Anti-Corruption Law and Enforcement in Hong Kong

Keeping It Clean

Michael I. Jackson

With the community, the ICAC is committed to fighting corruption through effective law enforcement, education and prevention to help keep Hong Kong fair, just, stable and prosperous.

ICAC Mission Statement

Abstract

This paper will examine Hong Kong’s anti-corruption laws and their enforcement by the ICAC, Hong Kong’s dedicated anti-corruption law enforcement agency. The key offences and investigative powers which have enabled the ICAC to successfully prosecute and prevent public and private sector corruption in Hong Kong for 40 years will be outlined and critically assessed. Various lessons learned over the course of the ICAC’s forty years of operation will be reviewed, and some of the challenges confronting the ICAC as it enters its fifth decade of operations will be explored, including legitimacy issues and public trust issues.

Keywords

Hong Kong – anti-corruption law – Independent Commission Against Corruption (ICAC) – bribery – corruption offences – law enforcement

* Associate Professor, Faculty of Law, The University of Hong Kong. Contact: mjackson@hku.hk.
1 ICAC (2015a).
1 Introduction

In 2014, Hong Kong’s dedicated anti-corruption agency, the Independent Commission Against Corruption (ICAC), celebrated its 40th birthday. Over the course of these four decades, the ICAC has unquestionably been highly successful in fighting corruption in Hong Kong, leveraging its resources through its three-pronged approach of law enforcement, education and prevention to further its mission of keeping Hong Kong “fair, just, stable and prosperous”. According to Transparency International’s 2014 Corruptions Perception Index of public sector corruption, Hong Kong ranked 17th equal (out of 175 countries surveyed), second in Asia behind Singapore (7th), and substantially ahead of its sovereign power, China, ranked 100th. This commendable ranking is principally attributable to the existence in Hong Kong of a body of broadly defined, presumptively established corruption offences, and to its dedicated, independent anti-corruption agency, the ICAC. Historically, the ICAC’s success in its fight against corruption in Hong Kong has been reinforced by the community’s strong support for its anti-corruption activities, and further fostered by Hong Kong’s legal system with its independent judiciary and high regard for the rule of law.

The ICAC’s historical success was highlighted in 2010 by its then Commissioner, Timothy Tong:

Every year we receive and handle around 3,500 corruption reports. Over 70% of the reports are traceable, meaning non-anonymous, and that, in our view, signifies the public’s confidence in us. We investigate every report that is pursuable. We handle over 200 court cases each year, with a registered conviction rate of 83% that reflects prudence when a decision is taken to prosecute and demonstrates effectiveness of process.3

Contemporaneously, the ADB/OECD, in its comprehensive review of the criminalization of bribery in 28 jurisdictions within the Asia Pacific Region, gave Hong Kong’s anti-corruption regime a mostly clean bill of health.4 Noting Hong Kong’s “impressive arsenal of investigative tools in bribery cases”, and recording that its legal regime mostly accords with international standards, the Report identified only three aspects of the law that needed consideration, namely: increasing the use of forfeiture in practice, increasing the maximum

---

2 Transparency International (2014). Hong Kong's score and ranking fell from 8.2/10 and 12th in 2009, to 77/100 and 17th in 2014.
3 Tong (2010).
4 ADB/OECD (2010).