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<sup>1</sup> Talk at Colgate University on September, 28, 2000, 7.30 p.m.

## **I.1 The Social background of Anti-corruption legislation in the People's Republic of China (PRC)**

Following the 1979 Modernization Program and Open Door Policy, economic activities in the PRC have experienced a thorough facelift. The gradual demise of state-owned enterprises and the surge of individual and private enterprises illustrated the fundamental changes in the PRC economic system. Nevertheless, along with the booming market-oriented economy came the demoralizing business practices—corruption and bribery, which is mistakenly regarded as the lubricant necessary to spin the wheels of the modern market-oriented economy.

The PRC government, in fact, made its debut in anti-corruption and bribery legislation in the 1950s following the founding of its new government in 1949. The “Ordinance Regarding Anti-Corruption and Bribery of the People's Republic of China” was promulgated in 1952, whereby staff of state administration, enterprises, schools and their subsidiaries who take advantage of their positions to embezzle, steal, swindle or by other means to obtain public property illegally shall be regarded as in violation of the law.

The penalties for the anti-corruption and bribery offenses were more clearly defined in the PRC Criminal Law promulgated of July 1979.

To keep in tune with the rapid economic development brought about by the Modernization Program and Open Door Policy and to address the associated economic crimes, such as bribery and corruption crimes, special regulations and amendments were enacted.

The “Decision Regarding the severe punishment of criminals who seriously undermine the economy”, promulgated by the Standing Committee of the National People's Congress, the PRC legislature, on March 8, 1982, expressly stated that an act of seeking unlawful advantages in business activities which seriously undermines the national economy and the social economic order infringes the national law and should be prosecuted under the PRC Criminal Law. The “Supplementary Regulations of the Standing Committee of the National People's Congress Regarding Anti-Corruption and Bribery” which came into force in 1988 specifically defined corruption offenses and embezzlement of public funds as offenses.

Under the market-oriented economy policy, the PRC economic market experienced massive growth. However, the public law governing economic crimes are far from comprehensive. To effectively maintain healthy growth in the market-oriented economy, to encourage fair competition, and to protect the legal rights of business operators and consumers, the Eighth National People's Congress adopted the “Law Against the Improper Competition of the PRC” in December 1993. This piece of legislation expressly prohibits operators from using property or other means to bribe when selling or buying commodities.

Rebates secretly offered to another person or unit shall be considered a bribe offered; acceptance of a secret rebate by another unit or person shall be considered a bribe accepted.

The “Decision Regarding Anti-Company-Law offenses” was adopted by the Standing Committee of the National People’s Congress on February 28 1995. That legislation was an endeavor to perfect the commercial corruption and bribery law by covering tort (which is a violation of private law), commercial bribes, and embezzlement of capital funds, which were used to be classified by the procuratorates as either theft or fraud offenses.

In 1996 the State Administration for Industry and Commerce issued the “Provisional Regulations Regarding Anti-Commercial-Bribery Practices”, which served as associated regulations for the “Law Against the Improper Competition” by expanding the definition of “bribes”. Originally the “bribes” were confined to “cash sums” and “money or tangible assets”, but under the provisional regulations of 1996, “commercial bribes” covered “all direct and indirect means of providing money or tangible assets, inclusive of providing free pleasure or study trips domestic or abroad.”

All such fresh anti-corruption-bribery legislation demonstrates that the PRC is constantly trying to answer the needs of its economic and social development. The new laws against corruption and bribery seek to uphold the economic order, to maintain a level playing field and to punish those who abuse their authority for personal gain. In the PRC, the Peoples Procuratorates (reinstated in 1979 in the wake of the Cultural Revolution of 1966-1976) at various levels are empowered to investigate corruption and bribery offenses and to decide whether a suspect should be arrested and if legal proceedings should be instituted against him. The Supreme People’s Procuratorate in Beijing and the regional People’s Procuratorates have established since 1989 anti-corruption and anti-bribery working bureaux to handle economic crimes such as corruption and bribery. Party cadres and party members infringing party discipline (including corruption and bribery) are subjected to investigation by the Commissions for Discipline Inspection. State functionaries who have misbehaved and subject to administrative sanctions (for corruption and bribery dealings which do not constitute criminal offenses) will be handled by the various levels of the Ministry of Supervision under the State Council.

## **I.2 Social background for anti-corruption legislation in Hong Kong**

Year 1974 could be taken as the watershed for anti-corruption legislation history in Hong Kong.

As early as year 1898, widespread corruption in Hong Kong attracted much attention from the public at large. In the same year, the Hong Kong Government enacted the first anti-bribery law, the Misdemeanors Punishment Ordinance. Then in 1948 after the Second World War, the Government passed the Prevention of Corruption Ordinance in the wake of the need to introduce a wide range of regulatory measures preferably to be enforced by clean and honest officers. In 1952, the Anti-Corruption Branch was set up within the Criminal Investigation Department of the Police Force. During this period, the Hong Kong police, customs officers, and Inland Revenue officers were notoriously known for their corrupt practices. Paying bribes for passing a driving test or for a successful public housing application or for obtaining a restaurant license was generally accepted as a part of life for the masses.

For the sake of tackling more effectively the increasing corruption problems, the outdated Prevention of Corruption Ordinance was replaced by the Prevention of Bribery Ordinance in 1971 whereby the investigative powers of the police on corruption cases were widened.

June 1973 could be taken as the new era in anti-corruption work in Hong Kong. At that time Peter Godber, a Chief Police Superintendent fled Hong Kong while under investigation by the Anti-Corruption Branch for corruption offenses. The disappearance of Chief Police Superintendent Godber sparked a series of demonstrations from the public. “Anti-corruption; catch Godber” was their slogan which was heard and seen on all the streets of Hong Kong.

The then Governor of Hong Kong, Sir Murray MacLehose, appointed Justice Alastair Blair-Kerr as a one-man Commission of Inquiry to investigate the disappearance and to review and recommend an amendment of the anti-corruption measures in force. To answer the community needs reflected in public opinion and the recommendations of the Commission of Inquiry, the “Independent Commission Against Corruption Ordinance” was passed on February 15, 1974, with the creation of the Independent Commission Against Corruption on the same day. The Independent Commission Against Corruption (ICAC) is independent of the Police Force and the civil service; the Commissioner of the Independent Commission Against Corruption is exclusively and directly accountable to the Governor/Chief Executive of Hong Kong. Prior to the inception of ICAC, people in Hong Kong suffered from corruption but accepted bribery as a way of life. The ICAC has successfully changed this attitude, i.e. their willingness to abide by the law and report corruption. In 1974 when ICAC was just established, only 35% of the complainants reporting corruption identify themselves but this figure now stands at almost 70%.<sup>2</sup> The performance and effectiveness of ICAC can be summarized by an extract from the Opening Address by the Chief Executive of Hong Kong, Mr. Tung Chee Hwa at the Silver Jubilee Conference on Fighting Corruption into the 21<sup>st</sup> Century held from March 22 through 24, 1999: “In the last quarter of a century, the ICAC has

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<sup>2</sup> ICAC International Anti-Corruption Newsletter, Inaugural Issue, January 2000: Community Education 2000

substantially reduced corruption in Hong Kong and kept it under control.... Hong Kong now prides itself as one of the best places in which to do business, with a clean and efficient civil service, accountable and transparent procedures and fair and open commercial practices....The community and the government remain firmly dedicated to combating corruption.”

The contribution of ICAC to the community of Hong Kong can be reflected in an extract from the Closing Remarks by the then ICAC Commissioner, Mrs. Lily Yam at the Silver Jubilee Conference on Fighting Corruption into the 21<sup>st</sup> Century held from March 22 through 24, 1999: “...although corruption cannot be eradicated it can be substantially reduced and controlled. This can be done when a community and its government at the highest level have the will to do so and are prepared to pay the price; when the government regulations and procedures are clearly understood and apply with equal force to one and all; when public servants and businessmen alike take a long term view for the good of the community, rather than focus on selfish gains; when the agency entrusted with fighting corruption carries out its duties without fear or favor, backed by a prosecuting authority and judicial process that are fair and impartial.”

## **II. Definitions of corruption and bribery**

### **II.1.1. People’s Republic of China (PRC)**

Both corruption and bribery offenses came under the umbrellas of economic crimes in the PRC’s Criminal Law, yet they are distinct from each other.

#### **The essence of the PRC’s anti-corruption and anti-bribery laws<sup>3</sup>**

	Embezzlement by state functionaries
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<sup>3</sup> Modified from *A Guide for Businessmen in Guangdong and Hong Kong*

<b>Corruption and Bribery Offenses</b>	<b>Corruption</b>	Embezzlement through dereliction of duty by employees of enterprises
		Illicit division of state-owned assets
		Illicit division of fines, confiscated money or property
		Misappropriation of public funds
		Misappropriation of a unit's funds
		Misappropriation of specific funds and materials
		Acceptance of bribes by state functionaries
	<b>Bribery</b>	Acceptance of bribes by a unit
		Members of intermediary organizations deliberately providing false testifying papers
		Offering bribes to state functionaries
		Unit offering bribes
		Offering bribes to a unit
		Introducing bribery
		Acceptance of bribes by employees of companies and enterprises
	<b>Others</b>	Offering bribes to employees of companies and enterprises
		Failing to explain significant excess of property or expenditure over lawful income
		Concealing savings outside the territory of China

The term “corruption” refers to any act whereby state functionaries take advantage of their office to misappropriate, steal, swindle, or use other illegal means to acquire their property.

Therefore, subjects<sup>4</sup> of corruption offenses are generally state functionaries, who could be

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<sup>4</sup> In Chinese law, the “subject” of an offense is a person who commits that offense and can also be used criminally

individuals or units. If non-state functionaries are alleged to have conspired with state functionaries to commit a corruption offense, they will be considered accomplices.

“Bribery” refers broadly to an act whereby state functionaries abuse their authority in return for soliciting or accepting advantages. Any person or unit who offers a bribe or introduces bribery act to a state functionary will also be subject to an indictment of bribery.

Provisions of the PRC Criminal Law prohibit offering and accepting bribes in relation to commercial transactions. In such transactions, the party accepting the bribes can be the employee of a company or an enterprise; while the party who offers bribes can be any individual.

### II.I.I. a. Corruption offenses<sup>5</sup>

Offense	Summary of the law	Key points for businessmen
Embezzlement by state functionaries [Articles 382, 394, 183(2), 271(2)]	<ul style="list-style-type: none"> <li>State functionaries taking advantage of this office</li> <li>By illegal means</li> <li>To appropriate public money or property</li> </ul>	<ul style="list-style-type: none"> <li>Refrain from taking part in corrupt activities since this could make you an accomplice to a corruption offense</li> </ul>
	<ul style="list-style-type: none"> <li>State functionaries assigned to non-state-owned institutions for official duties</li> <li>Taking advantage of their office</li> <li>To take possession of their institutions’ property illegally</li> </ul>	
	<ul style="list-style-type: none"> <li>State functionaries</li> <li>Accepting gifts (of a relatively high value) when discharging official duties</li> <li>Failing to hand over the gifts to the state as required by state regulations</li> </ul>	
Embezzlement through dereliction of duty by employees of enterprises [Articles 271(1)]	<ul style="list-style-type: none"> <li>Employees of a company, enterprise or other similar unit taking advantage of their position</li> <li>To take possession of the money or property of their own units unlawfully</li> </ul>	<ul style="list-style-type: none"> <li>Any employee, whether posted from Hong Kong or employed in the Mainland, can be the subject of a corruption offense</li> </ul>
Illicit division of state-owned assets [Article 396(1)]	<ul style="list-style-type: none"> <li>In the name of a unit</li> <li>Violating state regulations by</li> <li>Dividing up state-owned assets among individuals in secret</li> </ul>	
Illicit division of fines, confiscated money or property [Article 396(2)]	<ul style="list-style-type: none"> <li>Judicial or administrative law enforcement organs</li> <li>Violating state regulations by</li> <li>Dividing up in secret any fines or confiscated money/property among individuals which by right should be turned over to the state</li> </ul>	
Misappropriations of	<ul style="list-style-type: none"> <li>State functionaries</li> </ul>	

liable for doing so.

<sup>5</sup> Modified from *A Guide for Businessmen in Guangdong and Hong Kong*

public funds [Articles 185(2), 272(2), 384]	<ul style="list-style-type: none"> <li>• Taking advantage of their position</li> <li>• To misappropriate public funds for personal use</li> <li>• Or for loaning to others</li> <li>• Or for illegal or profit-making activities</li> </ul>	
Misappropriations of a unit's funds [Articles 272(1)]	<ul style="list-style-type: none"> <li>• Employees of companies, enterprises or other units</li> <li>• Taking advantage of their position</li> <li>• To misappropriate funds of their own units for personal use or for loaning to others</li> <li>• Or for illegal or profit-making activities</li> </ul>	<ul style="list-style-type: none"> <li>• Any employee of a unit named in this provision, whether posted from Hong Kong or employed in the Mainland, can be the subject of a corruption offense</li> </ul>
Misappropriations of public funds [Articles 273]	<ul style="list-style-type: none"> <li>• any unit</li> <li>• misappropriating funds and materials for disaster relief and aid-the-poor programs, etc</li> <li>• jeopardizing the interest of the state and the public</li> </ul>	

### II.I.I.b. Bribery offenses

- (1) Offenses committed when a state functionary or unit accepts bribes and when any person offers bribes to a state functionary or introduces bribery

Offense	Summary of the law	Key points for businessmen
Acceptance of bribes by state functionaries [Articles 385, 163(3), 184(2), 388]	<ul style="list-style-type: none"> <li>• state functionaries</li> <li>• taking advantage of their position</li> <li>• to extort money or property from other people</li> <li>• or to accept advantages illegally from another party in exchange for benefits to that party</li> </ul>	<ul style="list-style-type: none"> <li>• if a state functionary solicits a bribe, the request should be refused and the incident should immediately be reported to the proper authorities</li> </ul>
	<ul style="list-style-type: none"> <li>• state functionaries</li> <li>• in violation of state regulations</li> <li>• accepting and pocketing any form of rebate or service charge</li> </ul>	
	<ul style="list-style-type: none"> <li>• state functionaries</li> <li>• taking advantage of the convenience arising from their official authority or position</li> <li>• through the act of other state functionaries during the discharge of their duties</li> <li>• to extort or accept money or property from an entrusting person for securing illegitimate gain</li> </ul>	
Acceptance of bribes by a unit [Article 387]	<ul style="list-style-type: none"> <li>• state organs and state-owned enterprises</li> <li>• extorting or illegally accepting property from other people in exchange for gain</li> <li>• or secretly accepting a bribe in the form of a kickback, rebate, service charge, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• if a state body or state-owned enterprise solicits any form of bribe, the request should be refused and the incident should immediately be reported to the proper authorities</li> </ul>

Members of intermediary organizations deliberately providing false testifying papers [Article 229(2)]	<ul style="list-style-type: none"> <li>members of intermediary organizations who provide legal, accounting or auditing services, etc.</li> <li>demanding or illegally accepting money or property from other people</li> <li>in return for providing false testifying papers</li> </ul>	
Offering bribes to state functionaries [Article 389]	<ul style="list-style-type: none"> <li>any individual</li> <li>offering money or property to state functionaries</li> <li>for the purposes of securing illegitimate benefits</li> </ul>	<ul style="list-style-type: none"> <li>bribes should not be offered to a state functionary in exchange for illegitimate gain or to secure business</li> <li>if a state functionary uses extortion to force someone to offer money or property and at the same time that individual receives no illegitimate benefit, the individual will not be deemed to have committed bribery</li> </ul>
	<ul style="list-style-type: none"> <li>any individual</li> <li>in violation of state regulations</li> <li>offering money or property/rebates or service charges in any form to state functionaries</li> </ul>	
Unit offering bribes [Article 393]	<ul style="list-style-type: none"> <li>any unit</li> <li>for the purposes of securing illegitimate benefits</li> <li>or in violation of state regulations</li> <li>offering rebates or service charges to state functionaries</li> </ul>	<ul style="list-style-type: none"> <li>when a bribe is offered in the name of a company or an enterprise, it remains an offense</li> </ul>
Offering bribes to a unit [Article 391]	<ul style="list-style-type: none"> <li>any individual</li> <li>for the purposes of securing illegitimate benefits</li> <li>or in violation of state regulations</li> <li>offering money or property/rebates and service charges in any form to state organs or state-owned enterprises</li> </ul>	<ul style="list-style-type: none"> <li>even the soliciting party accepts the bribes in the name of a state organ or state-owned enterprise, it remains a bribery offense</li> </ul>
Introducing bribery [Article 392]	<ul style="list-style-type: none"> <li>any individual</li> <li>introducing bribery</li> <li>to state functionaries</li> </ul>	<ul style="list-style-type: none"> <li>anyone who lines up a bribe for state functionaries commits a criminal offense</li> </ul>

(2) Offenses committed when employees of companies or enterprises offer or accept bribes in the course of commercial dealings

Offense	Summary of the law	Key points for businessmen
Acceptance of bribes by employees of companies and enterprises [Article 163]	<ul style="list-style-type: none"> <li>employees of companies and enterprises</li> <li>taking advantage of their position</li> <li>demanding money or property from other people</li> <li>or illegally accepting advantages from other people in exchange for benefits for the other party</li> </ul>	<ul style="list-style-type: none"> <li>to combat bribery in the commercial sector, the Mainland's Criminal Law contains highly specific provisions</li> <li>employees of companies or enterprises, whether</li> </ul>

	<ul style="list-style-type: none"> <li>employees of companies and enterprises</li> <li>in violation of state regulations</li> <li>accepting rebates, service charges in any form for personal use</li> </ul>	posted from Hong Kong or employed in the Mainland, must not abuse their authority by soliciting or accepting bribes
Offering bribes to employees of companies and enterprises [Article 164]	<ul style="list-style-type: none"> <li>any person</li> <li>offering money or property to employees of companies and enterprises</li> <li>in order to seek illegitimate benefits</li> </ul>	<ul style="list-style-type: none"> <li>pay attention to all laws which seek to combat bribery in the commercial sector</li> <li>do not offer bribes to non-state functionaries</li> </ul>
Failing to explain significant excess of property or expenditure over lawful income [Article 395(1)]	<ul style="list-style-type: none"> <li>state functionaries whose property or expenditure significantly exceeds their lawful income</li> <li>failing to explain the source of such property or expenditure</li> </ul>	
Concealing savings outside the territory of China [Article 395(2)]	<ul style="list-style-type: none"> <li>state functionaries</li> <li>deliberately concealing their savings outside the territory of China</li> </ul>	

The funds or articles constituting the advantage in a corruption or bribery case may be traced and recovered by law. Criminals may also be fined and their property confiscated as prescribed by law. Where offenses are committed by units, the offenders will suffer the penalty while the units themselves will be held responsibility for criminal liability.

### **Terms and definitions**

**State functionaries:** all personnel who work in the public services in state bodies; employees of state-owned companies, enterprises, units or people's organizations who provide public services; employees of state bodies, state-owned companies, enterprises and units deployed to non-state-owned companies, enterprises, units, social organizations delivering public services, and other personnel who work in the public services.

**Taking advantage of office:** the act of taking advantage of a position of authority or of the convenience afforded by that position when appropriating, managing or handling property.

**Taking advantage of the convenience arising from one's own official authority or position:** the act of taking advantage of one's own authority or position to direct and influence state functionaries of any rank in the same department, in neighboring departments or in units with close ties.

**In violation of state regulations:** in violations of the laws and decisions made by the National People's Congress (the PRC legislature) and its Standing Committee, as well as the administrative policies, executive

measures and the decisions and orders made and issued by the State Council.

**Property:** money and materials, e.g. currency, gold silver and other materials that can be measured in terms of value and amount.

**Benefits or gain:** property and various labor services that cannot be measured in terms of value and amount, e.g. job redeployment, allocation of population register, arrangement of employment, etc.

**Public property:** (a) state-owned property; (b) property collectively owned by the masses; (c) community donations or property from the specific funds allocated for aid-the-poor programs and other public welfare services; also private property under the management of, use of or in the course of transportation by state bodies, state-owned companies, enterprises, collective enterprises and people's organizations.

**Misappropriation of public funds for personal use:** the use of embezzled public funds by the embezzlers themselves or by other individuals; also the offer of embezzled public funds to enterprises, units, bodies or organizations in the name of an individual for the purposes of securing personal gain.

**Company, enterprise or other unit:** "company": a non-state-owned limited liability company and holdings company limited set up in accordance with the Company Law of the PRC; "enterprise": any non-state-owned economic organization (other than a "company") engaging in lawful economic transactions; "other unit's": any non-state-owned social or economic organization/s other than a "company" or an "enterprise" as defined.

## II.I.2 Hong Kong

In Hong Kong, unlike PRC, corruption and bribery constitute the same offense under the Prevention of Bribery Ordinance (PBO), Chapter 201, Laws of Hong Kong. "Corruption" covers both offering and accepting a bribe. Offering a bribe takes place when an individual offers an advantage to an agent. Accepting a bribe means that an agent or entrusted party (normally an employee including those in the civil service) abuses his official position by accepting a bribe in relation to the business of his principal or entrusting party (normally the employer) without obtaining his principal's permission.

The party charged with accepting bribes can be anyone who is employed in the private sector, in a

government department or by a public body or who acts for another, while any person can be charged with offering a bribe.

Any private sector employee who uses false documents with the intent to deceive or mislead his principal also contravenes the Prevention of Bribery Ordinance.

### II.I.2.a. Bribery involving the public sector

Offense	Summary of the law	Key points for businessmen
Offering bribes to a public servant [Section 4(1) of PBO]	<ul style="list-style-type: none"> <li>any individual</li> <li>in Hong Kong or elsewhere</li> <li>without lawful authority or reasonable excuse</li> <li>offering an advantage to any public servant</li> <li>to affect that public servant's decision to perform or abstain from performing his official duties</li> </ul>	<ul style="list-style-type: none"> <li>a civil servant or an employee of a public body is normally not allowed to accept any advantage on account of his official duties</li> <li>businessmen should not offer tips or advantages to a public servant to assist business or to speed up services, e.g. their applications for connection to a public utility, for the granting of a restaurant license, etc.</li> <li>even though the act of bribery takes place outside Hong Kong, the offender is still liable to prosecution</li> </ul>
Offering an unlawful advantage to a public servant in the course of business [Section 8 of PBO]	<ul style="list-style-type: none"> <li>any individual</li> <li>without lawful authority or reasonable excuse</li> <li>offering an advantage to a civil servant or an employee of a public body in the course of business</li> </ul>	<ul style="list-style-type: none"> <li>offering an unlawful advantage to a civil servant or an employee of a public body in the course of business is an offense even though there is no apparent intent to bribe</li> </ul>

### II.I.2.b. Commercial Bribery <sup>6</sup>

Offense	Summary of the law	Key points for businessmen
Private sector employees accepting bribes [Section 9(1) of PBO]	<ul style="list-style-type: none"> <li>any agent</li> <li>without the permission of his principal</li> <li>soliciting or accepting any advantage</li> <li>so as to affect his doing or forbearing to do anything relating to his principal's affairs</li> </ul>	<ul style="list-style-type: none"> <li>employees should not solicit and accept any advantage related to their work without permission</li> </ul>
Offering bribes to a	<ul style="list-style-type: none"> <li>any individual</li> </ul>	<ul style="list-style-type: none"> <li>before offering an</li> </ul>

<sup>6</sup> Modified from *A Guide for Businessmen in Guangdong and Hong Kong*

private sector employee [Section 9(1) of PBO]	<ul style="list-style-type: none"> <li>• without the permission of the agent's principal</li> <li>• offering an advantage to any agent</li> <li>• as an inducement to or reward for doing or forbearing to do anything relating to his principal's affairs</li> </ul>	<p>advantage to a private sector employee, make sure the employee has the prior permission of his employer to receive such an advantage</p> <ul style="list-style-type: none"> <li>• do not offer bribes to secure business</li> <li>• any element in an act of bribery that takes place in Hong Kong can be pursued under the PBO</li> <li>• a company can also be charged with offering bribes</li> </ul>
Private sector employees using false documents to receive an employer [Section 9(3) of PBO]	<ul style="list-style-type: none"> <li>• any agent</li> <li>• using any false, erroneous or defective receipt, account or other document in respect of which his principal is interested</li> <li>• to deceive his principal</li> </ul>	<ul style="list-style-type: none"> <li>• it is also an offense to use false documents to deceive an employer even though no advantage is offered or accepted</li> </ul>

### **Terms and definitions**

**Principal or entrusting party:** generally an employer. Within the private sector, “employer” often means the owner or the board of directors of a company.

**Agent:** generally an employee or entrusted party. If a company appoints other people or organizations to act for it in the course of business, that person or organization is the agent or entrusted party whether the appointment is full-time or part-time and whether or not the entrusted party receives a fixed salary or a fee from the company. The term “agent” also includes the individual directors of a company.

**Public body:** includes the Government, Executive Council, Legislative Council, Urban Council, Regional Council, District Boards and any committees or other bodies appointed by the Chief Executive-in-Council. It also includes organizations franchised by the Government to provide utilities, empowered to use large amount of public funds, in receipt of substantial government financial assistance or specially appointed by the Government.

**Public servant:** an employee of a public body. The term covers permanent and temporary, paid and unpaid employees.

**Advantage:** includes money, gifts, loans, rewards, commissions, official position, employment, contracts, service, favors and discharge of liability whether in whole or in part, but excludes entertainment.

## II.1.2 c. Prevention of Bribery Ordinance

The Prevention of Bribery Ordinance treats the corruption offense and bribery offense from three perspectives:

### 1. Civil Servant

#### Prevention of Bribery Ordinance, Section 3

Any civil servant who, without the general or special permission of the Chief Executive, solicits or accepts any advantage shall be guilty of an offense.

#### Prevention of Bribery Ordinance, Section 10

Any person who, being or having been a civil servant maintains a standard of living above that which is commensurate with his present or past official emoluments; or is in control of pecuniary resources or property disproportionate to his present or past official emoluments, shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offense.

“Civil servant” means a person holding an office of emolument, whether permanent or temporary, in the Government of Hong Kong.

### 2. Public Servant (inclusive of civil servant)

#### Prevention of Bribery Ordinance, Section 4 (1)

Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servants:

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant’s capacity as a public servant;  
or
- (c) assisting, favoring, hindering or delaying, or having assisted, favored, hindered or delayed, any person in the transaction of any business with a public body,  
shall be guilty of an offense.

“Public Servant” means any employee of a public body, comprising the Government; the Executive Council; Legislative Council; Regional Council; any board, commission, committee, public utilities or other body run with Government funds or subsidies and are closely related to the general public such as the Hong Kong Mass Transit Railway, Hong Kong Housing Society, universities, Hong Kong Gas Company, China Motor Bus Company, Consumer Council, etc.

### 3. Private Sector Employees

#### Prevention of Bribery Ordinance, Section 9

Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to is principal’s affairs or business; or
- (b) showing or forbearing to show, or having to show, or having shown or forborne to show, favor or disfavor to any person in relation to his principal’s affairs or business

shall be guilty of an offense.

And any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent’s

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to is principal’s affairs or business; or
- (b) showing or forbearing to show, or having to show, or having shown or forborne to show, favor or disfavor to any person in relation to his principal’s affairs or business

shall be guilty of an offense.

It is obvious that from the essence and spirit of the Prevention of Bribery Ordinance civil and public servants are subject to more stringent standards than employees in the private sector. Such difference demonstrates the Hong Kong Government’s belief that only a clean and honest government can bring stability and prosperity, and it also demonstrates its faith in a laissez-fair economic system where lawful yet constrained liberty is upheld. The Prevention of Bribery Ordinance is applicable to Hong Kong civil and public servants regardless of their whereabouts in this world. However, the Prevention of Bribery Ordinance, in theory, carries no binding power on the private sector employees should their corrupt and bribery transactions take place beyond the territory of Hong Kong.

#### **II.I.3 a. Excerpts from the Criminal Law of the PRC on anti-corruption and anti-bribery<sup>7</sup>**

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<sup>7</sup> The text is extracted from the “Criminal Law of the People’s Republic of China” translated by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress of the PRC. Should any discrepancy, the

**(1) Embezzlement by State functionaries****Article 382**

- any state functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally takes it into his possession shall be guilty of embezzlement.
- Any person authorized by state organs, State-owned companies, enterprises, institutions or people's organizations to administer and manage state-owned property who, by taking advantage of his office, appropriates, steals, swindles the said property or by other means illegally takes it into his own possession shall be regarded as being guilty of embezzlement.
- Whoever conspires with the person mentioned in the preceding two paragraphs to engage in embezzlement shall be regarded as joint offenders in the crime and punished as such

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**Article 394**

- Any state functionary who, in his activities of domestic public service or in his contacts with foreigners, accepts gifts and does not hand them over to the State as it is required by State regulations, if the amount involved is relatively large, shall be convicted and punished in accordance with the provisions of Articles 382 and 383 of this Law.

**Article 183, Clause (2)**

- If an employee of a State-owned insurance company or any person who is assigned by a State-owned insurance company to an insurance company that is not owned by the State to engage in public service commits the act prescribed in Clause (1) of this Article, he shall be convicted and punished according to the provisions in Articles 382 and 383 of this Law.

**Article 271, Clause (2)**

- If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or if a person who is assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits the act mentioned in Clause (1) of this Article, he shall be convicted and punished according to the provisions in Articles 382 and 383 of this Law.

**(2) Misappropriation of public funds****Article 384**

- Any State functionary who, by taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds for profit-making activities, or misappropriates a relatively large amount of public funds and

fails to return it after the lapse of three months, shall be guilty of misappropriation of public funds and shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years. Whoever misappropriates a huge amount of public funds and fails to return it shall be sentenced to fixed-term imprisonment of not less than 10 years of life imprisonment.

- Whoever misappropriates for his own use funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief shall be given a heavier punishment.

**Article 185, Clause (2)**

- If any employee of a State-owned banking institution or any person who is assigned by a State-owned banking institution to a banking institution that is not owned by the State to engage in public service commits the act mentioned in Clause (1) of this Article, he shall be convicted and punished according to the provisions of Article 384 of this Law.

**Article 272, Clause (2)**

- If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or any person who is assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise, or any other unit that is not owned by the State to engage in public service commits any act mentioned in Clause (1) of this Article, he shall be convicted and punished according to the provisions of Article 384 of this Law.

**(3) Acceptance of bribes by State functionaries**

**Article 385**

- Any State functionary who, by taking advantage of his position, extorts money or property from another person, or illegally accepts another person's money or property in return for securing benefits for the person shall be guilty of acceptance of bribes.
- Any State functionary who, in economic activities, violates State regulations by accepting rebates or service charges of various descriptions and taking them into his own possession shall be regarded as guilty of acceptance of bribes and punished for it.

**Article 163, Clause (3)**

- Any employee of a State-owned company or enterprise who, being engaged in public service or who is assigned by a State-owned company or enterprise to engage in public service that is not owned by the State, commits any act mentioned in Clauses (1) and (2) of this Article, shall be convicted and punished according to the provisions of Article 385 and 386 of this Law.

**Article 184, Clause (2)**

- If any employee of a State-owned banking institution or any person who is assigned by a State-owned

banking institution to a banking institution that is not owned by the State to engage in public service commits the act mentioned in Clause (1) of this Article, he shall be convicted and punished according to the provisions of Article 385 and 386 of this Law.

#### **Article 388**

- Any State functionary who, by taking advantage of his own functions and powers or position, secures illegitimate benefits or an entrusting person through another State functionary's performance of his duties and extorts from the entrusting person or accepts the entrusting person's money or property shall be regarded as guilty of acceptance of bribes and punished for it.

#### **(4) Acceptance of bribes by a unit**

##### **Article 387**

- Where a State organ, State-owned company, enterprise, institution or people's organization extorts from another person or illegally accepts another person's money or property in return for securing benefits for the person, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offense shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.
- Any of the units mentioned in the preceding paragraph that, in economic activities, secretly accept off-the-book rebates or service charges of various descriptions shall be regarded as guilty of acceptance of bribes and punished in accordance with the provisions of the preceding paragraph.

#### **(5) Offering bribes to State functionaries**

##### **Article 389**

- Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State functionary shall be guilty of offering bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.
- Whoever, in economic activities, violates States regulations by giving a relatively large amount of money or property to a State functionary or by giving him rebates or service charges of various descriptions shall be regarded as guilty of offering bribes and punished for it.
- Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefit shall not be regarded as offering bribes.

#### **(6) Offering bribes to a unit**

##### **Article 391**

- Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State-owned company, enterprise, institution or people's organization or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.
- Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the

persons who are directly in charge and the other persons who are directly responsible for the offense shall be punished in accordance with the provisions of the preceding paragraph.

**(7) Introducing bribery**

**Article 392**

- Whoever introduces a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.
- Any person who introduces a bribe but voluntarily confesses the act before he is investigated for criminal responsibilities may be given a mitigated punishment of exempted from punishment.

**(8) Unit offering bribes**

**Article 393**

- Where a unit offer bribes for the purpose of securing illegitimate benefits or, in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offense shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with the provisions of Articles 389 and 390 of this Law.

**(9) Failing to explain significant excess of property or expenditure over lawful income; concealing savings outside the territory of China**

**Article 395**

- Any State functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of the property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall be recovered.
- Any State functionary shall, in accordance with State regulations, declare to the State his bank savings outside the territory of China. Whoever has a relatively large amount of such savings and does not declare them to the State shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or the competent authorities at a higher level.

**(10) Illicit division of State-owned assets; illicit division of fines, confiscated money or property**

**Article 396**

- Where a State organ, State-owned company, enterprise, institution or people's organization, in violation of State regulations and in the name of the unit, divides up State-owned assets in secret among all the individuals of the unit, if the amount involved is relatively large, the persons who are directly responsible for the offense shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount is huge, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.
- Any judicial organ or administrative law-enforcing organ that, in violation of State regulations and in the name of the organ, divides up in secret the fines or confiscated money or property, which should be turned over to the State, among all the individuals of the organ shall be punished in accordance with the provisions of the preceding paragraph.

### **(11) Acceptance of bribes by employees of companies and enterprises**

#### **Article 163, Clause (3)**

- Where an employee of a company or enterprise who, taking advantage of his position, demands money or property from another person or illegally accepts another person's money or property in return for the benefits he seeks for such person, if the amount involved is relatively large, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property.
- Any employee of a company or enterprise who, violating State regulations in economic activities, accepts rebates or service charges of various descriptions and takes them into his own possession shall be punished in accordance with the provisions of the preceding paragraph.
- Any employee of a State-owned company or enterprise who, being engaged in public service or who is assigned by a State-owned company or enterprise to engage in public service in a company or enterprise that is not owned by the State, commits any act mentioned in the preceding two paragraphs shall be convicted and punished according to the provisions of Article 385 and 386 of this Law.

### **(12) Offering bribes to employees of companies and enterprises**

#### **Article 164**

- Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company or enterprise, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.
- Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offense shall be punished in accordance with the provisions in the preceding paragraph.

- Any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

**(13) Members of intermediary organizations deliberately providing false testifying papers**

**Article 229, Clause (2)**

- Any member mentioned in Clause (1) of this Article who commits the crime prescribed in the Clause demands money or property from another or illegally accepts money or property from another shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

**(14) Embezzlement through dereliction of duty by employees of enterprises**

**Article 271, Clause (1)**

- Any employee of a company, enterprise or any other unit who, taking advantage of his position, unlawfully takes possession of the money or property of his own unit, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property.

**(15) Misappropriation of a unit's funds**

**Article 271, Clause (1)**

- Any employee of a company, enterprise or any other unit who, taking advantage of his position, misappropriates the funds of his own unit for personal use or for loaning them to another person, if the amount is relatively large and the funds are not repaid at the expiration of three months, or if the funds are repaid before the expiration of three months but the amount involved is relatively large and the funds are used for profit making activities or for illegal activities, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, or if it is relatively large but is not returned, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

**(16) Misappropriation of specific funds and materials**

**Article 273**

- In cases of misappropriation of funds or materials that are allocated for disaster relief, emergency rescue, flood prevention and control, support to disabled servicemen and families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief, if the circumstances are serious and major harm is caused to the interests of the State and the people, the person who is directly responsible for the offense shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to

fixed-term imprisonment of not less than three years but not more than seven years.

## **II. I.3 b. Excerpts from the Prevention of Bribery Ordinance of Hong Kong**

### **1. Corruption and bribery offenses involving the private sector (offering bribes, accepting bribes and deceiving one's employer by furnishing false documents)**

#### **Section 9**

- (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement or reward for or otherwise on account of his
  - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to is principal's affairs or business; or
  - (b) showing or forbearing to show, or having to show, or having shown or forborne to show, favor or disfavor to any person in relation to his principal's affairs or business
 shall be guilty of an offense.
- (2) And any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's
  - (a) doing or forbearing to do, or having done or forborne to do, any act in relation to is principal's affairs or business; or
  - (b) showing or forbearing to show, or having to show, or having shown or forborne to show, favor or disfavor to any person in relation to his principal's affairs or business
 shall be guilty of an offense.
- (3) Any agent who, with intent to receive his principal, uses any receipt, account or other document:
  - (a) in respect of which the principal is interested; and
  - (b) which contains any statement which is false or erroneous or defective in any material particular; and
  - (c) which to his knowledge is intended to mislead the principal,
 shall be guilty of an offense.
- (4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5) neither he nor the person who offered the advantage shall be guilty of an offense under subsection (1) or (2).
- (5) For the purposes of subsection (4) permission shall
  - (a) be given before the advantage is offered, solicited or accepted; or
  - (b) in any case where an advantage has been offered or accepted without prior

permission, be applied for and given as soon as reasonably possible after such offer or acceptance, and for such permission to be effective for the purposes of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

## **2. Offering bribes to a public servant**

### **Section 4**

- (1) Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servants:
  - (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
  - (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any public servant in his or that other public servant's capacity as a public servant; or
  - (c) assisting, favoring, hindering or delaying, or having assisted, favored, hindered or delayed, any person in the transaction of any business with a public body,
 shall be guilty of an offense.

## **3. Offering advantages to a public servant without authority**

### **Section 8**

- (1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to a Crown servant<sup>8</sup> employed in that department, office or establishment of the Government shall be guilty of an offense.
- (2) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offense.

## **II.I.4. Differences and similarities of the corruption and bribery offenses in the PRC and Hong Kong**

No vast differences are found in the legal definitions of corruption offenses between Hong Kong

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<sup>8</sup> "Crown servant" is to be construed as a "servant of the Government of the Hong Kong Special Administrative Region".

and the PRC in terms of spirit and essence. However, the corruption offenses and bribery offenses in the PRC are grouped under different sections of the same Prevention of Bribery Ordinance.

In the PRC, though both corruption offenses and bribery offenses come under the economic crimes umbrella. The two are quite distinct from each other. Corruption offenses belong to the violation of funds/property category while bribery offenses belong to dereliction of duty category. Corruption refers to the unlawful taking of public funds/property under someone's care through embezzlement, misappropriation, theft, or fraud; whereas bribery offenses refer to the unlawful taking of someone's funds/property through solicitation or acceptance. And both corruption and bribery offenses are applicable only to state functionaries, functionaries of collective economic organizations staff engaged in public duties. Those company directors, supervisors or staff who committed similar offenses will be prosecuted under the Company Law. Therefore, if someone is suspected of committing a corruption offense, bribery offense, or commercial bribery offense, it is necessary to define his official position before an appropriate charge is laid.

In Hong Kong, no matter whether the offender is a public servant or a private sector employee, he who without the official permission of his employer, accepts an advantage or is granted a favor in the course of his duties, or offers an advantage to a public servant or a private sector employee, shall be guilty of an offense under the Prevention of Bribery Ordinance, Chapter 201, Laws of Hong Kong. The Prevention of Bribery Ordinance also prohibits nationals of any territory in this world from engaging in corruption and bribery in Hong Kong. Mainland Chinese conducting business in Hong Kong remain subject to the sanctions of the PRC's anti-corruption and anti-bribery laws since the PRC Criminal Law follows the principle of *lex personalis* (law of the person) as well as that of *lex situs* (law of the place). Likewise, Hong Kong businessmen conducting business in China do not only have to comply with the Hong Kong's Prevention of Bribery Ordinance but also have to observe the anti-corruption and anti-bribery laws of PRC.

## **II. II. Everyday social interpretation**

Traditionally, to the Chinese people, harmony and orderliness in its entirety is their utopia for a government, society, family and themselves. Chinese tradition, under the influence of Confucianism, had been in a sense anti-legal, but it had never been lawless. It stressed that law should never be separated from the concept of virtue or morality and always placed equity and social justice above the chapter and verse of the law. According to the teachings of Confucius, human nature was basically good, but not that man was born perfect. Therefore, the sanction of virtue was its being admirable and desirable. This Confucian attitude held that if the people are governed by morality (which is an internal obligation) and "gentlemen's agreements", and their conduct was regulated by rules of propriety and decorum or code of honor, they would have the sense of shame and would also become law-abiding and responsible. Harmony and orderliness in a government, society, family and human bonds would prevail accordingly. It was believed that if the people were strictly governed by laws and their conduct was regulated by a system of punishments (which is an external obligation), they would only try to avoid punishment, and would lose the

sense of shame. Against such Confucian beliefs bred the general Chinese tradition of handling litigations in a personal rather than an impersonal manner, stressing the administration of justice by good and virtuous men rather than relying on codes of law in the Western sense.

On the other hand, the Legalists, emphasized on the administrative system of punishments. To make government depend upon the virtue of the ruler was dodgy, according to the Legalists. They argued that not the rules of propriety and decorum or code of honor but the codes of punishment should rule. Besides, they reasoned that as the state becomes larger and human activities became increasingly complex, public or civil offenses inevitably multiplied and the existence of codes of law became a necessity. The Legalist conception of punishment was in certain way similar to the western conception of law, but its objective was very different from what it is commonly thought of in the West as the objective of law. To Westerners, “the safeguards of the law” mean protection for the individual against unwarranted and unfounded accusations by the government. The Legalists, however, regarded the codes of punishment as an instrument for the control of the people by the government. In effect, the code of punishment constituted a set of rewards and punishments, which should be administered fairly and impartially.

To reconcile the two contrasting views, the Confucian-Legalist thinkers maintained that the code of propriety and decorum is documentary and the code of punishment is its essential practice. In other words, the laws cannot be well enforced if both the law enforcers and the people do not behave in conformity with the code of propriety and decorum.

For thousands of years, kings, princes, feudal lords, government officials, judiciary personnel and police were generally considered incompetent and corrupt. Honest judges were sanctified and worshipped by the people in temples built in their honor. Since the 1911 Revolution, the Chinese people have been endeavoring to reconstruct their legal system along the democratic Western model. Unfortunately, plagued by civil wars, foreign aggression and domestic political movements, the new legal system have not met with success. However, the adoption of the new legal system has laid the foundation for governing the administration of justice by codes of law of the democratic Western model. Moreover, by the 21<sup>st</sup> Century, the Chinese government as well as the masses are convinced by now that proper administration of justice depends not merely on a modern system of law but quite as much on a clean, honest strong and well-trained judiciary; and a sound economy depends on honest and even-handed business transactions. To realize such goals calls for a corruption-free government and community. And against such cultural and political background in the PRC, “corruption” and “bribery” carry the connotations of “immoral”, “unethical”, “anti-social”, “illegal”, and “undesirable” on top of their legal definition. It is the hope, or perhaps, dream of the Chinese people that the powerful and influential who shape the course of the country and more, their daily lives, can stay honest and corruption-free.

Since PRC came into being in 1949, efforts had been made to censure corruption from time to time. In 1951 there was the Three-Anti Campaign, a nation-wide campaign against three evils: corruption, waste and bureaucratism. The Campaign, unfortunately, turned out to be a semi-political movement: a fight against corruption plus corrosion by the bourgeoisie. It was not just intended to get rid of corrupt officials but to eliminate both undesirable elements within the government, i.e. dissidents. In 1952, the Five-Anti Campaign

(to fight against five evils: bribery, tax evasion, theft of state property, cheating on government contracts and stealing state economic information) was launched, directing against businessmen and industrialists. However, owing to vague legal definitions of the corruption and bribery crimes, the Campaign again served just the political objectives of the Communist Party rulers. In 1963 another anti-corruption campaign to combat corruption in the villages, the Four Cleans (i.e. cleaning up account books, granaries, properties and work-places) or Socialist Education Movement was launched and it lasted for three years. It again turned out to be a class struggle movement of peasants against rich peasants and landlords to raise the people's ideological awareness, and to strengthen the collective economy and proletarian dictatorship. All such censures of corruption, initially aimed to correct the corrupt, arrogant and elitist style of the bureaucrats and to re-establish an equal and just society, unfortunately, turned out to be mass movement attempting to weed out political dissidents. Between 1966 and 1976, the Cultural Revolution, negating law and order, took place in China. During that period, power is everything; abuse of official power illustrating "absolute power corrupts absolutely" became part of daily lives for the masses. Being "corrupt", in fact, carried the connotation of being "politically incorrect" then. Nevertheless, from late 1970s onward, China opened herself to the outside world and was eager to seek exchanges with the other nations. Then came all sorts of economic crimes, of which the most common are bribery, obstruction of justice, official profiteering, misappropriation, excessive spending by officials, and nepotism. To fight corruption and bribery in the democratic Western sense became the desire of the people, especially the intellectuals and some forward-looking leaders. This was the original aim of the Tiananmen Square Turmoil initiated by college students in 1989. Since then, new anti-corruption and anti-bribery laws in the Western sense have come into force to meet the realities. Up until the present moment, a "corruption-free" community and government, in every Western legal sense of the word, which guarantee fair and square practices, is the yearning of the masses in the PRC.

As far as anti-corruption experience is concerned, the Chinese in Hong Kong (accounting for over 95% of the 7 million population) have a totally different feel. Hong Kong, from 1840 through 1997, was a British colony where, up until the present, the rule of law is upheld and the people are given basic human rights. As mentioned earlier, corruption was rampant among the law enforcers up until the inception of the Independent Commission Against Corruption in 1974. Prior to 1974, people, like their PRC counterparts, did take to the streets calling for censure of corruption. However, street demonstrations did not end up with bloodshed as in the case in China due to different political systems in force in the two places. In Hong Kong, corruption is defined by the law. Legal definitions are very well-defined, clear-cut, consistent and operational, and thus legal censures cannot be arbitrarily directed at political opponents. The Independent Commission Against Corruption, the law enforcement agency charged with investigating corruption and bribery allegations, really manages to function without fear or favor, prejudice or ill will in accordance with the law. "Immoral", "unethical", "anti-social", "illegal", "undesirable" and corrupt officials regardless of their rank or race, businessmen or individuals are seen to be sent to jail, when convicted with due process of the criminal justice system. The Independent Commission Against Corruption is highly regarded, both within and beyond the territory, for its success in the fight against corruption. It is the only non-police

law-enforcement agency admitted to Interpol. All such demonstrates that the agency can live up to its pledge and commitment in the fight against corruption. By pledging to help keep Hong Kong fair, just, stable and prosperous, all such adjectives can be seen as synonymous with the fight against “corruption” and “bribery”.

The 25-year-old efforts of the ICAC has brought about a “quiet revolution” in public attitude towards corruption. In the words of the Chief Executive of Hong Kong Special Administrative Region, in Hong Kong “corruption is now recognized as an insidious crime and a serious impediment to the rule of law, social development and economic growth. Uncontrolled, it threatens to undermine government and social institutions and destroy the very foundations of a fair and just society. In the public service, it removes all incentives to provide an honest and efficient service. In the business sector, it deters foreign investment and distorts the distribution of wealth.”<sup>9</sup>

### **Conclusion**

Despite the different social background warranting anti-corruption legislation in PRC and China and the difference in legal and everyday social definitions, enforcement of anti-corruption laws are deemed the desires of the government and the people. Both the rulers and the ruled in the two places have high hopes that through proper effective enforcement of anti-corruption laws, a clean and honest government will prevail. Anti-corruption measures seemingly have become a social censure and offensive practices condemned by peoples of both places as they try to put themselves on the map of the world of the 21<sup>st</sup> century.

Nevertheless, in spite of sharing the same ambition to fight corruption, the task is treated differently in the two places. Perhaps a quote from the former PRC Prosecutor-General, Zhang Siqing and a Mission Statement and Code of Ethics of the Hong Kong Independent Commission Against Corruption might help explain the different approaches undertaken by the anti-corruption law enforcement agencies of the two places.

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<sup>9</sup> Extracts from Opening Address by the Chief Executive, Mr. Tung Chee Hwa at the ICAC Silver Jubilee Conference on Fighting Corruption into the 21<sup>st</sup> Century held in Hong Kong from March 22 to 24, 2000.

**Zhang Siqing, PRC Procurator-General stated  
in his report to the National People's  
Congress in 1993:**

“We should  
closely rely on  
the leadership of the (Communist) party committees  
and  
voluntarily  
accept supervision  
by the people's congresses.  
Procuratorial bodies should  
regularly report to  
party committees  
and  
the people's congresses,  
seek their advice  
and  
consciously  
carry out their instructions and opinions.”

**Independent Commission Against  
Corruption (ICAC)  
Mission Statement and Code of Ethics**

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

Officers of the ICAC will at all times uphold the good name of the Commission and:

- ❑ adhere to the principles of integrity and fair play
- ❑ respect the rights under the law of all people
- ❑ carry their duties without fear or favor, prejudice or ill will
- ❑ act always in accordance with the law
- ❑ not take advantage of their authority or position
- ❑ maintain necessary confidentiality
- ❑ accept responsibility for their actions and instructions
- ❑ exercise courtesy and restraint in word and action
- ❑ strive for personal and professional excellence.

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