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**“Building a Public Sector Integrity System for Effective Governance:
the Hong Kong Experience”**

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**Mr Needham, Mr Cripps, Mr Roberts-Smith, Professor Anechiarico,
Ladies and Gentlemen,**

First, I thank warmly our Australian hosts for organizing this important Conference and bringing together many prominent officials and some of the most qualified experts in anti-corruption work. Coming from Hong Kong, I am doubly privileged for being able to take part in your deliberations, and also for the ‘home-like feeling’ myself and my colleagues particularly enjoyed in the wonderful city of Sydney. Like Hong Kong, Sydney is a world class international city blessed with a beautiful harbour; and like Sydney, Hong Kong has one special advantage that is a dedicated anti-corruption agency bearing the name of “Independent Commission Against Corruption” – the ICAC.

Definition of “Effective Governance”

The theme of my presentation is building an integrity system in the public sector for effective governance. The United Nations defined effective governance as “making decisions and implementing policies that meet the needs of society and making the best use of resources at our disposal”. The World Bank in its publication “Governance Matters 2007 – Worldwide Governance Indicators 1996 -2006”, measured the governance of over 200 countries and territories by using six major components: - the rule of law; control of corruption; regulatory quality; voice & accountability; political stability; and government effectiveness.

I would contend that the six elements are closely inter-linked. Corruption control is the principle instrument to build an integrity system; and an effective integrity system is the cornerstone of good governance.

The Hong Kong Experience

The Era of Abuse

A local public opinion survey conducted earlier this year has confirmed that the people of Hong Kong no longer consider corruption to be a serious problem now. An overwhelming majority – 96.4% – of the respondents acknowledged that they themselves, plus their friends and relatives had not come across any corruption in Hong Kong in the past 12 months.

Graft 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. According to New Zealand journalist Kevin Sinclair (himself a renowned Police reporter), even before the World War II the triads in Hong Kong were already collecting protection money from the wealthy, with the condonation of the police. There were then some 65,000 members of the triads under the control of five families, 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, to quote Sinclair, “the crowded Colony was chaotic”.

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 close-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 to a host of foreign companies looking for off-shore investment. It was at this time that we earned the reputation of a tourism paradise as “the Pearl of the Orient”, thanks to a surge in cash-rich visitors from American, Japan and other origins.

The fateful blend of chaos and bloom resulted in some economic miracles, but also run-away 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 1960's, 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 a sick person;
- 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 the 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 could 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 collection went side by side. Corruption was once rampant within the Force. Front-line officers did, as a matter of routine, systematically cover up the criminal activities which they were tasked to

eliminate. The worse 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 a boiling point when, in the early 70’s, thousands of people took to the streets after a Chief Police Superintendent had 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 one 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.

Building a Public Sector Integrity System

The Hong Kong experience show that, to build an integrity system for the public sector, you would need three things :

First : A set of good laws;

Second : The political will plus the capacity for effective enforcement; and

Third : Community support based on an anti-corruption culture.

The Laws

Given its Commonwealth heritage, Hong Kong had bribery made an offence as early as in 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, namely “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 7 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 official emoluments, unless he could give a satisfactory explanation to the court. This provision appears to be at variance with the notion of "assumed innocence" usually expected under the Common Law. However, it is time-honoured and has been proven highly effective for use against hard-core 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 of this offence is 10 years' custodial sentence plus fine and restitution.

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 an establishment of 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. The Commission has three constituent departments, respectively responsible for law enforcement, corruption prevention and community relations.

Enforcement Results

Determined law enforcement was the first and most important step in building public sector integrity. A gradual decline of corruption reports against the Public Sector and a gradual shrinkage in its 'share' of total corruption reports were evident since the ICAC had started operation. In the year of 1974, a total of 3,189 corruption reports were received, of which 87% (2,774 cases) were launched against the Public Sector with 45% specifically targeted at the Police. Following many arrests and convictions, the situation was progressively brought under control. But it would take 15 years - until 1988 - for the number of Public Sector reports to level off with those in the Private Sector. This trend continued. Currently, reports against the Public Sector accounts for less than 40% of all corruption reports, and the complaints in most cases were relatively minor.

Similar trends were found in the prosecution figures. In general, a small proportion of Public Sector complaints would lead to prosecution

compared to the Private Sector. In the initial years, over half of the corruption charges in the Hong Kong courts were laid against public officers. This came down to around 20% in the 1980s; and currently stands at approximately 10%.

Also worth noting is the declining number of Section 10 charges laid against “possession of unexplained property”. Section 10, as explained before, is the special weapon used against the offenders who are known to be persistently corrupt but had never been caught red-handed. Best known was the tale of the \$600 million Criminal Investigation Detective (CID) who had more money than he could have earned at work in ten thousand years. Section 10 was invoked no less than 37 times in the first five years of ICAC’s operations. Incidents of invocation were few in the decade that followed, and unheard of since 1995. Corruption in the Public Sector nowadays is far less blatant than before.

Corruption Prevention

The Hong Kong ICAC adopts a time-honoured 3-pronged approach, in that our enforcement work goes side-by-side with prevention efforts as well as community education.

The Corruption Prevention Department of the ICAC has a statutory responsibility to minimise 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 therefore to take away the incentive to bribe;
- Transparency : The public must be informed of their rights 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 does at work or for his 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 the staff. The Integrity Steering Committees have worked very well especially in the Disciplined Services Departments, including the Police and Customs. They promote healthy life-style and help their staff to handle financial matters including case 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 conflict of interests. 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 liable to disciplinary action, dismissal from

the service, and, in serious cases, criminal proceedings.

The Power of Education

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

- educate the public against the evils of corruption; and
- enlist and foster 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 department 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 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 are complimentary to 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 turned into 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.

Overview

The Hong Kong experience in building an integrity system for the Public Sector is essential in the history of the ICAC. The ICAC in the discharge of its duties has helped keep Hong Kong fair, just, stable and prosperous.

The US-based Heritage Foundation has rated Hong Kong as the World's freest economy for 13 consecutive years, most recently in 2007. One of the reasons for bestowing this honour upon Hong Kong is that the Heritage Foundation considers Hong Kong "virtually free of corruption". We would interpret this complimentary remark to mean that in our region, corruption is very much under control, and that there is no longer any syndicated corruption in our Public Sector.

We also believe that our probity culture has contributed to Hong Kong's sustained development and economic growth. Over the past 20 years, despite an unprecedented Asian economic crisis, Hong Kong's economy grew by an average of 5.1% in real term, against a world growth of 3.7%.

As a law enforcement agency, we will not be complacent about our work. Looking ahead, we see the need to expend greater efforts to combat private sector corruption, which offences are also covered by the POBO. Statistics show that corruption reports involving private enterprises have also stabilized in recent years. However, as Hong Kong has evolved from a manufacturing base to a world leading financial centre, we must be able to safeguard the integrity of our securities and futures markets.

As for the public sector, we are aware that corruption is no longer confined to the traditional quid pro quo "bribe for favour" type of offences. Corruption in a more subtle form seems to be on the rise, namely "Misconduct in Public Office" (MIPO).

Misconduct in Public Office as a Common Law Offence has been in existence since the 18th Century. It has all along been challenged as ill-defined, too wide in scope and lacking clarity. In Hong Kong, the first prosecution under this offence by the ICAC took place in 1998. To date, 38 public officers have been prosecuted for MIPO offences related to acceptance of advantage, resulting in 18 convictions so far.

Arising from two landmark cases respectively in 2002 and 2005, the Hong Kong Court of Final Appeal has come to a clearer definition of MIPO. Five elements are listed to constitute this offence :

- A public officer;
- In the course of or in relation to his public office;
- Without reasonable excuse or justification;
- Willfully misconduct himself, by act or omission, for example, by willfully neglecting or failing to perform his duty; and
- Where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from responsibilities.

We believe the Hong Kong Court of Final Appeal has come a long way in addressing MIPO offences. The ICAC will come in as and when there is a MIPO case “connected” with corruption, even if the act of corruption cannot be proven in the context of POBO provisions. It is of course up to the

ICAC and our legal advisers to prove to the court that there is a corruption scene involved. We will keep watch of the application of CFA's definition of MIPO and re-assess the situation in light of further experience to be gained from actual operation.

Conclusion

The ICAC of Hong Kong is a special force established outside and independent of the Civil Service of the Hong Kong Special Administrative Region. The Hong Kong Civil Service is faithful and efficient, and they know their job is to ensure that the people of Hong Kong may freely pursue their social, political and economic goals, or whether legitimate objectives as they would determine for themselves. In our view, they can be relied upon to meet the toughest challenges. Amongst other Government agencies, the Hong Kong Police Force, which was the immediate reason for the birth of the ICAC, will bear testimony to both the strength and the virtue of the Public Service. They serve with demonstrated integrity, without fear or favour, and ICAC colleagues are gratified that over the past three decades, we have contributed to this end.

Ultimately, success in our work is not with ICAC officials. The key to success is community support. The one – message – we want to convey to the HK Police is that: They themselves are instrumental to the substantiality of all anti-corruption efforts.

Thank You!