



THE INTERNATIONAL ACADEMY
OF FINANCIAL CRIME LITIGATORS

Bulletin

of The International Academy
of Financial Crime Litigators

DOROTHY SIRON

“ Recent landmark cases and enforcement activities demonstrate Hong Kong’s ongoing commitment to maintaining its reputation as a global leader in anti-corruption efforts. ”

ISSUE 4 | FALL 2024

The logo consists of the letters 'T' and 'A' in a light teal color, positioned in the upper left corner of the page. The 'T' is a simple, blocky font, and the 'A' is also blocky with a slightly open top.

TA

A large, decorative graphic on the left side of the page, consisting of two overlapping curved shapes. The outer shape is a light teal color, and the inner shape is a darker teal color. Both shapes curve from the bottom left towards the top right, meeting at a point at the top edge of the page.

Shadows of Integrity

Hong Kong's Independent Commission
Against Corruption is a model to
model.

DOROTHY SIRON

Introduction

Corruption has been, and in some jurisdictions continues to be, a pervasive problem worldwide. Hong Kong, with its unique history as a British colony and its rapid post-war development, is no exception. During the 1960s and early 1970s, corruption in the city was systemic and entrenched in both the public and private sectors. The turning point came in 1974 with the establishment of the Independent Commission Against Corruption (“ICAC”), following public outrage over high-profile scandals, including the notorious case of Peter Godber, a senior police officer who amassed unexplained wealth over HK\$4.3 million – six times his total net salary over two decades.

This article provides a review of Hong Kong’s anti-corruption framework, with a particular focus on the ICAC’s role in enforcement and the legal mechanisms provided under the Prevention of Bribery Ordinance (“POBO”). It looks at how the ICAC conducts investigations and key cases that demonstrate its effectiveness, emerging challenges, and explores the potential of future reforms in areas such as corporate liability and new technologies.

THE PREVENTION OF BRIBERY ORDINANCE **(“POBO”)**

The POBO serves as Hong Kong’s primary statute addressing bribery in both the public and private sectors. It criminalizes the solicitation, offering, or acceptance of any advantage by public servants and private agents alike. As an investigatory agency, the ICAC is empowered to enforce the POBO and has the operational discretion to investigate offenses, choose the means to carry out investigations, and allocate resources as necessary.

The POBO is divided into several sections, each addressing specific corrupt practice:

Section 3. Soliciting or accepting an advantage:

Makes it illegal for public officers to accept any advantage without the approval of the Chief Executive. The term “advantage” is broadly defined to include money, gifts, loans, and services, among other things. Offenses under this section must be prosecuted within two years from the date they arise, as stipulated in Section 31A.

Section 4. Bribery:

Prohibits any person from offering an advantage to a public servant with the intent to influence their conduct in official duties. This applies to anyone attempting to influence a government officer's decisions or actions through corrupt means.

Section 9. Corrupt transactions with agents:

Extends anti-bribery provisions to the private sector, criminalizing the solicitation or acceptance of an advance by agents (such as employees) without the permission of their principal (such as their employer). This ensures that private enterprises are held to the same standards of integrity as public organizations.

Section 10. Possession of unexplained property:

Addresses unexplained wealth and requires public officers to justify any assets disproportionate to their known income. Failure to provide a satisfactory explanation may result in prosecution.

DEFINITION OF “ADVANTAGE”

Under the POBO, the term “advantage” is defined very broadly to include monetary payments, gifts, loans, contracts, services, and favors. Advantages valued at or above HK\$2,000 are generally prohibited, even if offered by personal friends. What matters is that an inducement of some substance is being made ([*HKSAR v Hui Russel and Another \[2009\] HKCAR 326*](#)). Interestingly, “entertainment” is excluded from this definition, although excessive hospitality could still lead to prosecution if it is deemed to have been offered to influence a public officer's decision.

SCOPE

The POBO applies to both public servants and individuals in the private sector. Under Section 2(1), public servants include government employees, members of public bodies, and other officials holding positions of authority in publicly funded institutions.

Section 9 of the POBO extends the application of the POBO to commercial dealings where agents may be influenced to act against the interests of their principals. This was clarified by the landmark case [Secretary for Justice v Chan Chi Wan Stephen \(2017\) 20 HKCFAR 98](#), which confirmed that an agent is guilty if their acceptance of an advantage is intended to influence their principal's business, thereby undermining the integrity of the relationship.

The POBO includes special provisions for the Chief Executive ("CE") of Hong Kong under Section 31AA. Corruption charges against the CE follow a separate process involving the Legislative Council and an investigation by the Chief Justice under Article 73 of the Basic Law (as seen in the Donald Tsang case outlined below).

Whilst "person" under Section 4 of the POBO includes groups of individuals (corporate or unincorporated), enforcement typically focuses on individual officers of private companies rather than the corporations themselves due to the difficulty in proving intent. As a result, companies involved in bribery or corruption are often penalized through fines or public reprimands due to corporate governance or internal control issues, rather than directly for the offenses. Meanwhile, the Court may bar a convicted individual from continuing employment with the company they were associated with at the time of their consideration on the basis of public interest pursuant to section 33A of the POBO.

Attempted bribery is punishable under Section 11 of the POBO, which covers incomplete or failed bribery attempts. Section 89 of the [Criminal Procedure Ordinance](#) (Chapter 221, the Laws of Hong Kong) also imposes liability on anyone who aids, abets, or procures the commission of an offense (which includes bribery).

PENALTIES

The penalties under the POBO are severe, reflecting Hong Kong's zero-tolerance to corruption. For public officers, violations of Section 3 or Section 4 can lead to fines of up to HK\$500,000 and imprisonment for up to seven years. In cases involving large sums of money, the imprisonment term can extend to ten years. Although no tariff is specifically given by the court,

imprisonment is the norm and non-custodial sentence can only be justified under exceptional circumstances.

Additionally, the court may issue confiscation orders under Section 12AA, particularly in cases of unexplained wealth. The ICAC Commissioner can also make an *ex parte* application for a court-issued written notice requiring a suspect under investigation to surrender their travel documents.

For comprehensive accountability, these penalties apply both to the person accepting or soliciting the bribe, and to the individual or entity offering it.

COMMON LAW

Common Law supplements the statutory regime by addressing the offense of misconduct in public office. In [*Sin Kam Wah v HKSAR \(2005\) 8 HKCFAR 192*](#), a public officer was found guilty of misconduct in public office, despite deriving no personal gain. The court held that willfully abusing one's office to benefit oneself or others constitutes a punishable offense. Similarly, in [*HKSAR v Hui Rafael Junior \(2017\) 20 HKCFAR 264*](#), the court ruled that misconduct includes entering into arrangements that compromise a public officer's duty. However, whilst the common law offense of bribery continues to stand, the statutory provisions under the POBO have rendered it almost obsolete for practical purposes.

HIGH-PROFILE CASES AND LESSONS LEARNED

The ICAC's handling of high-profile cases highlights the complexity of enforcing anti-corruption laws. Notably, the former CE of Hong Kong, Donald Tsang, was charged by the ICAC and found guilty of one count of misconduct in public office in February 2017, having failed to disclose plans to rent a luxury penthouse for retirement from Bill Wong Cho-bau, who was in the process of applying a broadcasting licence for his media company. After the allegations of such preferential allocation surfaced in 2012, Tsang was later summoned to answer questions from an open inquiry by the Legislative Council. To review the frameworks and procedures for preventing and handling potential conflicts of interest concerning the CE, an Independent Review Committee was formed and chaired by the former Chief Justice.

In 2017, Tsang was sentenced to 20 months imprisonment, becoming the highest officeholder in Hong Kong history to be convicted and imprisoned ([HKSAR v Tsang Yam Kuen, Donald \[2017\] HKCFI 640](#)). His conviction was subsequently quashed on appeal, after finding the trial judge had failed to provide an adequate explanation of the elements constituting the offence of misconduct in public office to the jurors ([HKSAR v Tsang Yam Kuen, Donald \[2019\] HKCFA 24](#)).

In another case of *HKSAR v Hui Rafael Junior* (2017) 20 HKCFAR 264, charges were laid against the former Chief Secretary Rafael Hui, along with property tycoon Thomas Kwok of Sun Hung Kai Properties and two others, regarding secretive payments totaling HK\$8.5 million made into Hui's bank account by Kwok via two co-appellants, in exchange of substantial commercial interest by getting involved in several major development projects that Hui was in charge with (right before he took office as Chief Secretary). The Court viewed that proof of specific act of the defendant done in favor of the briber is not required to constitute misconduct in public office, and this case sets a precedent that pre-office advantages received by a public officer may still amount to an abuse of public trust, which reinforces the principle that public officers must act with integrity and impartiality.

THE ROLE OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION (“ICAC”)

Established under the [Independent Commission Against Corruption Ordinance](#) (Chapter 204, the Laws of Hong Kong; “ICACO”), the ICAC is the primary enforcement body for anti-corruption laws in Hong Kong. It works independently from other branches of the government, as mandated by Article 57 of the Basic Law, with powers which include the authority to investigate suspicious financial transactions, inspect bank accounts, and compel individuals to provide information, as outlined under Part III.

The ICAC's powers extend beyond bribery, enabling it to investigate any associated crimes uncovered during a bribery investigation. Under Section 10(2) of the ICACO, the ICAC can arrest suspects without a warrant if another offense is reasonably suspected. Additionally, Section 12 of the ICACO requires the ICAC Commissioner to consider all received complaints of

corrupt practices and to carry out investigations ([Gregory Michael Hall v Commissioner of the ICAC \[1987\] HKLR 210](#)).

A hallmark of the ICAC is the confidentiality of its investigations. Under Section 30 of the POBO, it is a criminal offense for anyone to disclose the identity of a person under investigation. This safeguard ensures the integrity of investigations and prevents attempts of interference by individuals implicated in corruption cases. The principle of confidentiality is critical in ICAC's operations, as demonstrated in [HK SAR v Ng Man Yuen Avery \[2019\] HKCFI 1485](#).

Additionally, under Section 14 of the POBO, the ICAC's investigatory powers include compelling witnesses to provide information and to answer questions, even if this may infringe upon their right to silence, which is otherwise protected under Hong Kong's Basic Law. Statements obtained under this provision can be used against the statement maker under Section 20 of the POBO, subject to the overarching principle that a fair trial shall be maintained ([A v The Commissioner of the ICAC \(2012\) 15 HKCFAR 362](#)).

In 2024, the ICAC has focused its efforts on industries with a high risk of corruption, such as construction, building management, and finance. A notable case involved the Three-Runway System Project at Hong Kong International Airport, where several public officers were charged with accepting bribes totaling HK\$7.7 million (see [ICAC - Press Releases](#)). Similarly, investigations into the building management sector have led to the largest prosecution in ICAC history, where 23 individuals were indicted for conspiracy to defraud and bribery involving over HK\$6.5 million (see [ICAC - AR2023 – Operations Department.pdf](#)). The ICAC has also increasingly been collaborating with other statutory bodies such as the Competition Commission, to investigate suspected corruption and bid-rigging activities in the building maintenance industry.

ICAC AND THE POBO: EXTRATERRITORIAL EFFECT

Hong Kong is a signatory to international anti-corruption treaties, such as the United Nations Convention against Corruption (“UNCAC”). This facilitates

cross-border cooperation between the ICAC and foreign law enforcement agencies. However, the extraterritorial application of the POBO itself is somewhat limited.

Section 4 of the POBO extends to bribery involving Hong Kong public servants irrespective of where the crime occurred. In contrast, Section 9 (private sector bribery) lacks explicit extraterritorial reach. Nonetheless, Hong Kong courts have ruled that foreign entities may still be prosecuted if a substantial portion of the bribe took place within Hong Kong. Furthermore, whilst bribing a foreign public official is not explicitly an offense under the POBO, depending on the circumstances, such conduct may be an offense contrary to Section 9(2) (*HKSAR v Lionel John Krieger* [2014] 3 HKLRD 404).

FUTURE CHALLENGES AND REFORMS

Hong Kong consistently ranks as one of the least corrupt jurisdictions globally, as evidenced by its 14th-place ranking in the [2023 Corruption Perceptions Index](#). However, the ICAC continues to face emerging challenges. For instance, the rise in popularity of decentralized finance such as Bitcoin and other cryptocurrencies presents new obstacles to anti-corruption enforcement. The ICAC has acknowledged the need to adapt its investigative techniques to address the difficulty to trace illicit money flows from anonymous and borderless transactions. Further law reform may be proposed in due course.

The ICAC has also announced plans to strengthen its enforcement efforts in high-risk industries, particularly in the financial and construction sectors. As part of this initiative, it introduced Integrity Risk Management toolkits for construction companies in their recruitment processes, with the intent to mitigate integrity risks and uphold professionalism.

In addition, the Hong Kong International Academy Against Corruption (HKIAAC) was recently established to focus on systematic training in various business sectors and academic exchange on anti-corruption laws and practices worldwide.

CONCLUSION

Hong Kong's legal framework for combating bribery and corruption is comprehensive, with the POBO serving as the primary statute alongside common law provisions. The ICAC plays a pivotal role in enforcing these laws, equipped with extensive powers to investigate, arrest, and prosecute offenders. Recent landmark cases and enforcement activities demonstrate Hong Kong's ongoing commitment to maintaining its reputation as a global leader in anti-corruption efforts.

While challenges remain, particularly in relation to cross-border issues and the up-and-coming decentralized finance, Hong Kong's anti-corruption regime offers a robust model for other jurisdictions.

AUTHOR



Dorothy Siron

[Dorothy Siron](#) is a Hong Kong-based partner at Stephenson Harwood and an authority on asset tracing, recovery, and complex commercial litigation across the PRC and globally. Recognized for her expertise in financial crimes, digital assets, and international disputes, she co-founded CFAAR's Hong Kong Chapter.