Hong Kong we are experiencing such development. Recent times have seen in Hong Kong a clear shift away from the quid pro quo bribery situations, to a more sinister form of self generated advantage, created by a public officer using and abusing his public office to obtain a private benefit. This is known as Misconduct in Public Office. Although it is not part of the ICAC statutory scheme, we have had success in prosecuting public officials for this common law offence. In the wake of those successful prosecutions, we have found that the public has come to expect increasingly high standards of accountability and integrity of its public officials.

8. ICAC can act as an effective law enforcer whenever the circumstances of the misconduct clearly come within the definitions laid down by the courts. However, in a situation where differences exist between what is legally enforceable on the one hand, and the high levels of public expectations on the other, the challenge will be the most pronounced.

9. It is this law based reality versus the public expectations that collectively we should reflect upon, as a Hong Kong issue as well as in the global context. Even though where a law enforcement agency can meet public expectations in enforcing the law, there may still be shortfalls between the remits of enforcement, and the high values of integrity and standards that it seeks to promote through prevention and education programmes.

10. Highly germane to the debate is the perception of collusion, and the potential for conflict of interests between senior officials and the business community. In the context of prevention and education this is how we perceive the issue in Hong Kong:

11. The public do not expect that interaction between public officials and members of the business community will not take place. Equally they expect such interaction to be appropriate and proportionate, and that the public official always maintains standards commensurate with the nature of his duties. These standards, yes, should take the form of cogent guidelines. Guidelines are meaningful only if they are faithfully observed. Guidelines should be given the widest form of interpretation possible, on the premise that not only the forms of conduct arising out of a relationship must be lawful, the persons involved in the relationship should not feel uncomfortable because of it. If in doubt, they should look inwardly and ask themselves, innocent as it is, could what I am doing be seen by the public as inappropriate? In other words if the conduct engaged in is the kind of conduct the official would rather the public did not find out about, then, however innocent or lawful that conduct might be, alarm bells should ring. In short, the sunlight test applies.

12. To address public concerns relating to the perception of collusion within the Hong Kong Special Administrative Region, our corruption prevention experts stand ready to work with the Administration. The starting point can be an assessment as to the adequacy of the existing probity framework for Government officials, supplemented by a review of rules and guidelines covering practical issues as the declaration of conflict of interests. How such initiative is to be implemented should take account of the findings and recommendations of the on-going Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests.

13. Prevention is important, but let me make this abundantly clear. Whether it be bribery under our statute law, or abuse of an official duty that would amount to Misconduct in Public Office under the common law, the ICAC as the agency with responsibility for investigating corruption will pursue the matter. So long as it is within our jurisdiction, we will perform our duty with dogged determination; with no exception as to the time, place, or manner in which the alleged offence was committed, or the status or levels of the persons involved.

14. Alongside the attention the community pays to our work, the ICAC appreciates that there is also rising demands for greater transparency in our operations. Running parallel to this Symposium, we are taking steps to fortify our publicity and related education programmes. A specific aim is to further enhance the community's understanding that, within our structures, there exists stringent checks and balances on our work.

15. Checks and balances are built into the intrinsic segregation of authorities in investigation, prosecution and adjudication. The ICAC carries out its investigative work independently. The decision to prosecute rests solely with the Department of Justice. The courts will independently hear the evidence and arrive at a judgment.

16. While our investigations, especially during their initial stages, must remain covert due to legal constraints and operational considerations, our investigation charter is under the constant review of the Operations Review Committee. This independently appointed Committee, which consists of a wide cross section of professions, monitors our handling of corruption complaints, oversees all our investigations, and sanctions the closing of any investigation that does not result in a prosecution. In short, this Committee represents the eyes, ears, and conscience of the community and ensures that the ICAC duly performs its duty.

17. The current monitoring mechanism is robust and effective. But a system is only as strong as its ability to adapt to change. The ICAC is mindful that for us to maintain credibility, regular reviews are necessary that take into consideration changes in public expectations. One such area is in the strengthened control over the use of special investigative techniques. Typically, public opinion accepts that intercepting communications and covert surveillance must be part of our function, but the public also demand that we be held to a very high degree of accountability in their use. Suffice it to say that since the Interception of Communications and Surveillance Ordinance became law in 2006, no investigative personnel of the ICAC can afford to be foreign to its provisions because our operations must be fully compliant within their confines.

18. Distinguished guests, fighting corruption means building trust among members of the community:

- Trust in the government that it will use its powers for the common good;
- Trust that there is a level playing field for every business, irrespective of its size or scale;
- Trust that people can continue their way of life without falling victim to corruption, extortion or any other form of unlawful interference from those in power; and
- Trust in the anti-corruption agencies that they will continue to fight corruption within the rule of law, and without fear or favour.

On the part of the ICAC, trust that the community will continue to support the anti-corruption cause, that being the foundation of our partnership with the people of Hong Kong.

19. Ladies and Gentlemen, the ICAC is grateful for the participation in this Symposium of so many distinguished speakers and delegates from around the world. We have in common one ultimate goal – a world free of corruption. I am sure that the insights shared and the intense deliberations to be conducted in the coming three days would further enrich our capacity in fighting corruption, moving us closer to that goal.

20. With this, I declare the Fifth ICAC Symposium officially open.

Thank you.

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