

From fighting corruption to promoting corporate governance

# The Hong Kong ICAC's experience

從打擊貪污至推廣企業管治

## 香港廉政公署的經驗

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**P**robity is an important intangible asset for doing business. In that respect, Hong Kong, which is internationally acclaimed as one of the least corrupt places in the world, does have a competitive edge over other markets.

Over the past four decades, the Independent Commission Against Corruption (ICAC) works hand in hand with the community to eradicate bribery and related malpractices through law enforcement, prevention and education. In the private sector, the ICAC promotes ethical governance as a strategy to prevent corporate corruption.

### City Ranks Among Least Corrupt

In the latest annual Corruption Perception Index of Transparency International, Hong Kong ranks second lowest for perceived level of public corruption in Asia. In the global index developed by TRACE International and RAND Corporation in 2014 to assess business bribery risks, Hong Kong is ranked the least corrupt territory in Asia and fourth among 197 territories. A corruption-free society helps ensure a level playing field for businesses. This reputation, together with other strengths such as good legal and regulatory framework and a value system supporting competitiveness, has made Hong Kong the most competitive

place in the world as per the World Competitiveness Yearbook released by the Switzerland-based International Institute of Management Development.

In recent years, annual opinion surveys conducted by independent polling agencies commissioned by the ICAC revealed that just about one per cent of the survey respondents had come across corruption. The very low level of corruption in Hong Kong contrasts with the situation in other countries or territories. In the European Union, for instance, a 2014-released survey entitled “Special Eurobarometer 397: Corruption” disclosed that some eight per cent of the Europeans said they had experienced or witnessed corruption in the past 12 months. The ICAC’s corruption statistics also show that corruption has been kept in check in Hong Kong. Over the years, the ICAC has been receiving corruption complaints of below 3,000 per annum. The percentage of private-sector complaints increased from around one-third in the 1980s to two-thirds in recent years, partly because of the business community’s increasing vigilance towards corruption.

Corruption is a high risk crime in Hong Kong. The conviction rate of ICAC cases remains at about 80% and judges are never hesitant to pass down heavy sentences on the

convicted, in particular in cases of public officials and listed companies. In many cases, company directors who were found guilty of corruption or fraud offences ended up not only in prison but were also disqualified from holding directorship for some time. This is also a strong deterrent against corruption in society. ICAC Annual Surveys also reveals that the Hong Kong public consistently has zero tolerance for corruption. About 80% of the survey respondents were willing to come forward and report corruption. In fact, more than 90% of complaints received by the ICAC came directly from members of the public.

### Fight against Corruption Faces New Challenges

Despite such remarkable achievements, the fight against corruption is no less challenging. In the private sector, complex corruption and fraud involving huge sums of money are uncovered from time to time. In 2015, the ICAC received around 1,800 corruption complaints related to the private sector. In the same year, over 180 persons from the private sector were brought to the court. Over the years, many cases involved company directors and professionals who disregarded the basic principles of corporate governance.

In a case investigated by the ICAC, the

chairman, an executive director and the financial controller of a listed company embezzled and cheated two listed sister companies of funds totaling over HK\$65 million. They also published false information in the annual report to cover up their misdeeds. When sentencing the company chairman, the judge reprimanded him for succumbing to greed and the pursuit of fame.

The judge's remark pinpoints some typical ingredients in such scams, that is, the lack of personal integrity and the blatant disregard of fiduciary duties expected of a company director. The problems are often compounded by a weak internal control system and professionals who failed to live up to their guardianship role or even facilitated the wrongdoings. As long as these elements exist, we must not underestimate the detrimental effects of corruption on individual companies and the business environment in Hong Kong.

Globalised business environment also makes it even more difficult for law enforcement agencies, including the ICAC, to track down the culprits and recover crime proceeds. Today's information technology makes money transactions more complex and secretive. Illicit gains from corruption are increasingly veiled by complex financial arrangements, corporate vehicles, trusts and nominees. Corruption proceeds are transmitted across different jurisdictions, making them ever harder to trace.

To rise to these challenges, the ICAC has been augmenting its capabilities and work strategies. On the law enforcement side, the ICAC continues to upgrade its investigative techniques to cope with the increasing complexity of corruption cases. Teams dedicated to forensic accounting, asset recovery and computer forensics were set up to detect intricate and cryptic financial transactions, trace, restrain and confiscate illicit funds, and extract and examine data hidden in electronic devices.

Cross-jurisdictional cooperation is another important area in progress. Increasingly,

the international community has been alerted to the need to address globalisation of economic crimes such as corruption, tax evasion and money laundering. Long recognising this global trend, the ICAC has established a good co-operative system with other jurisdictions under the United Nations Convention against Corruption and bilateral agreements of mutual legal assistance on criminal matters. Separately, a Mutual Case Assistance Scheme has been put in place, enabling the ICAC and the People's Procuratorates in Mainland China to provide investigative assistance to each other upon request.

### **Uphold Governance as First Line of Defence**

Strong law enforcement is essential in the fight against graft. However, to safeguard a clean society in the long run, corruption must be pre-empted by plugging systemic loopholes conducive to malpractices and a culture of integrity must be nurtured and sustained. In a corporate setting, ethical governance must be reinforced.

The ICAC plays an active role in helping put this concept to practice. Since the early 1990s, the ICAC has been promoting business ethics and corporate governance as the first line of defence against corruption. This mission of building a clean corporate culture is carried out by the ICAC's Hong Kong Business Ethics Development Centre (HKBEDC) with the support of major local and foreign chambers of commerce, professional bodies and trade associations.

In 2007, HKBEDC launched an ethics programme to train company directors and related professionals by partnering with various professional bodies, including HKIoD. Under the programme, HKBEDC published a "Toolkit on Directors' Ethics" and injected corruption prevention elements into professional training courses for company directors. The ICAC also approached all Hong Kong listed companies to offer prevention and educational services. So far, the ICAC has visited about 1,100 listed companies, 60 per cent of which have accepted corruption prevention services.

In response to the global trend and the local regulatory development in corporate governance, HKBEDC kicked off a three-year ethics promotion programme for listed companies last year with HKIoD and 17 other co-organisers, among them, relevant government departments, regulators, professional bodies and chambers of commerce. This programme aims to further assist listed companies to enhance personal integrity of directors and senior executives, entrench an ethical corporate culture, and fortify internal control system in light of the latest integrity challenges.

Meanwhile, the "Toolkit on Directors' Ethics" (<http://www.hkbedc.icac.hk/english/files/publications/toolkit.15.pdf>) has been revamped to include the latest legal and regulatory updates on directors' duties and common corruption risks faced by directors. In the next two years, HKBEDC will:

- produce a new training package to fine-tune directors' skills in upholding corporate governance;
- convene a conference on business ethics;
- organise seminars for company directors and related professionals; and
- offer tailor-made ICAC services to all Hong Kong listed companies.

In addition, the ICAC's Corruption Prevention Advisory Service will promulgate a corruption prevention guide in 2016 to assist listed companies in strengthening risk management and system control as required by the revised listing rules of the Stock Exchange of Hong Kong.

While the ICAC and relevant parties play a role in the campaign for corporate governance, at the end of the day it is up to the companies to put corporate governance in practice. Company directors, who are vested with the ultimate responsibilities to run their companies, are well positioned to steer an enterprise in the right direction and create values for stakeholders, retain talents and mitigate negative impacts from malpractices.



# 廉

潔是營商的重要元素之一。在這方面，被譽為世界上最廉潔社會之一的香港，的確具有相當的競爭力。

過去四十年，廉政公署(廉署)一直透過執法、預防和教育，與社會攜手杜絕賄賂及相關不當行為。在私營領域，廉署致力推廣企業誠信管治，協助機構預防貪污。

## 廉潔程度 位居前茅

「透明國際」每年發表「清廉指數」，量度受訪者對各地公營部門貪污情況的觀感。最新的結果顯示，香港的廉潔程度在亞洲排名第二。而在TRACE International和RAND Corporation的2014年全球商業貪污風險評估中，香港的廉潔水平更在亞洲高踞首位，在全球197個地區中亦排名第四。廉潔社會能確保企業之間公平競爭，香港在這方面享負盛名，加上具備其他優勢，如良好的法規架構以及鼓勵競爭的價值觀等，使香港在瑞士國際管理發展學院的《世界競爭力年報》中脫穎而出，被評為全球最具競爭力經濟體。

廉署近年委託獨立調查機構進行的周年民意調查結果顯示，只有約1%的受訪者表示曾在過去12個月內遇過貪污情況，顯示香港社會的貪污情況處於極低水平。這與其他地區的狀況形成鮮明對比，例如根據歐洲聯盟於2014年公布的調查“Special Eurobarometer 397: Corruption”，約有8%受訪歐洲居民表示曾在過去12個月親身經歷或目睹貪污情況。廉署數據亦顯示，香港的貪污問題持續有效受控。近年廉署接獲的貪污投訴，維持在每年少於3,000宗。涉及私營機構的投訴由八十年代佔整體投訴約三分之一，增至近年約佔三分之二，與工商界對貪污問題提高警覺不無關係。

在香港，貪污屬於高風險罪行。廉署個案的定罪率維持在大約八成。對被裁定觸犯貪污罪的人士(尤其牽涉公職人員或上市公司)，法官必予以重判，從不姑息。有為數不少的個案，公司董事一旦被裁定貪污或詐騙罪成，除被判監禁外，亦會被禁止擔任董事若干年，這對貪污份子產生有效的阻嚇作用。廉署周年民意調查結果亦顯示，香港市民對貪污採取「零容忍」的態度，約八成的受訪者願意挺身舉報貪污。事實上，廉署接獲的投訴中，超過九成來自市民直接舉報。

## 繼續反貪 迎新挑戰

雖然過往的肅貪工作成績卓越，但廉署現

正面對的挑戰卻殊不簡單。在私營領域中，案情複雜和牽涉巨款的貪污及詐騙案件時有所聞。2015年，廉署接獲約1,800宗有關私營機構的貪污投訴。同年，有超過180名私營機構人員被移送法庭審理。歷年案件中，不少牽涉無視企業管治基本原則的公司董事及專業人士。

以廉署曾調查的一宗個案為例，案中涉及某上市公司的主席、執行董事及財務總監。三人挪用及詐騙兩間上市姊妹公司資金共超過6,500萬港元，更在年報內發布虛假資料，以隱瞞其不法行為。法官判刑時，斥責該公司主席的罪行是源於貪婪及追求名利。

法官的評語正好點出了這類貪污勾當的重要元素：公司董事欠缺個人誠信，漠視受信責任；而內部監控系統過於寬鬆，專業人士把關不力，甚或包庇不法行為，往往令問題更為嚴重。只要這些因素一日存在，貪污對個別公司及香港營商環境所造成的禍害實不容低估。

另外，全球化經濟亦令廉署和其他執法機構更難追查不法分子及起回犯罪得益。日新月異的資訊科技令金錢交易變得更複雜及隱秘；因貪污而獲取的不法得益能夠在各種繁複的財務安排、投資工具、信託及受託人的掩護下蒙混過關；不法份子亦會在不同地區之間進行匯款活動，使偵查工作變得困難重重。

為應對這些挑戰，廉署一直致力提升打擊貪污的能力及工作策略。在執法層面上，廉署不斷加強調查技能，以應付日趨複雜的貪污案件，並成立法證會計、犯罪得益及電腦鑑證三個專責小組，分別負責揭露複雜而隱秘的財務交易；追查、限制及沒收非法資金；以及提取並審查隱藏於電子裝置的數據資料。

此外，司法管轄區之間的合作亦取得長足發展。國際社會對處理日趨國際化的貪污、逃稅及洗黑錢等經濟罪行的迫切性，愈發關注。廉署一直關注此世界趨勢，根據《聯合國反腐敗公約》及就刑事事宜相互法律協助而訂立的雙邊協定，與其他司法管轄區建立良好合作關係。廉署亦與內地人民檢察院訂立「個案協查計劃」，以便雙方按對方要求在調查工作上提供協助。

## 企業管治 第一防線

雖然嚴厲執法是反貪工作的必要元素，但

是要長遠保持社會廉潔，還必須堵塞制度中助長不當行為的漏洞，並培養和鞏固誠信文化；而加強誠信管治則是企業預防貪污的重要一環。

廉署一直積極在香港推動企業誠信管治的發展。自九零年代初便提倡以商業道德及企業管治作為打擊貪污的第一道防線，並設立香港商業道德發展中心(中心)，與本港及外國主要商會、專業團體及行業協會攜手合作，共同構建企業誠信文化。

中心在2007年與香港董事學會及其他合作夥伴推出誠信培訓計劃，協助公司董事及相關專業人士處理誠信挑戰。中心亦就該計劃出版《董事誠信實務指南》，並於公司董事專業培訓課程中注入防貪元素。此外，廉署亦主動接觸全港上市公司，提供防貪教育服務。至今，廉署已探訪共約1,100間上市公司，當中六成採用了廉署防貪服務。

為配合環球趨勢及本港對監管企業管治的發展，中心去年與香港董事學會及另外17個合辦機構，包括相關政府部門、監管機構、專業團體及商會等，開展一個為期三年的上市公司誠信推廣計劃，因應近年新出現的誠信挑戰，進一步協助上市公司提升董事及高級行政人員的個人誠信、確立企業誠信文化，以及加強內部監控制度。

在這項計劃之下，廉署已更新《董事誠信實務指南》([http://www.hkbedc.icac.hk/tc\\_chi/files/publications/toolkit.tc.15.pdf](http://www.hkbedc.icac.hk/tc_chi/files/publications/toolkit.tc.15.pdf))，內容涵蓋有關董事誠信的最新法規，以及董事經常遇到的貪污風險。未來兩年，中心將會：

- 製作一套全新的培訓教材，以提升董事秉持企業管治的技巧；
- 舉辦商業道德會議；
- 為公司董事及相關專業人士舉辦培訓研討會；及
- 向全港上市公司提供度身訂造的防貪服務。

廉署「防貪諮詢服務」亦將於2016年推出防貪指南，協助上市公司加強風險管理及系統管控，以符合香港聯合交易所上市規則中的最新要求。

儘管廉署與各有關方面致力提倡良好企業管治，但最終仍有賴公司將相關措施付諸實行。公司董事負有企業營運的最終責任，他們不但可帶領公司循正確方向發展業務，更可為持份者創造更大的價值、保留人才、減低舞弊行為對機構的負面影響。