Can the ICAC Help Fight Corruption on the Mainland?

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Can the Hong Kong ICAC Help Reduce Corruption on the Mainland?

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Can the Hong Kong ICAC Help Reduce Corruption on the Mainland?

- Yes, if
  - criminalise bribery of foreign officials in international business transactions
  - criminalise foreign bribery
  - criminalises corporate bribery
  - xeroxes CoE conventions signs them with the Mainland

The ICAC has moved from the glamorous days of I Corrupt All Cops of actually fighting corruption to the recent Cold War, bureaucracy trying to look glamorous.

Why does the US DoJ have a greater impact on corruption in China than the Chinese ICAC?
Hong Kong Causes Corruption on the Mainland

Drivers of corruption

- Hong Kong does not outlaw foreign bribery
- Laws not extra-territorially applicable
- Her companies are not prosecutable
- Centre of investment nexus focused on BVI

€3.4 billion in bribes likely

Hong Kong relatively corruption-free by exporting corruption North – with her businessmen travelling to Fujian, Taipei and Guangzhou. What happens in Guangzhou stays in G’Jo.

Can Chinese use EU experience to help HK to themselves?
How Would We Investigate Chinese Official Bribery if HK=London?

- If mandarin paid bribes in China, SFO can claim jurisdiction if:
  - FCO allows
  - if touch to London (UKBA – extraterritorial and foreign bribery)
  - can nab if flies through Paris or other country party to CoE or Union (MLA)
  - JITs and MLA (if treaty)

- Extra-territorial application would allow HK to prosecute just like Washington or London can now

Political obstacle is biggest problem
How Do and Would MLA Work in the Middle Kingdom?

Bribe is paid in China by a Hong Kong land development company for help in avoiding a zoning regulation.

State Inspection Body should have jurisdiction. Pretty useless.

Not even certain ICAC can start case, as offence took place outside HK. No precedent.

If we continue with UK, MK example, can send JIT, invest on both sides, and even ask FR, CH, and other authorities to help. Now, must rely on useless UN Convention.

In EU, Third Pillar makes easy, CoE Conventions make at least possible
How would we create “Third Pillar” in China?

In this scheme, China is just another country. I propose HK to CN as UK to AZ, basically adopting the UN Convention. The danger is reciprocity. If CN gets same rights and priviledges, violates HK’s sovereignty. Yanks show capacious and deleterious use of FCPA... if China, worse. When take private-to-private corruption into account, risks even greater.

Need asymmetric third pillar like UK to AZ, not UK to FR
If the ICAC were the SFO

Figure 25: Changes to the ICAC’s Organisational Structure to allow for work on international anti-corruption issues

In UK, competence for foreign bribery and corruption split between Serious Fraud Office and London Met Police. They have foreign branches dealing with foreign investigation and work on prosecution (MLA).

FBI more intrusive, branch offices in most foreign regions...
Dealing with the “Other” China

- Another $3 billion in bribes in TW
- Bribery “long-linked” through Fujian and other Mainland cities
- TW is China so must form part of Greater China Law Enforcement Space
- Cross-Straits Agreement and informal relationships
- Liberal interpret of HK and CN law allow for Chinese Third-Pillar
  - Basic law
  - Several law-like CN regulatory decrees

ICAC’s counterparts in CN and TW likely to protect more than fight corr.
Making Chinese Companies Liable

- Chinese companies listed on HK Stock Exchange
- Far easier to apply civil rather than criminal penalties
- In US and UK, have criminal-like administrative sanctions

Corporate criminalisation (which HK lacks) is the way that ICAC can help whack corruption on the Mainland. It’s the way the US DoJ (FBI) investigates and prosecutes corruption in the EU and Japan. It allows for quick, easy prosecution, with none of the mess.

Companies are people too – far easier to get them than their bloody counterparts
Deterrance, Pre-trial diversion, vicarious liability and corporate remedies

Turning our DoJ into US DoJ would crush corruption on the Mainland

Prof. Misha’s Bestaire of the law behind whacking companies
pre-trial diversion – when prosecutions make a deal with companies instead of taking to court
vicarious liability – when your company gets in trouble when partners pay bribes
non-prosecution agreement – when prosecutors say they won’t prosecute if you give them money and do what they say
defered prosecution agreement – when prosecutors wait and see if you did what they wanted before they decide to smack you
remedy – punishment (usually fines or prosecutors surveillance of your company)
monitorship – prosecutors hire someone to see if your company changes
disgorgement – giving the money back

“backward induction outcome” means I see what’s gonna happen

99%

2%
The Economic Impacts of the Fight

- MLA only if incentive compatible and resource positive
  - taxes: more ICAC work drags down HK econ.
  - more ICAC work increases investment and growth in CN, HK’s largest I&NX parter
- Additional funding of $20 million maximises tax revenue to HK treasury

HK Treasury actually earns a profit by MLA between ICAC and MoS
The Political Impacts of the Fight

**Figure 29: Estimated Political Positions to Suggested Reforms by Hong Kong's Political Interests on Purely Ideological Grounds**

(uses previous Council composition as an illustration of the political-economic technique)

<table>
<thead>
<tr>
<th>Political Groups</th>
<th>Estimated Reaction to Proposals</th>
<th>For/Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro-Beijing (43)</td>
<td>This Party would oppose greater enforcement against Mainland interests as well as anything potentially reducing the stability of the status quo.</td>
<td>Against</td>
</tr>
<tr>
<td>Federation of Trade Unions (4)</td>
<td>Labour would support policies discouraging the low-cost advantage and corruption-driven outsourcing to the Mainland.</td>
<td>For</td>
</tr>
<tr>
<td>Pro Business Forum (4)</td>
<td>A Right Wing party would oppose our basically liberal reforms aimed at introducing international law to HK.</td>
<td>Against</td>
</tr>
<tr>
<td>Economic Synergy (9)</td>
<td>As a laissez-faire capitalist party, they would oppose increased regulation and interference with free trade.</td>
<td>Against</td>
</tr>
<tr>
<td>Liberal Party (5)</td>
<td>Strong pro-Chinese free-market interests in this Party would oppose reforms aimed at undermining its base.</td>
<td>Against</td>
</tr>
<tr>
<td>Federation of HK and Kowloon Labour Unions (1)</td>
<td>Labour would support policies discouraging the low-cost advantage and corruption-driven outsourcing to the Mainland.</td>
<td>For</td>
</tr>
<tr>
<td>New People's Party (1)</td>
<td>This party has strong support by mandarins in administrative class</td>
<td>For</td>
</tr>
<tr>
<td>Independent (10)</td>
<td>Given dispersion of benefits and high cost on costs of our reforms, we expect over resistance from this group.</td>
<td>Against</td>
</tr>
</tbody>
</table>

- Geographic and functional constituencies
- Votes come if ICAC MLA increase incomes in a constituency by even $1. Otherwise, nay.
- Getting majority yay requires sequencing and timing.

**amend ----> vote ----> amend ----> vote**

and can earn a political dividend as well!
Should the Hong Kong ICAC Help Reduce Corruption on the Mainland?

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Benefits to the ICAC
- Restore bruised reputation
- Actually do what supposed to do
- Help promote Union in a more (rather than less) lawly society

Benefits to the CCP
- Stop the incompetence
- Show fighting corruption
- Create more stable base for Chinese economic growth
- Delay the democratic uprising