



National Integrity Systems

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Independent Commission Against Corruption

Office of the Ombudsman

Security Bureau

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List of Abbreviations

ACGA	Asian Corporate Governance Association
CEO	Chief Electoral Officer
CSB	Civil Service Bureau
CSO	Commission Standing Order
EAC	Electoral Affairs Commission
ECICO	Election (Corrupt and Illegal Conduct) Ordinance
GLD	Government Logistics Department
GRA	General Revenue Account
HAMS	Hong Kong Association of Minority Shareholders
HKICPA	Hong Kong Institute of Certified Public Accountants
HKMA	Hong Kong Monetary Authority
HKSAR	Hong Kong Special Administrative Region
HKSE	Hong Kong Stock Exchange
ICAC	Independent Commission Against Corruption
IIA	Institute of Internal Auditors
IPCC	Independent Police Complaints Council
IPO	Initial Public Offering
LegCo	Legislative Council
NIS	National Integrity System
NPC	National People's Congress
PAC	Public Accounts Committee
POAS	Principal Officials Accountability System
POBO	Prevention of Bribery Ordinance
PACO	Police Anti-Corruption Office
PPRB	Police Public Relations Branch
PRC	People's Republic of China
PSC	Public Service Commission
REIT	Real Estate Investment Trust
REO	Registration and Electoral Office
SB	Security Bureau
SFC	Securities and Futures Commission
SFST	Secretary for Financial Services and the Treasury
SPR	Stores and Procurement Regulations

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Currency

The currency in Hong Kong is the Hong Kong dollar (HKD), and the rate of the dollar to the US dollar in January 2007 was approximately HKD10 US\$1.28.

About the NIS Studies

What Is the NIS?

The National Integrity System (NIS) encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International (TI) as part of its holistic approach to combating corruption.¹ While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The NIS studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

Why Conduct NIS Studies?

The purpose of each NIS study is to assess the system in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries. They can also be carried out at the regional level, thus producing an Integrity Study.

The studies provide a starting point for signalling areas requiring priority action. They also form the basis from which stakeholders may assess existing anti-corruption initiatives. Integrity studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive, and what factors support or inhibit their effectiveness. Integrity studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the integrity system.

The studies create a strong empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political, or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For TI, Integrity Studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index, and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 55 such studies have been completed as of August 2006.

TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. Integrity Studies are a unique product of TI, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

Methodology of the Integrity Studies

The Integrity Studies offer a qualitative assessment of the integrity system in a country or region. The studies are based on both objective and subjective sources of data, which differ in quantity in each country or region evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the Integrity Study, although more are recommended/desirable. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g., lawyers, accountants, and engineers), media, and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the integrity system and to comment on the draft Integrity Study. The results of the meeting then inform further revision of the Integrity Study.

Each Integrity Study is reviewed by an external expert referee.

Executive Summary

Hong Kong generally benefits from an excellent reputation and international recognition in terms of governance and integrity systems as compared with other countries in the Asia Pacific region. This is confirmed by a number of surveys and rankings that position Hong Kong at the top of the list among Asian countries. Hong Kong is ranked in 15th position in Transparency International's Corruption Perceptions Index 2006, with an overall rating of 8.3.²

With regards to its capacity to preserve a fair and transparent society, Hong Kong benefits from a wide range of regulations and institutions in place, as reflected by the Basic Law. Although Hong Kong is an inalienable part of China under the concept of 'One country, two systems,' Hong Kong enjoys a high degree of autonomy under the Basic Law. It also has a world-class anti-corruption system, the Independent Commission Against Corruption (ICAC).

Hong Kong is also commonly recognised as a free society under which the rule of law, freedom of human rights, and an independent judicial system have been preserved and maintained. Hong Kong continues to be an international and regional trading and financial centre. Indeed, foreign businesses have continued to demonstrate confidence in Hong Kong. More than 3,700 foreign companies had regional headquarters or regional offices in Hong Kong in 2005.³

Since it was set up in 1974, the ICAC has cracked many corruption cases in both the public and private sectors. Cases like the Godber case (1974–75), the Carrion fraud case (1983–2000), the 26 public housing blocks case (1983–2000), the Overseas Trust Bank case (1986–87), stock listing scams (1987–92), and a number of recent cases reported in the press are good examples of efforts conducted to maintain Hong Kong as one of the least corrupt places in Asia.

In the fight against corruption the ICAC maintains close contact and cooperation with its Mainland counterparts in combating cross-boundary corruption through cooperative efforts on the operational, preventive, and educational fronts. The International and Mainland (Operational) Liaison Office of the Operations Department and the Mainland Liaison Office of the Community Relations Department have established a network with Mainland counterparts on operational and non-operational matters, respectively.

The efficiency of the judiciary has been demonstrated in the past by court rulings on many important cases, some with political or constitutional significance. For example, reduction of civil service pay and establishment of a real estate investment trust under the Housing Authority came about through court rulings.

Nevertheless, despite all the components in place, several further conditions are required to ensure that the governance system works effectively in practice. In particular, apart from the capacity of Hong Kong to regularly monitor its integrity system, the achievement of the following objectives is key to maintaining Hong Kong's reputation in building a fair and transparent society:

- Maintain its politically neutral, clean, and efficient civil service;
- Continue to have robust and first-class law enforcement agencies, e.g., the police and ICAC;
- Preserve an independent judiciary;
- Maintain rights and freedoms protected in accordance with law;
- Maintain open and clean elections supervised by an independent statutory body;
- Enhance corporate governance in the business sector.

Priorities and Recommendations

Overall, there is a fair level of confidence in the maintenance of an effective integrity and governance system in the coming years in Hong Kong, as generally expressed by Hong Kong's civil society as well as government authorities. The following recommendations aim at clarifying priorities that will ensure the sustainability of this system in the future.

- **Carefully Monitor the Systems of Checks and Balances**

An appropriate system of checks and balances between the executive and the legislative powers is a key element in the effectiveness of the system of integrity and governance in Hong Kong. There is widespread recognition that Hong Kong civil society and government should pay particular attention to ensuring that this delicate balance is maintained. Opinions differ about the degree of risk this balance faces.⁴ Hong Kong authorities should take the initiative to identify possible improvements necessary to best monitor the system of checks and balances. For this they can rely on the prior research in this area.⁵

- **Enhance the Role of Auditing⁶**

There is a growing awareness in Hong Kong about the benefits of internal auditing, as a separate discipline from external auditing governed by its own standards, in order to help monitor the governance system in the public sector. Auditing plays a key role in providing reasonable assurance to government organisations that objectives are met and that operations are carried out in an ethical and accountable manner.⁷ However, while the function does exist there is little assurance regarding its effectiveness, which is reflected by limited reference to international standards - or any established set of standards for the practice of internal auditing - in internal control disclosures.⁸ The Hong Kong government would benefit from closer consideration of generally accepted international standards in auditing as recommended by international professional bodies.⁹

- **Pursue Efforts to Reinforce the Corporate Governance Culture in the Business Sector**

Hong Kong has been very active in recent years in promoting corporate governance and transparency in the business community, which is reflected in a range of institutions, regulations, and communication strategies already in place. However, corporate governance advocates commonly express that there is still a need to build a strong corporate governance culture in Hong Kong to enhance corporate governance 'in real substance more than form.'¹⁰ This will help foster the ever more demanding environment required by overseas investors. To this end, it is essential that the most prominent business leaders of Hong Kong take an active role in instilling values for better governance beyond their powerful image of being successful entrepreneurs. This is already reflected in some initiatives taken recently in Hong Kong by some academic institutions.¹¹

- **Adapt Anti-Corruption Activities**

Risk factors for corruption may shift significantly in Hong Kong in the future because the environment is changing rapidly, notably under the impact of increasing economic flows in terms of capital and goods with Mainland China. China's government has defined the fight against corruption and economic criminality as a key priority in the future.¹² It is essential that Hong Kong authorities and government agencies evaluate the impact of this changing environment, notably by addressing potentially rising forms of corruption. To this end, it is essential that cooperation between Hong Kong and Mainland authorities be reinforced in order to investigate and prosecute those individuals suspected of crimes.¹³

- **Encourage a More Open Society**

It is essential that Hong Kong build an environment to foster know-how, inventiveness and initiative in order to sustain its economic development in the coming years. This relies on the capacity to create an open society where opinions and individual initiatives can be discussed in a positive and constructive manner. In that perspective, it is important to consider closely potential advantages that constitutional developments may bring to the success of Hong Kong, as well as the time frame of those developments with regard to Hong Kong's current stage of expansion toward a knowledge-based economy.¹⁴

Region Profile

The Sino-British Joint Declaration on the Question of Hong Kong (The Joint Declaration) was signed between the Chinese and British governments on 19 December 1984. The Seventh National People's Congress (NPC) of the People's Republic of China (PRC) adopted the Basic Law of the Hong Kong Special Administrative Region (the Basic Law, Hong Kong's constitutional document) on 4 April 1990. As a result Hong Kong became a Special Administrative Region (HKSAR) of the People's Republic of China on 1 July 1997, after a century and a half of British administration. Under the Basic Law, the previous capitalist system and way of life shall remain unchanged for 50 years. HKSAR enjoys a high degree of autonomy in accordance with the Basic Law. Defence and foreign affairs are the responsibility of the Central Authorities of the PRC.

Situated at the southeastern tip of China, Hong Kong covers a surface of 1,104 square kilometres, comprising Hong Kong Island, Kowloon Peninsula just opposite and the New Territories. It has no natural resources, except one of the finest deep-water ports in the world.

Hong Kong's population was about 6.88 million in mid-2004. The population density was 6,380 people per square kilometre. Hong Kong has a large foreign population of about 524,200. The top three nationalities come from the Philippines (129,760), Indonesia (105,710), and the USA (29,900). Chinese and English are the official languages. English is widely used in the government and by the legal, professional and business sectors.¹⁵

Situated at the centre of rapidly developing East Asia, Hong Kong has become a world-class financial, trading and business centre. Hong Kong is the world's 11th largest trading economy, the world's 6th largest foreign exchange market, the world's 13th largest banking centre, and has Asia's second biggest stock market. Hong Kong is one of the world's top exporters of garments, watches and clocks, toys, games, electronic products, and certain light industrial products.

Hong Kong was the world's 10th largest exporter of services in 2004. Civil aviation, shipping, travel and tourism, trade-related services, and financial and banking services are the main components of trade in services. More than 3,800 international corporations have established regional headquarters or offices in Hong Kong. The major types of business include the wholesale/retail and import/export trades, other business services (e.g., accounting, advertising and legal services), finance and banking, manufacturing, transport, and related services.

Over the past two decades, Hong Kong's economy has more than doubled in size, with its Gross Domestic Product (GDP) growing at an average annual rate of 4.8 per cent in real terms. Per capita GDP in Hong Kong has more than doubled over the same period, with an average annual growth rate of about 3.6 per cent in real terms. In 2004, it reached US\$23,684, second only to that of Japan in Asia and higher than that of many Western countries.¹⁶

Hong Kong is one of the region's pre-eminent financial centres, the second-largest after Tokyo, and boasts a highly internationalised banking sector. It benefits from the stability of its local currency, the HKD, with no exchange controls. The Hong Kong dollar is pegged to the US dollar at the rate of HKD7.8 to US\$1. This rate is guaranteed by a currency board system that automatically links Hong Kong's foreign currency reserves to the monetary base.

Hong Kong has built its success and reputation on the effectiveness and transparency of its free-trade legislation and regulations. It has long been well known for its market-led economic policy. The territory's free-trade principles inherited from the British have been followed by the government of the administrative region, without the Mainland meddling in the territory's legal, financial, and economic affairs. In keeping with its free-market philosophy, Hong Kong does not place any restrictions on the activities of foreign investors. Hong Kong remains a free port. The return to China has not affected its openness to international trade.

Corruption Profile

In simple terms, corruption occurs when an individual abuses his authority for personal gain at the expense of other people. Corruption brings unfairness and crookedness and, in its more serious form, puts the lives and properties of the community at stake. The aim of the Prevention of Bribery Ordinance (POBO) enforced by the ICAC is to maintain a fair and just society. The law protects the interests of institutions and employers and inflicts punishments on unscrupulous and corrupt staff. The POBO oversees corrupt offences in both the public and the private sectors.

Corruption-Prone Areas

Past ICAC cases indicate that the breeding grounds of much corruption in both private and public sector organisations are situations such as those containing the potential for conflicts of interest or the misuse of information. Left unchecked, these vulnerable areas can cause irreparable damage. The areas that commonly give rise to corruption are:

- *Conflicts of interest:* A conflict-of-interest situation arises when the private interests of the staff compete or conflict with the interests of the organisation. 'Private interests' means both the financial and personal interests of the staff or their connections including family and other relations, personal friends, the clubs and societies to which they belong, and any person to whom they owe a favour or are obligated in any way.
- *Misuse of information of value:* Information of value may be easily accessible to staff when they provide service to customers. It is essential for employees to realise that some information may, on the surface, appear to have little value of interest to the public in general but is of value to the culprit. Thus organisations must protect such information.
- *Sweetening process:* Corruption does not always start with a direct bribe at the outset. In fact, it often begins with the offering of free meals and small gifts, i.e., 'the sweetening process,' so that the receiver will fall into the corruption trap without noticing it and feel obliged to pay back in the end.
- *Indebtedness:* Employees of organisations must be prudent in managing their personal finances. Overspending, speculative investment beyond one's financial means, and gambling are among major factors landing employees in a difficult financial situation. Employees can easily succumb to corruption if they face great financial problems.
- *Other corruption problems of public sector organisations:* Table 1 presents other common corruption-related problems in Hong Kong, as well as their causes.

Table 1 Typology of Corruption Problems in Hong Kong

Problem	Common Cause
Selective enforcement	Unenforceable legislation and unclear enforcement policy
Abuse of office	Inadequate supervision and instructions
Administrative delay	Cumbersome and unnecessary procedures
Leakage of confidential information	Inadequate control measures
Public not aware of their rights and obligations	Inadequate publicity of policies and procedures

Corruption in Hong Kong

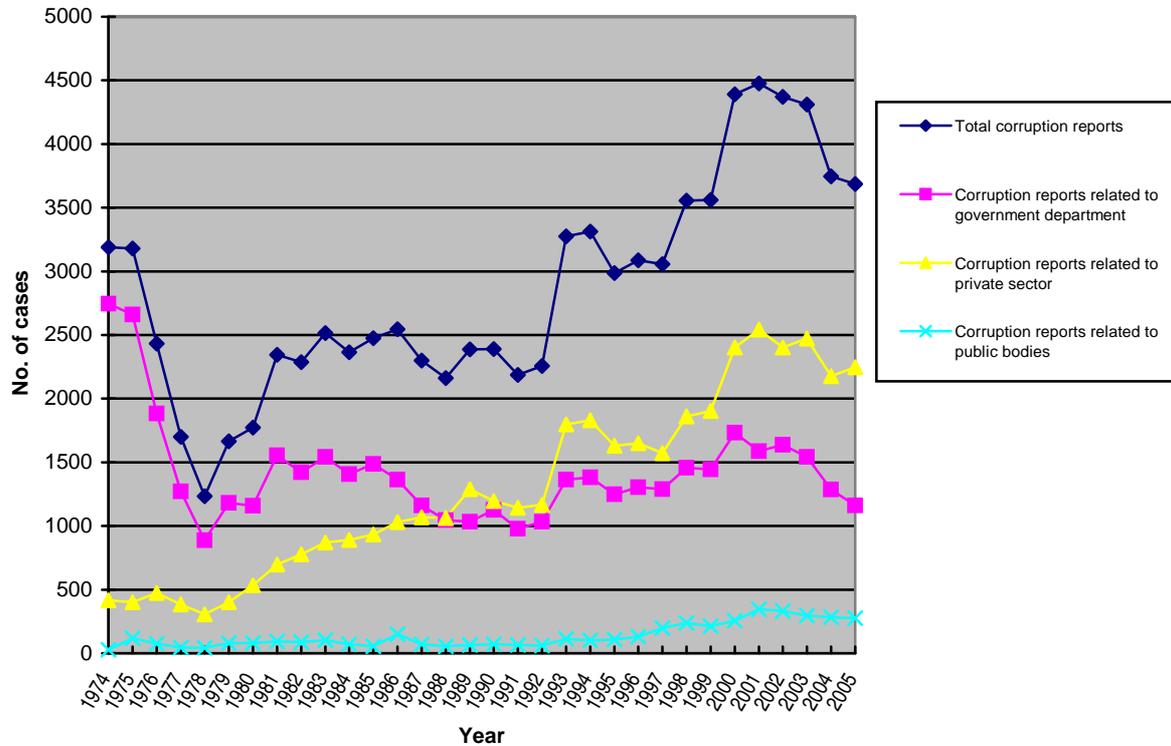
Since its inception in 1974, the ICAC has adopted a holistic approach to fighting corruption through enforcement, prevention, and community education. This strategy has successfully transformed Hong Kong from a graft-ridden city in the 1970s to one of the cleanest in the world. In recent years, international and regional surveys consistently rated Hong Kong as one of the least corrupt places in Asia and worldwide:

- The Transparency International Corruption Perceptions Index and the Political and Economic Risk Consultancy's Corruption Report on Asia have consistently rated Hong Kong as one of the least corrupt cities in Asia;
- Hong Kong's has been rated the third freest press in Asia by Reporters Without Borders;

- The Asian Corporate Governance Association (ACGA) has ranked Hong Kong in second position in its list of countries in terms of corporate governance performance in 2005.

Figure 1 presents data on the number of corruption reports in Hong Kong since 1974.

Figure 1 Total No. of Corruption Reports (excluding election-related cases) by sector



Source: ICAC website (www.icac.org.hk).

Tables 2 and 3 show the number of corruption cases reported and prosecuted by sector.

Table 2 Breakdown of Corruption Reports (excluding election-related cases)

	2003	2004	2005	2006 (Jan – Jun)
Total	4310	3746	3685	1628
All government sectors	1541	1286	1161	539
Police	532	435	382	161
Other government department	1009	851	779	378
Private sector	2472	2176	2247	969
Public bodies	297	284	277	120

Source: ICAC website (<http://www.icac.org.hk>).

Table 3 Breakdown of Corruption Prosecutions (excluding election-related cases)

	2003	2004	2005	2006 (Jan – Jun)
Persons prosecuted	416	417	348	140
Completed prosecutions	445	383	343	209
Persons convicted	320	296	256	170
Persons cautioned	108	99	51	29
No. of government servants recommended for disciplinary/administrative action	234	161	170	48

Source: ICAC website (<http://www.icac.org.hk>).

According to the ICAC, from 1996 to 2005, the average number of corruption reports was about 3,800 annually. There has been a steady decrease in the number of corruption reports received since 2002. In 2005, there were 3,685 corruption reports, an 18 per cent drop as compared with the number in 2001.

Overall, corruption is well under control. The civil service is efficient and clean without sign of resurgence of the syndicate-organised corruption that was prevalent in the 1960s and early 1970s. Complaints against police officers have continued to decline in proportion to all corruption complaints. In 2005, they accounted for 10 per cent of the total number of corruption complaints received, versus nearly half in the early days after the establishment of the ICAC.

In the early years, corruption reports against government departments substantially outnumbered those concerning the private sector. The situation gradually changed as syndicate-organised corruption in the government was eradicated, coupled with a growing public willingness to report graft in the private sector. During the past decade, corruption reports concerning the private sector accounted for more than 50 per cent of total corruption reports.

In terms of investigating and prosecuting corruption crimes, the ICAC and the Department of Justice have clear separation of duties. The ICAC is responsible for investigating corruption cases. The Department of Justice advises on and prosecutes corruption cases. Since its inception and up to June 2006, 12,426 persons have been prosecuted for corruption and related crimes. In recent years, the case-based conviction rate stands at over 80 per cent.

The total number of corruption reports received by the ICAC increased between the late 1990s and 2001. Although reasons for this trend are difficult to identify objectively, one explanation may be that Hong Kong's economy experienced more difficult times over this period. In bad times, companies and employees tend to cut corners to achieve their business targets, while employers are generally more concerned about corrupt activities of their staff and are more willing to report them. In contrast, since 2002 the total number of corruption reports has been gradually decreasing. During the same period, the economy of Hong Kong was also improving.

Anti-Corruption Activities

In the 1960s and early 1970s, corruption permeated Hong Kong's society. Despite the enactment of the POBO and the establishment of then Police Anti-Corruption Office (PACO) in 1971, corruption remained widespread and deep-rooted. Public resentment reached boiling point in June 1973 when news broke that Peter Godber, then a Chief Superintendent of Police, had escaped to his home in England while being investigated for corruption by the PACO. In response to the demand of action from the society, the governor set up an independent organisation to tackle corruption following a Commission of Inquiry into the problem of corruption in Hong Kong.

The ICAC was formally established on 15 February 1974 according to the ICAC Ordinance enacted on the same date. This new body replaced the PACO. To ensure that it was free from interference in discharging its duty, the ICAC was made accountable to the highest authority, previously the governor, now the Chief Executive of the HKSAR. It is also independent from the police and the rest of the government. Its independence is guaranteed under Article 57 of the Basic Law.

The ICAC is given extensive powers to investigate all allegations of corruption and related crime, in both the public and private sectors, under the ICAC Ordinance, the POBO, and the Elections (Corrupt and Illegal Conduct) Ordinance. As of June 2006, the ICAC had prosecuted 12,426 persons for corruption and related crimes.

To ensure the success of the battle against corruption, the ICAC was entrusted with the statutory duty to tackle corruption on three fronts: investigation, prevention, and community education. Since a clean civil service is integral to good governance, the ICAC and government departments have worked closely to build a clean and efficient civil service by reviewing work procedures and conducting training sessions. While there is a comprehensive set of regulations applicable across the whole government, individual departments also formulate or revise their own departmental codes of conduct for staff with the assistance of the ICAC. Since the early 1980s, the ICAC has established corruption prevention groups with the senior management of government departments to identify priorities and vulnerable areas for corruption prevention studies. Moreover, the Community Relations Department of the ICAC has successfully enlisted the public's support in the fight against corruption and educates the public against the evils of corruption through its target-based public education programme. In 1995, the Community Relations Department set up the Hong Kong Ethics Development Centre to promote business and professional ethics as the first line of defence against corruption. Six leading chambers of commerce in Hong Kong guide the Centre's work.

The Integrity System

Executive

HKSAR enjoys a high degree of autonomy. The region is vested with executive power. It can conduct its own administrative affairs in accordance with the relevant provisions of the Basic Law and domestic legislation. The executive authorities of the HKSAR are not obliged by law to give reason for their decisions. In practice, they do so. The government of the HKSAR is accountable and obliged to answer the community it serves. This promotes confidence in the government, understanding of government policies, decisions, and actions as well as participation in public-service issues.

In accordance with the Basic Law, the chief executive is elected by a broadly representative Election Committee and appointed by the Central People's Government. The Election Committee comprises 800 members, with the industrial and commercial sector, the professionals, the labour, social services, religious, and other sectors, and the political sector each returning 200 representatives to the Election Committee. The great majority of the Election Committee members are returned through elections, while the 60 members of the Legislative Council (LegCo) and the 36 HKSAR deputies to the National People's Congress are ex-officio members.

In accordance with Article 55 of the Basic Law, members of the Executive Council are appointed by the chief executive from among the principal officials of the executive authorities, members of the LegCo and public figures. Their appointment or removal is decided by the chief executive. The term of office of members of the Executive Council does not extend beyond the term of office of the chief executive who appointed them.

The Executive Council of HKSAR assists the chief executive in policy making. Article 56 of the Basic Law states that the chief executive shall consult the Executive Council before making important policy decisions, introducing bills into the LegCo, or making subordinate legislation. If the chief executive does not accept a majority opinion of the Executive Council, he must put the specific reasons on record.

The administrative structure of the HKSAR is as follows: The chief secretary for administration assists the chief executive in supervising the policy bureaux as directed by him and in ensuring harmonisation in policy formulation and implementation in such areas. The financial secretary assists the chief executive in supervising relevant policy bureaux and in ensuring harmonisation in policy formulation and implementation in the financial, monetary, economic, and employment areas. The secretary of justice is the legal advisor of the government and is responsible for drafting legislation and for controlling criminal prosecution.

The government of the HKSAR is organised into bureaux and departments. The bureaux, each headed by a secretary of bureau, collectively form the Government Secretariat. There are 11 policy bureaux:

- Civil Service Bureau
- Financial Services and the Treasury Bureau
- Commerce, Industry and Technology Bureau
- Health, Welfare and Food Bureau
- Constitutional Affairs Bureau
- Home Affairs Bureau
- Economic Development and Labour Bureau
- Housing, Planning and Lands Bureau
- Education and Manpower Bureau
- Security Bureau
- Environment, Transport and Works Bureau

Under the accountability system implemented on 1 July 2002, the top layer in the government is made up of principal officials (namely, the chief secretary for administration, the financial secretary, the secretary for justice and 11 bureau secretaries) who are political appointees. Principal officials under the accountability system are required, as part of their condition of employment, to abide by a code that includes provisions setting out their relationship with the civil servants working under

them.¹⁷ The heads of department and agencies are responsible to the secretaries of bureaux for the direction of their departments and the efficient implementation of approved policies.

In terms of budget/staffing, the General Revenue Account (GRA) is the government of the HKSAR's main account and acts as the central funding device. Resources are transferred as necessary to and from a number of purpose-specific funds. For the 2006–2007 financial year, the estimated total expenditure of the GRA is HKD 214,344,718,000. The estimated total number of civil service posts as of 31 March 2007 is 161,897. The Public Finance Ordinance provides the statutory framework for the control and management of Hong Kong's public finances.

Under Article 73 of the Basic Law, the LegCo of the HKSAR has the power to raise questions on the work of the government. It can also receive and handle complaints from Hong Kong residents. The public is consulted from time to time on important policy proposals and initiatives. The administration will ensure that public views are taken into account when policy decisions are formulated and introduced.

Executive officers are required to declare, on appointment and annually/biennially thereafter:

- Their investments in and outside Hong Kong, as specified in CSR 463(1);
- The occupation of their spouse; and
- Any single investment transaction equivalent to or exceeding HKD200,000 or three months' salary in value, whichever is the less, within seven days of the transaction.

In addition, officers holding Tier I posts are required to register on appointment and annually thereafter the following financial interests, in and outside Hong Kong, for public inspection on request:

- Land and buildings (including self-occupied property);
- Proprietorships, partnerships, or directorships of companies; and
- Shareholdings of 1 per cent or more of the issued share capital in any listed public or private company.

Records of these financial interests are kept in a register in the Civil Service Bureau (CSB). That register is open to public inspection on request.

Bureaux or departments may issue their own declaration guidelines requiring staff to avoid or declare certain specified investment activities, in light of their specific operational circumstances and the relevant risk of exposure to conflict-of-interest situations to which their staff are subject.

Moreover, Section 10 of POBO (HK Law Cap. 201) stipulates that it is an offence for a prescribed officer, including principal officials, to maintain a standard of living not commensurate with, or to be in control of pecuniary resources or property disproportionate to, his or her official emoluments in the absence of a satisfactory explanation being made to the court.

Members of the executive do not have any immunity from corruption and bribery offences under Hong Kong law. In addition to the POBO, the common law offence of bribery applies equally to all. If members of the executive have committed corruption offences under the POBO or the common law, they will be prosecuted and are liable to legal sanction.

On appointment and annually thereafter, principal officials must declare their investments and interests. The declaration will be made available for public inspection on request. Permanent secretaries/heads of departments and their designated officers are responsible for reviewing the declarations of investments by civil servants. Such review facilitates management actions in identifying (and, where necessary, introducing proper safeguards against) conflict-of-interest situations at the earliest possible opportunity. As in other situations, if they come across any incidents of alleged bribery, corruption or other crimes in their work the reviewing officers concerned should report it to the relevant authorities (i.e., the police or the ICAC) in accordance with the requirements in the relevant circulars.

Article 35 of the Basic Law guarantees to all Hong Kong residents the right to institute legal proceedings in the courts against acts of the executive authorities and their personnel. Section 6 of the Hong Kong Bill of Rights Ordinance, which binds the government and all public authorities, provides that a court or tribunal, acting within its jurisdiction in an action for breach of the ordinance, or in which a violation or threatened violation of the Bill of Rights is relevant, may grant such remedy or relief as it considers just and appropriate under the circumstances. Hong Kong residents have sued the government for infringement of civil rights on many occasions. Judgments on important cases of Hong Kong courts are publicly accessible on the website of the Legal Reference System of the Hong Kong Judiciary.¹⁸

The Basic Law is subject to ambiguities in interpretation like any other constitutional document. In accordance with the PRC Constitution (Article 67[4]) and the Basic Law (Article 158), the Standing Committee of the National People's Congress has the power to interpret the Basic Law. This is part of Hong Kong's constitutional order under the 'One country, two systems' principle. In the past nine years, the Standing Committee has interpreted the Basic Law on three occasions.

Legislature

The respective powers and responsibilities of the executive authorities and the legislature are clearly prescribed in the Basic Law (Article 73). Under the spirit of the Basic Law, the relationship between the executive authorities and the legislature is one of mutual regulation and coordination. Bills and budgets involving public expenditures, the political structure, and government operations have to be put forth by the government and passed by the LegCo.

LegCo powers and functions include enacting, amending, or replacing laws; approving public expenditure; raising questions on the work of the government; and debating the policy addresses of the chief executive. The LegCo of the HKSAR is vested with the powers to examine and approve budgets introduced by the government of HKSAR under Article 73 of the Basic Law. The Public Finance Ordinance requires the financial secretary to put before the LegCo the government's estimate of revenue and expenditure before the start of a financial year, which runs from 1 April to 31 March of the next year. The financial secretary delivers the annual budget speech at a meeting of the LegCo, usually in February or March, outlining the government's budgetary proposals and moving for the second reading of the appropriation bill, which gives legal effect to the annual expenditure proposals contained in the budget. The LegCo approves the annual estimates of expenditure with the passage of the appropriation bill.

In formulating and implementing policies, the executive authorities take full account of public opinion to ensure the policy is moderate, reasonable and consistent with their objectives. On this basis, the executive authorities endeavour to support the work of the legislature so that the two can cooperate in a spirit of goodwill to serve the community.

The former legislature of Hong Kong established under British rule ceased to exist on 1 July 1997 after then-existing constitutional instruments lapsed when the PRC resumed exercising sovereignty over the region. In preparing the establishment of the HKSAR, the Preparatory Committee had, on 24 March 1996, decided to establish the Provisional LegCo to perform specified tasks to enable the business of the government to continue before elections could be held to form the first LegCo of the HKSAR.

The powers and functions of the LegCo are clearly prescribed in the Basic Law. Regarding LegCo's power to introduce bills, this is prescribed in Article 74 of the Basic Law. According to the Basic Law, LegCo is to be constituted by election. The method of election of representatives of the first three terms of the LegCo appears in Table 4.

Table 4 Method of Election of LegCo Representatives

	First term (1998–2000)	Second term (2000–2004)	Third term (2004–2008)
Elected by geographical constituencies through direct elections	20	24	30
Elected by functional constituencies	30	30	30
Elected by Election Committee	10	6	-
Total	60	60	60

Source: Constitutional Affairs Bureau - Hong Kong.

The relationship between the executive authorities and LegCo is complementary and provides mutual checks and balances. For example, one of the functions of LegCo is to enact, amend, or repeal laws in accordance with the Basic Law and legal procedures. Bills introduced by the executive authorities are subject to LegCo's scrutiny and approval. Members of LegCo may also introduce bills themselves, subject to the restrictions laid down under the Basic Law; for example, bills that do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by LegCo members. The written consent of the chief executive is required before bills relating to government policies are introduced.

LegCo has the power to scrutinize and approve the government's budget, taxation, and public expenditure proposals. The formulation of policy and legislative proposals usually involves discussions between the government, LegCo and other stakeholders such as advisory committees, chambers of commerce, trade associations, and district councils. The government takes into account the feedback received from LegCo as well as other channels when considering the proposals and often makes adjustments to the proposals in response to comments received.

If the chief executive considers that a bill passed by LegCo is not compatible with the overall interests of Hong Kong, he or she may return it to LegCo within three months for reconsideration. If LegCo passes the original bill again by not less than a two-thirds majority of all members, the chief executive must sign and promulgate the bill within one month. If it does not, or in cases in which LegCo refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the chief executive may dissolve LegCo. The chief executive must consult the Executive Council before dissolving LegCo. The chief executive may dissolve LegCo only once in each term of his or her office. If the new LegCo still refuses to pass the disputed bill after the previous LegCo has been dissolved, the chief executive must resign.

LegCo can raise questions on the work of the government and debate any issue concerning public interests. Principal officials attend LegCo meetings to reply to members' questions and motion debates. The chief executive attends question-and-answer sessions at LegCo on a regular basis to address issues of concern to members and the public.

In formulating and implementing policies, the government takes careful account of public opinions. In this regard, LegCo has an important role to play in reflecting to the government the interests of different sectors of the community on various social, economic, and livelihood issues. For example, LegCo invites delegations to attend panel meetings and express their views on major policies or bills proposed by the government; LegCo members may put forth policy or legislative proposals to the government that reflect or address the concerns of different sectors and members of the public. LegCo operates a redress system to receive and handle complaints from members of the public who feel aggrieved by government actions or policies. It also deals with public representations on government policies and legislation as well as other matters of public concern. LegCo refers public complaints to the government for follow-up as appropriate.

The ultimate goal of universal suffrage for electing the chief executive and forming the LegCo is prescribed in the Basic Law. According to the Basic Law, this aim is to be attained in accordance with the principle of gradual and orderly progress and in light of the actual situation in Hong Kong. The chief executive charged the Commission on Strategic Development in November 2005 with formulating a road map for universal suffrage. Members of the commission are drawn from a broad cross section of the community, including professionals, academics, private sector representatives, members of different political parties, LegCo members and labour and media personalities.

Although there is an overall opinion that Hong Kong benefits from good executive and legislative institutions, some external observers express a different opinion based on those institutions' actual work. Notably, concerns have emerged about the number of bills introduced by members of the LegCo.¹⁹ Concluding the meeting of the Human Rights Committee at the United Nations on 21 March 2006, the committee chairperson, Christine Chanet, commented on the role of the LegCo. According to her comments, 'Despite [the fact that] all the democratic components are in place in Hong Kong, she felt there was some degree of risk in maintaining the somewhat delicate "balance" (namely the system of checks and balances between the executive and legislature).'²⁰

On 1 July 2003, more than 500,000 Hong Kong residents took to the streets to demonstrate their dissatisfaction with proposed anti-subversion legislation and to voice their support for universal suffrage in the 2007 chief executive and 2008 LegCo elections. Some observers note emerging dissatisfaction among the population about the contribution of parties to the political debate in Hong Kong, and recent polls have revealed that Hong Kong citizens are increasingly dissatisfied with the pace of democratic development.²¹

The checks and balances of the executive and the legislature, the need to develop Hong Kong's political parties, the process of selection of the chief executive, and increases in the number of directly elected seats in the legislature are considered by some analysts as key factors for enhancing accountability and dialogue in Hong Kong's civil society.²² Although the central government and the Hong Kong government are committed to promoting constitutional development, the government of HKSAR argues that a date for attaining universal suffrage cannot be fixed in a vacuum, since the model for the political structure after the implementation of universal suffrage would have implications for the road map and hence timetable for attaining universal suffrage. In addition, given the crucial importance of constitutional development, the Hong Kong government maintains that the whole community needs to have serious and in-depth discussions on the model. This is reflected in the establishment of the Constitutional Development Task Force in January 2004 to consult through various channels different sectors of the community

about possible amendments to the methods for selecting the chief executive in 2007 and for forming the LegCo in 2008. In 2005, the task force put forth a proposed package on the 2007/08 electoral arrangements, which would have greatly enhanced the democratic representation in the electoral methods for election of the chief executive and the LegCo. Although the package was supported by the majority of the public, it was not endorsed by the required two-thirds majority of all LegCo members. In November 2005, the chief executive initiated discussions on the formulation of a road map for universal suffrage through the Commission on Strategic Development. The commission started discussion of possible models for electing the chief executive and the LegCo by universal suffrage in July 2006. It aims to summarise the discussions as soon as possible in 2007.

Political Parties

Hong Kong has numerous political parties. LegCo members come from a number of different political parties and groups, and none has a majority in the LegCo. Moreover, under the Basic Law, the chief executive and members of the legislature are elected through two separate processes, one involving a Election Committee of 800 members and the other involving universal suffrage from geographical and constitutional constituencies. Through this system, there will not be any 'ruling party' as in a parliamentary system.

In Hong Kong, there is no statutory requirement for political parties to be registered as such, nor is there any legislation to regulate specifically the operation of political parties. Political parties are generally registered as companies under the Companies Ordinance or as societies under the Societies Ordinance. Parties represented in the LegCo include the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), the Democratic Party, the Liberal Party, the Civic Party, the Association for Democracy and People's Livelihood, and the Frontier.

Hong Kong citizens' freedom to form political parties is safeguarded under the Basic Law (Article 27). Political parties debate issues of interest to the public at both territory-wide and district levels and support candidates for both LegCo and District Council elections.

Political parties in the HKSAR are also subject to some regulatory controls; they are registered under the Societies Ordinance (Cap. 151) or the Companies Ordinance (Cap. 32).²³ These two ordinances have provisions requiring some degree of transparency in the finances of political parties. If registered under the Societies Ordinance, political parties are required, by Section 15 of the ordinance, to submit accounts of their finances to the Societies' officer (i.e., the commissioner of police) should he ask for them. They are, however, not required to disclose their finances to the public. If registered under the Companies Ordinance, political parties are required, by Sections 107 and 109 of the ordinance, to submit audited income and expenditure accounts annually. The accounts are open for inspection by the public on payment of a fee.

Regarding the current political situation in Hong Kong, as the National Democratic Institute in the United States has asserted, 'The "executive-led" government has not built a strong relationship with any of the political parties in the LegCo.'²⁴ This situation highlights the importance for the political system of enhancing the competition between parties in order to represent the true interests of the population. In the current system, for example, the Democratic Party has been reported as having little influence in the LegCo, as it is outnumbered by members not elected by the public. The Democratic Alliance, which supports Mainland views, is supported by many of the poor in Hong Kong, but it must also support the policies of the pro-business chief executive.²⁵ The fact that elected parties can ultimately evolve into a 'ruling' majority may result in their pursuing more short-term targets relying principally on the charisma of some individuals.

The HKSAR government has taken a number of initiatives aiming at facilitating the growth and development of political parties and to make room for public-spirited individuals to participate in public affairs. For example, it introduced the accountability system in 2002, under which individuals with a political party background can be appointed principal officials. Members of political parties have also been appointed to the Executive Council. The government is proposing further development of the political appointment system to provide more channels for people with political aspirations to join the government. A financial assistance scheme for candidates in the 2004 LegCo election to encourage participation of the aspiring candidates has been extended to District Council elections.

Electoral Commission

The Electoral Affairs Commission (EAC) is a statutory body established under the EAC Ordinance²⁶ (Chapter 541 of the Laws of Hong Kong) to supervise public elections in Hong Kong. It is an independent, apolitical, and impartial body. Under Section 15 of the EAC Ordinance, the EAC is not regarded as a servant or agent of the government or as enjoying any status, immunity, or privilege

of the government. The EAC Ordinance governs the appointment and membership of the EAC and prescribes the scope of functions and powers of the EAC.

The EAC's objective is to ensure that public elections are conducted honestly, fairly, and openly, concentrating on the efficiency and fairness of the electoral process and arrangements to achieve its objective. Its main tasks are to supervise public elections in Hong Kong, to make recommendations on the delineation of geographical constituencies or District Council constituencies, and to make regulations, guidelines, and arrangements for the conduct of public elections, including the registration of electors.

The EAC comprises a chairman and two members, all appointed by the chief executive of HKSAR. The chairman of the EAC must be a serving judge of the High Court and must be appointed in consultation with the chief justice of the Court of Final Appeal. The EAC itself does not have any staff members. Its functions are mainly performed through the Registration and Electoral Office (REO), which is headed by the chief electoral officer (CEO). The REO, as the EAC's executive arm, provides administrative and secretariat support for the EAC and carries out the regulations and policies decided on by the EAC, as well as all other election-related work and arrangements for conducting elections.

Pursuant to Section 12 of the EAC Ordinance, all expenses properly incurred by the EAC and REO in the performance of any prescribed functions shall be payable out of the general revenue of the government according to the appropriation approved by the LegCo. The tenure of the EAC's chairman will not exceed five years or be less than three years; it will be specified by the chief executive at the time of appointment in accordance with Section 3(6) of the EAC Ordinance.

The EAC is accountable in two main areas:

- It has a statutory obligation to submit a report to the chief executive after each election giving a detailed account of the arrangements at various stages of the election, reviewing the arrangements, and suggesting improvement measures for future elections; and
- Its recommendations for the delineation of constituency boundaries are subject to consideration by the chief executive.

Under the Standing Order made by the EAC under Section 5 of the EAC Ordinance, rules were established relating to the declaration of interest of members, such as requiring the chairman and members to register their personal interests, direct or indirect, pecuniary or otherwise, when they first join the commission and annually thereafter to the CEO; to make full disclosure of their interests when they have any potential conflict of interest in an issue placed before the commission; or to declare prior to discussion of an item if they have any direct personal or pecuniary interest in an issue under the EAC's consideration.

The EAC conducts public consultation when making provisional recommendations for the demarcation of boundaries before the District Council election and the LegCo election, and when issuing electoral guidelines for public elections, unless it considers that such consultation is not practicable due to the existence of an urgent need to issue, revoke, or amend a guideline. The EAC is also required to submit a report to the chief executive within three months after each election. Subject to the approval of the chief executive, the report may be made public.²⁷

Apart from the above, the EAC has been operating very openly regarding many of the electoral functions that it has performed. For example, the voter registration exercise is widely publicised to invite qualified persons to register as voters. Candidates and their agents are permitted to stay inside the polling stations to monitor polling. Candidates and their agents are allowed to witness the count; members of the public can also observe the counting process.

The EAC can look into complaints relating to the violation of its guidelines and decide whether any appropriate action should be taken. Regarding any candidate or person who is in breach of the guidelines, the EAC may issue warnings, censures or reprimands and/or refer the cases to the relevant authorities, e.g., the Hong Kong Police or the ICAC, for further actions. The Hong Kong Police is responsible for dealing with complaints that involve criminal liability while the ICAC is responsible for enforcing compliance with requirements under the Election (Corrupt and Illegal Conduct) Ordinance (Cap. 554)²⁸, such as corrupt or illegal conduct relating to nomination, bribing electors, providing electors with refreshments or entertainment, and vote planting. There have been successful prosecutions for breach of the Election (Corrupt and Illegal Conduct) Ordinance for vote planting and bribing of electors; such offenders were punished with immediate custodial sentences, indicating that the courts join in the effort to maintain clean elections. Altogether, 5,147 and 3,914 complaints, respectively, were received from the public concerning the 2003 District Council and 2004 LegCo elections.

The commission has been working with the cooperation and support of various government departments, the media, candidates and the public to ensure that elections in Hong Kong are open, fair, and honest.

Supreme Audit Institution

According to Article 58 of the Basic Law, the Audit Commission shall function independently and be accountable to the chief executive of HKSAR. The Audit Ordinance (Chapter 122 of the Laws of Hong Kong) provides for the appointment, tenure of office, duties, and powers of the director of audit and for the auditing of and reporting on the accounts of the government of HKSAR. Under the Audit Ordinance, in the performance of his duties and the exercise of his powers under the ordinance, the director of audit is not subject to the direction or control of any other person or authority.

In terms of appointment and removal of the director of audit, the chief executive of HKSAR nominates and reports to the government of the PRC about the appointment of the director of audit according to Article 48(5) of the Basic Law. Under the same article, the chief executive of HKSAR recommends to the central People's government the removal of the director of audit. Also, under the Audit Ordinance, if a public officer is dismissed or required to retire from the office of director of audit (if he has not attained the normal age of retirement), a full statement of the circumstances is made at the first opportunity to the LegCo.

Types of audits conducted by the Audit Commission are classified as follows:

- **Regularity Audit:** The aim of a regularity audit is to provide LegCo with an overall assurance that the government's financial and accounting transactions and those of funds of a public or quasi-public nature are proper and that they conform to generally accepted accounting standards. The regularity audit is done annually by the director of audit.
- **Value for Money (VFM) Audit:** The aim of the VFM audit (known as performance audits in some countries) is to provide LegCo with independent information, advice and assurance about the economy, efficiency and effectiveness with which any audited body (i.e., bureau/department of government, agency, other public body, public office or audited organisation) has discharged its functions.

The estimated expenditure of the Audit Commission is about HKD115.9 million for the year April 2006 to March 2007. The staff establishment of the Audit Commission was 181 as at 1 April 2006.

The Audit Commission is a government department. It follows the annual budgetary process of the HKSAR government. Each financial year, the financial secretary of the HKSAR government prepares estimates of the revenue and expenditure of the government for the next financial year. The Appropriation Bill, which gives legal effect to the annual expenditure proposal, must be enacted by LegCo. The Audit Commission is given autonomy and flexibility in deploying the approved annual recurrent expenditure for the operations of the commission.

According to Article 58 of the Basic Law, the Audit Commission functions independently and is accountable to the chief executive of HKSAR. The duties and powers of the director of audit are specified under the Audit Ordinance. In the performance of his duties and the exercise of his powers under the Audit Ordinance, the director of audit is not subject to the direction or control of any other person or authority. The Audit Commission conducts VFM audits under a set of guidelines agreed upon between the Public Accounts Committee (PAC) of LegCo and the director of audit and accepted by the administration.

Section 12 of the Audit Ordinance provides that the director of audit, within a period of seven months (i.e., in October) after the close of financial year (i.e., in March), prepares and submits to the president of LegCo a report concerning his examination and audit of the accounts of the government. The guidelines on VFM audits also provide that the director of audit submits two reports on VFM audits, one in April and one in October, to the president of LegCo. After the tabling of the director of audit's reports, the PAC of LegCo will consider the reports in accordance with the Rules of Procedure of LegCo. This is done in practice.²⁹

The PAC will select subjects in the director of audit's report for detailed examination, either by conducting public hearings or by exchange of correspondence with the relevant bureaux/departments. Normally within three months after the tabling of the director of audit's report in LegCo, the PAC produces its own reports with its observations and recommendations. In terms of mechanisms for review of the implementation of the Audit Commission's recommendations, for those audit reports selected by the PAC for detailed examination and included in the PAC report, the administration is required to respond within three months of its tabling through a Government Minute. The Government Minute is the administration's response to

observations and recommendations in the PAC report. It indicates what action the administration has taken or proposes to take to rectify any irregularities or deficiencies that have been identified or, if necessary, explains why action is not intended. On those audit reports not selected by the PAC for detailed examination, the Audit Commission calls for reports direct from the government bureaux and departments concerned on a half-yearly basis (i.e., in January and July) on the progress of the implementation of audit recommendations.

Although the Audit Commission normally does not need to consult the public in carrying out audit work, it does welcome comments and suggestions from the public.

According to Civil Service Bureau Circular No. 2/2004, 'Conflict of Interest' rules have been set out to avoid conflict of interest and the course of action to be taken by an officer when he faces a real or apparent conflict-of-interest situation. It also sets out the role of supervisors in managing conflicts of interest. All staff of the Audit Commission are required to comply with the requirements set out in this circular.

Staff of the Audit Commission include civil servants and some non-civil servant contract personnel. As a general rule, the same circular holds that civil servants and non-civil servant contract personnel should not accept any advantage (including service and favour), excessive entertainment, or benefit that could lead to embarrassment in the discharge of official duties or bring the government into disrepute.

In terms of post-employment restrictions, all staff members of the Audit Commission are required to comply with the restriction requirements of Civil Service Regulations.

The Audit Commission has established proper channels to deal with staff complaints. In addition, all staff members are encouraged to offer suggestions for improvement of the efficiency of the commission or the government service as a whole. The public may contact the Financial Services and the Treasury Bureau of the HKSAR government to express their opinions or make enquiries on budgetary matters. They may also lodge their complaints with members of LegCo.

The Audit Commission has a very close relationship with the National Audit Office of the People's Republic of China (CNAO). It actively participates in regional and international congresses and assemblies as a member of the CNAO delegation.

Judiciary

Articles 80 to 96 of the Basic Law govern the judiciary of the HKSAR. As provided for in Article 83, the structure, powers, and functions of the courts of the HKSAR at all levels are prescribed by law. The Hong Kong judiciary is responsible for the administration of justice. It hears all prosecutions and civil disputes. It is completely independent of the executive and legislative branches of the government. The independence of the judiciary is constitutionally provided for and enshrined in Article 85 of the Basic Law. Judicial independence is of fundamental importance in the Hong Kong legal system and forms a core element in the concept of the separation of powers between the executive, the legislature, and the judiciary, with checks and balances between them.

According to Article 92 of the Basic Law, the judges of the courts of the HKSAR are chosen on the basis of their judicial and professional qualities. Article 88 provides that judges are appointed by the chief executive on the recommendation of an independent commission composed of local judges, persons from the legal profession, and eminent persons from other sectors. The commission, as prescribed by the Judicial Officers Recommendation Commission Ordinance (Cap. 92), consists of nine members who, apart from the ex-officio members, are appointed by the chief executive. The commission comprises:

- three judges (including the chief justice as the ex-officio chairman);
- three lawyers (including the secretary for justice as the ex-officio member, a barrister, and a solicitor who are appointed in consultation with the governing councils of the professional bodies); and
- three laypersons not connected with the practice of law

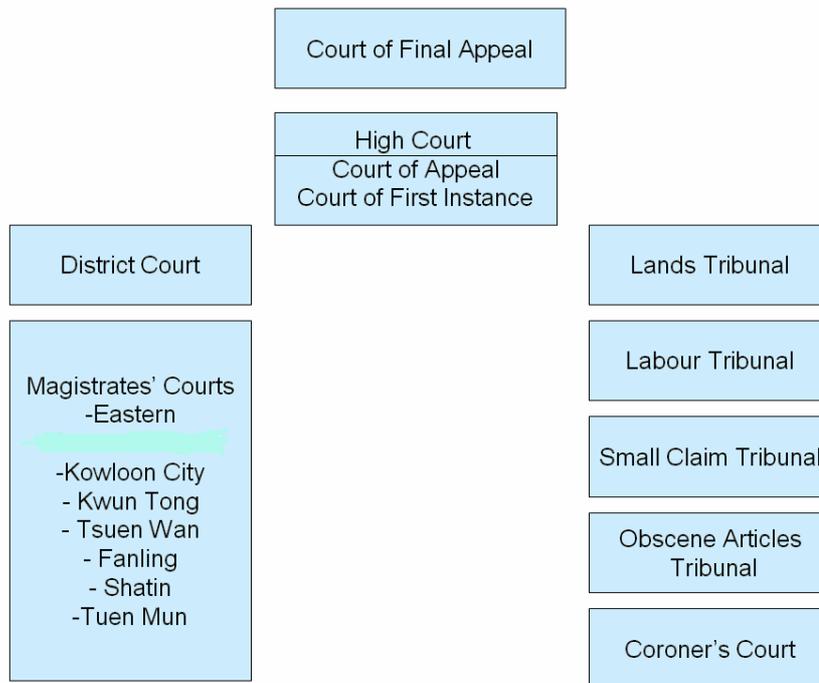
A resolution of the commission is not effective if there are more than two votes among those members present not in favour.

In terms of removal of judges, according to Article 89 of the Basic Law, the chief executive may only remove a judge from office for inability to discharge his or her duties or for misbehaviour. The chief executive's decision must be based on the recommendation of a tribunal appointed by the chief justice and consisting of not fewer than three local judges. As for the removal of the chief justice, the Basic Law provides that the chief justice 'may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and

consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.' Moreover, in the case of the removal of judges of the Court of Final Appeal and the chief judge of the High Court, Article 90 of the Basic Law provides that the chief executive shall, in addition to following the procedures prescribed in Article 89, obtain the endorsement of the LegCo and report such removal to the Standing Committee of the National People's Congress for the record.

Figure 2 presents the structure of the judiciary.

Figure 2 Institutional Framework of the Judiciary in 2005



The Court of Final Appeal is the highest court in Hong Kong. It hears appeals on civil and criminal matters from the High Court, i.e., the Court of Appeal and the Court of First Instance.

The Court of Appeal hears appeals on all civil and criminal matters from the Court of First Instance and the District Court. It also hears appeals from the Lands Tribunal and other statutory tribunals. The Court of First Instance has unlimited jurisdiction in both civil and criminal matters. It also hears appeals from Magistrates' Courts, the Small Claims Tribunal, the Obscene Articles Tribunal, the Labour Tribunal, and the Minor Employment Claims Adjudication Board of the Labour Department. For criminal trials, judges of the Court of First Instance sit with a jury of seven (nine on the special direction of the judge).

The budget and staffing of the Hong Kong judiciary between 2004 and 2005 are presented in Tables 5 and 6.

Table 5 Expenditure and Revenue of the Judiciary for 2004–2005

Recurrent Account Expenditure	(HKD' 000)
Personal Emoluments	693,394
Departmental Expenses	164,806
Other Charges	6,416
Total	864,616
Revenue	(HKD' 000)
Fees and Charges	191,945
Fines	238,545
Forfeitures and Others	27,965
Total	458,455

Source: Hong Kong Judiciary Annual Report 2005.

Table 6 Staff of Judiciary in 2005

Judges and Judicial Officers	154
Bailiffs	40
Bailiff's Assistants	40
Court Interpreters	146
Part-time Interpreters	395
Judicial Clerks	184
Other Grades Officers	871
Total	1435

Source: Hong Kong Judiciary Annual Report 2005.

Judiciary employees (including judges and judicial officers) are prescribed officers who are subject to Section 10 of the POBO. Section 10(1) of the POBO stipulates that 'any person who, being or having been a prescribed officer who maintains a standard of living above that which is commensurate with his present or past official emoluments or who 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 offence.' Judges and judicial officers are required to declare in writing their investments in Hong Kong on their first appointment to the judiciary. The 'Guide to Judicial Conduct' also contains guidance on the management of personal investments. There is no lifestyle monitoring, but the ICAC may investigate suspected corruption offences including Section 10(1) offences.

A judge or judicial officer may be required by the chief justice, Court of Final Appeal, to divest himself/herself of the investment if it is considered to be in real or apparent conflict with his/her public duties. The information collected in relation to the investments of judges and judicial officers on their first appointment to the judiciary is not made publicly available. The ICAC may investigate suspected corruption offences including Section 10(1) offences.

Article 10 of the Hong Kong Bills of Rights Ordinance provides, inter alia, that 'any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.' In practice, court proceedings are open to the public including the media, unless the court directs otherwise in accordance with the grounds as stipulated under Article 10.

The Hong Kong Law Reports contain the judgments of important cases and are accessible to the public. They are sold in the Government Publications Centre and some bookshops, and are available in the libraries of the judiciary, the professional associations, or the universities concerned. At present, judgements that are significance legal precedents on points of law, practices and procedures of the courts, and public interests are also made available on the website of the judiciary.³⁰

Civil Service

Bribery of civil servants is a criminal offence under the POBO (Cap. 201, Law of Hong Kong). In addition, the common law offence of 'misconduct in public office' extends the reach of criminal law beyond bribery into corrupt conduct that does not involve the acceptance of an advantage offered by another person. Civil servants who have committed a criminal offence may be subject to disciplinary punishment on top of the sentence handed down by the court. Officers convicted of an offence under the POBO or the common law offence of misconduct in public office are usually removed from the service.

There are service-wide guidelines issued by the CSB, as well as supplementary guidelines issued by departments, on the procedures for a civil servant or anyone within the government to voice his views or make complaints if, for example, he feels that he has been directed to act in way that is illegal, improper, or may involve possible maladministration. As set out in these guidelines, a civil servant will not be penalised for lodging a complaint made in good faith.

The civil service remains a professional, permanent, meritocratic, and politically neutral body of public servants. For recruitment of civil servants, the candidates are selected based on their character, ability, potential, and performance in recruitment examinations and interviews, as well as on qualifications and experience prescribed for the ranks concerned. Recruiting is held in an open, fair, and competitive manner. To safeguard the impartiality and integrity of appointments and promotions and to ensure that the principle of broad consistency in punishment is maintained in the civil service, the Public Service Commission (PSC) is set up under the law as an independent body to advise the chief executive on civil service appointments, promotions, and discipline that relate to the middle and senior ranks in the public service.

All civil servants must abide by the code of conduct embodied in various civil service rules and regulations and uphold high standards of probity in discharging their duties and in their daily lives. As part of the administration's integrity promotion efforts, the core values that all civil servants are expected to share are published in a booklet titled *Civil Servants' Guide to Good Practices*, which is distributed to all civil servants. Principal officials under the accountability system are required, as part of their condition of employment, to abide by a code that includes provisions setting out the basic principles to follow in discharging their duties, including guidelines on their relationship with the civil servants working under them. They are backed by disciplinary sanctions provided for under the Public Service (Administration) Order or the relevant disciplined services legislation.

Under the disciplinary system of the civil service, civil servants who have breached civil service rules and regulations or have been convicted of criminal offences (including but not limited to convictions under the POBO) are subject to disciplinary punishments ranging from warnings to dismissal from the service, depending on the nature and gravity of the misconduct/offence. Section 10 of the POBO (HK Law Cap. 201) stipulates that it is an offence for civil servants to maintain a standard of living not commensurate with, or to be in control of pecuniary resources or property disproportionate to, his or her official emoluments in the absence of a satisfactory explanation being made to the court.

In accordance with the relevant Civil Service Regulations and circulars issued by CSB, the top two tiers of civil servants³¹ are required to declare, on appointment and annually/biennially thereafter:

- Their investments in and outside Hong Kong, as specified in CSR 463(1);
- The occupation of their spouse; and
- Any single investment transaction equivalent to or exceeding HKD 200,000 or three months' salary in value, whichever is the less, within seven days of the transaction.

Any reports or complaints of alleged misconduct of a civil servant (whether they come from other civil servants, members of the public, the media, or even anonymously) will be looked into by the relevant bureau/department/office. A person may report to senior government offices including those of the chief executive or the chief secretary for administration if he thinks the management or the head of a department is at fault. He may also file a complaint with the Office of the Ombudsman. Cases of alleged bribery/corruption or other crimes received by a department must be referred to the relevant authorities for investigation.

Disciplinary action will be taken against civil servants found to have engaged in misconduct. The Secretariat on Civil Service Discipline, set up within the CSB in 2000, processes all formal disciplinary cases to ensure that the cases are promptly acted upon in a manner compatible with the principles of common justice principles. Civil servants convicted of criminal offences are also subject to disciplinary action in addition to any sentence handed down by the court.

The government endeavours to resolve any complaints or disputes relating to the employment of individual staff through consultation and continued dialogue. In addition, staff may seek redress through the courts for any alleged breach of the employment contract by the government.

In contributing to integrity, transparency, and accountability in Hong Kong's society, the civil service interacts most with the ICAC as the anti-corruption agency. Over the years, CSB has worked closely with the ICAC in educating civil servants on the statutory provisions relating to bribery offences, in developing and keeping under regular review the guidelines on good conduct, and in identifying and plugging system loopholes for corruption or malpractice through the conduct of corruption prevention review or provision of corruption prevention advice. The administration also acts on referrals made by the ICAC on the advice of its Operations Review Committee. These referrals may reveal possible misconduct or malpractice of civil servants or system loopholes that require attention.

Since the establishment of the ICAC in 1974, the proportion of corruption reports concerning government departments to the total number of corruption reports has been decreasing steadily. This is the result of preventive and educational efforts conducted by the ICAC. On the preventive front, the Corruption Prevention Department of the ICAC partners with various government departments to identify possible corruption-prone areas in work procedures and recommend measures to plug the loopholes through corruption-prevention reviews. On the educational front, the ICAC and the CSB have joined hands to organise programmes to sustain a clean culture in the government.

Law Enforcement Agencies

In accordance with Section 4 of the Police Force Ordinance (Chapter 232, Laws of Hong Kong), the commissioner of police is answerable to the chief executive of Hong Kong. The Hong Kong Police carries out its duties and enforces the laws of Hong Kong independently. If there is sufficient evidence, persons arrested will be charged in accordance with the relevant legislation and the case will be dealt with by the judicial system of Hong Kong. In case of doubt as to the sufficiency of evidence, the police will seek advice from the Department of Justice, which is independent from the police and provides professional legal advice. The secretary for justice (director of public prosecutions of the Department of Justice) is the ultimate body that decides whether to prosecute.

In Hong Kong, the police and the prosecution agency are two independent bodies. The commissioner of police heads the Hong Kong Police, and the director of public prosecutions, under the secretary for justice, is responsible for all criminal prosecutions in HKSAR. The commissioner of police is responsible to the chief executive of Hong Kong to maintain law and order. He is free from any interference in discharging the duties of the office. In terms of his appointment and removal, he is promoted from within the ranks of the force, which employs a merit-based promotion system. Removal is governed by HKSAR Basic Law and Civil Service Regulations, as the commissioner of police is a civil servant.

In addition to the police, some of the other key law enforcement agencies are:

- Customs and Excise Department
- Correctional Services Department
- Fire Services Department
- Immigration Department
- Independent Commission Against Corruption (ICAC)

As with other government departments, the budget and staffing of law enforcement agencies are approved by the LegCo. The budget of the police for the financial year 2006–2007 is about HKD11,153 million. The Hong Kong Police department, as of 26 April 2006, numbered 26,669 disciplined officers, 4,855 civilians and 3,945 auxiliary officers.

Operation of the Hong Kong Police is governed by the Police Force Ordinance (Cap. 232). Conduct of members of the force is governed by Police Disciplinary Regulations, Police General Orders, Civil Service Regulations and the POBO (Cap. 201). Like other members of the public, police officers are also required to observe the laws of Hong Kong.

By virtue of Section 4 of the Police Force Ordinance, the commissioner of police reports to the chief executive. While the force is always under close scrutiny by the mass media in its day-to-day activities, all complaints against the force are reported to the Independent Police Complaints Council (IPCC), which monitors these investigations closely. All findings of a complaint against police must be endorsed by the IPCC before action can be closed. The IPCC may reflect its opinion

to the chief executive of the HKSAR at any time. Members of the IPCC are appointed by the chief executive of the HKSAR.

In March 2006, a Hong Kong citizen reported to the ICAC the existence of a database seemingly maintained by either the IPCC or the Complaints Against Police Office (CAPO). Following this incident, the press stated that a report would be issued regarding concerns about the leak of the IPCC database.³² The IPCC monitors investigations conducted by the CAPO, which itself is part of the police department and handles all incoming complaints against them.³³ The CAPO should be separate from the police in order to avoid conflicts of interest.³⁴

At the police headquarters level, the Police Public Relations Branch (PPRB) acts as the bridge between the police and the public. It channels the opinion of the public on law enforcement matters to the relevant sections of the police for consideration and action as appropriate. The Fight Crime Committee, which is chaired by the chief secretary for administration, reviews the crime situation of Hong Kong and makes recommendations on how to reduce crime. At the district level, a dedicated Police Community Relations Office facilitates communication between the police and the public on local policing issues. The district commanders of police regularly attend meetings of the District Council and the District Fight Crime Committee, where law enforcement issues are discussed and opinions canvassed. The Hong Kong Police conducts, through independent institutions, customer satisfaction surveys to gauge the satisfaction of its customers. The latest one, carried out in 2005, showed an overall satisfaction rate of 78 per cent.

The Hong Kong Police publish an annual report that reviews the works of the force. It is available on the official police website,³⁵ and hard copies are widely distributed. Members of police senior management regularly appear before the LegCo, District Councils, public forums, and the media to answer queries on any issue of public interest. They also hold media briefings at least twice a year to discuss crime situations and other topical issues.

Hong Kong Police internal orders require that all police officers must report to their senior officers when actual or potential conflicts of interest arise. Senior officers concerned then decide appropriate actions to eliminate the conflict. Failing to report may result in disciplinary actions. In terms of accepting gifts and hospitality, the POBO, the Acceptance of Advantage Note issued by the chief executive of HKSAR and the Police General Orders provide clear guidelines for police officers to follow and are effective. Breach of the legislation, regulations or orders may result in criminal prosecution or disciplinary sanctions.

With respect to post-employment restrictions, based on CSB Circular 10/2005, for police officers of directorate grade (chief superintendent and above), there is a control period of one to three years during which prior permission from the secretary for civil service is required for taking up outside work. For non-directorate police officers, the control period is two years. Moreover, there is a sanitisation period of 6 to 12 months for directorate officers in order to ensure a break between an official's government duties and outside work.

Civil service regulations require officers of specified ranks and/or holding specified offices to disclose assets on a regular basis. Police General Orders require all officers to be financially prudent or face disciplinary action. The Hong Kong Police actively promote a healthy lifestyle and have robust administrative instructions on lifestyle monitoring. Supervisors are responsible for monitoring and reporting cases in which officers are suspected of being heavily indebted. According to Section 13 of the POBO (Chapter 201, Laws of Hong Kong), if the commissioner of the ICAC is satisfied that there is reasonable cause to believe that an offence under the captioned ordinance has been committed, he may apply to court for an order requiring any person to disclose information relating to the assets or bank accounts of subjects under investigation. Failing to comply with the court order is an offence punishable by a fine of HKD20,000 and imprisonment for one year. Officers of certain ranks are required to be 'positively' vetted before promotion to certain ranks in line with other senior civil servants.

Internal reporting of malpractice and corruption is encouraged and acted upon in accordance with clearly written police orders. Corruption reports are referred to the ICAC for action. Misconduct reports are dealt with by the Complaint and Internal Investigations branch. All information is treated in strict confidence, and support officers are assigned to provide support to the reporting officer. In Hong Kong, the ICAC is responsible for handling complaints of corruption against the police. From 2001 to 2005, a total of 13 police officers suspected of corruption were charged for offences under the POBO.

The Hong Kong Police adopts a partnership approach with the ICAC in combating corruption internally. Moreover, there is a high-level Force Anti-Corruption Strategy Steering Committee to oversee all anti-corruption-related matters in the police force. The Hong Kong Police has a clear anti-corruption strategy to fight and ensure a work environment that is free from corruption. It holds 'Living-the-Values' workshops for all officers to inculcate professionalism, integrity, and

honesty. It has conducted research on corruption reports against police officers to develop preventive methods. Guidelines are in force to prevent police officers from associating with undesirable personalities while off duty. The Hong Kong Police has devised a vetting mechanism for officers working in certain units involving anti-triad/anti-vice duties and holds annual briefings reminding individuals of the pitfalls of undesirable associations for officers working in the aforesaid units. The Hong Kong Police interact primarily with the ICAC in its efforts against corruption in the police force. The ICAC has conducted regular anti-corruption briefings at command courses and to officers in vulnerable posts.

Public Contracting System

The Stores and Procurement Regulations (SPR) issued by the financial secretary under the Public Finance Ordinance governs procurements made by government bureaux and departments. These regulations are supplemented by Financial Circulars issued by the secretary for financial services and the treasury (SFST) where necessary. All government bureaux and departments are required to follow the procedures set out in the SPR and the supplementary Financial Circulars in conducting their procurement activities.

The SPR sets out the detailed procedures for various tendering methods. Open and competitive tendering is the norm. Selective and pre-qualified tendering, under which approved contractors or pre-qualified contractors are invited to tender, is used for works contracts. This is because for works contracts, due to their size and financial magnitude, not all contractors have the capabilities to deliver the services required; it is necessary to ascertain beforehand whether the tenderers have the financial and technical capabilities to actually provide the services for which they are bidding.

The proportion of government procurement (including goods, services and construction services) was less than 3.2 per cent of the GDP in 2004.³⁶ The size of government procurement may be influenced by various factors, such as requirement of additional services to meet the needs of the general public and the development of new public projects.

The Government Logistics Department (GLD) is the government's central procurement agent for goods and related services. It maintains a number of essential items and controlled forms for use by bureaux/departments. It also arranges bulk contracts on a wide range of items (e.g., stationery and cleaning materials) commonly used by bureaux/departments, enabling them to draw their requirements directly from the concerned contractors on an as-and-when-required basis and pay for the stores from their own accounts. The GLD also acts as the purchasing agent for the specific stores and equipment required by procuring entities and provides advice on sourcing, tendering, negotiating, and administering contracts to procuring entities.

As with other government departments, the GLD is subject to the financial resources allocation procedures for funding its operational expenditures and is subject to the scrutiny of the LegCo, the Office of the Ombudsman, the Audit Commission and the public. In terms of the e-procurement system, the GLD operates an electronic tendering system for internet downloading of tender documents from and submission of tender offers by suppliers for all types of tenders issued by the GLD. Public accountability is one of the government's procurement principles. The government has an obligation and is always prepared to account for its purchasing decisions to the LegCo.

Procuring entities are accountable for their procurement. They draw up the tender specifications to suit their needs based on the requirements of the procurement. The SPR requires that procuring entities should ensure that only properly qualified persons are appointed to assess technical submissions in their tender exercise.

The SPR requires that the officer who approves and/or selects the suppliers for obtaining quotations should not be the officer authorising the acceptance of the offer for that procurement. The SPR also sets out clearly the procedures for tender evaluation. Such evaluation should be conducted by an assessment panel in which only properly qualified persons are appointed to assess the technical aspects of tender submissions, and assessment should be based on predetermined assessment criteria. Tender reports for consideration by tender boards must be endorsed and signed by officers of specified rank, and tender recommendations should be approved by the relevant tender board.

A standard provision in the tender document states that if the contractor or any employee or agent of the contractor is found to have committed an offence under the POBO, or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the contract or any other government contracts, the government may summarily terminate the contract, without entitling the contractor to any compensation.

The SPR requires all officers involved in preparing tender documentation including tender specifications and assessing tenders to declare their interest before starting the deliberation or as

soon as they become aware of a potential conflict. Tender assessment panels must state in each tender evaluation report whether all members of the panel have declared their interest, where conflict of interest (actual, potential, or perceived) has been identified and if so, the remedial action taken. Procuring entities are required to comply with these requirements. Under Section 3 of the POBO, any prescribed officer who, without general or special permission of the chief executive, solicits or accepts any advantage shall be guilty of an offence.

In accordance with the relevant civil service regulation and circulars issued by CSB, the top two tiers of civil service officers are required to declare their assets on appointment and annually/biennially (see 'Civil Service').

For procurements conducted through open and selective tendering procedures, invitations to tender are normally advertised in the Government Gazette, in newspapers where appropriate, and on the websites of the procuring entities. For these tenders, there is no restriction on the dissemination of invitations to tender. The outcome of the tender approved by the relevant tender boards is published in the Government Gazette and on the internet. The unsuccessful tenderers are informed of the outcome of the bid evaluation.

In terms of confidentiality, all commercially sensitive information of the tenderers that is submitted to the procuring entities in a confidential manner, as well as minutes of tender board meetings, are normally not made accessible to the public. The change and adjustment of contracts in execution requires approval. The SPR requires that procuring entities should copy correspondence on approved variations to the director of audit. The information on contract variations, which is subject to audit checks and inspection, is not published.

Procuring entities are required to monitor the performance of contractors in accordance with the terms and conditions of the contract. These monitoring results are not published.

Contractors, suppliers, firms, and organisations may lodge complaints with the procuring entity, the relevant tender board, the Office of the Ombudsman, and/or the ICAC if alleged corruption is involved in the procurement process. The recipients of the complaint are required to deal with it in an impartial and timely manner. Aggrieved tenderers may take legal action in a court of law if they consider their interests to have been jeopardised.

The government accords a high priority to preserving a fair and corruption-free environment for government procurement. The procurement process is guided by the cardinal principles of open and fair competition, public accountability, transparency, and value for money. These principles are enshrined in the SPR and supplementary Financial Circulars and must be observed by bureaux/departments in any procurement activities.

Ombudsman

The Office of the Ombudsman was established in 1989 under the Ombudsman Ordinance (Cap. 397). By law, the ombudsman is empowered to receive and investigate citizens' complaints of maladministration by government departments and public organisations and to inform the parties involved of the results of his investigation and 'such comments on the matter as he thinks fit to make.' In December 2001, the ombudsman was incorporated into a sole corporation and has since been fully independent in respect of the financial, administrative and personnel policies and systems and practices of the office.

The ombudsman of HKSAR can investigate actions taken by or on behalf of policy bureaux and government departments in the exercise of their administrative functions when complaints are made by members of the public who claim to have sustained injustice in consequence of maladministration connected with those actions. The ombudsman may also initiate direct investigations in the absence of complaints. In the course of such assignments, the ombudsman invites views and suggestions from the public and interested groups. This enables him to review matters at a macro level and examine systemic problems or widespread deficiencies. Some examples are the direct investigations on the commissioning and operation of the new airport at Chek Lap Kok, administration of public examinations, monitoring of charitable fund-raising activities, enforcement of the Education Ordinance on universal basic education, prevention of abuse of the Comprehensive Social Security Assistance Scheme, administration of urn grave cemeteries, and the medical fee waiver system.

The power of appointing the ombudsman is vested in the chief executive of HKSAR government. The incumbent ombudsman was appointed through an open competition process. A firm of headhunters was engaged to conduct an executive search, and the position was advertised in local newspapers inviting qualified and interested persons to apply. The law stipulates that the ombudsman can be removed from office only by the chief executive with the approval by resolution of the LegCo on the grounds of inability to discharge the functions of his office or misbehaviour.

The approved annual budget for the office in 2005–2006 is HKD81 million. The ombudsman currently holds a reserve of HKD60 million for long-term development of the office. As of April 2006, the office had 88 full-time staff members. The ombudsman has full authority to decide on the number, ranking, and remuneration of the staff that he appoints, including part-time and temporary supplements.

The office is financed through the appropriation of funds by the LegCo. Funding for the ombudsman's office is provided through a lump-sum subvention, which may be adjusted to cater for:

- Any salary revision in line with the salary adjustment in the civil service;
- New, expanded, or additional services undertaken by the ombudsman as requested by the administration; and
- Unforeseen contingencies beyond the control of the ombudsman.

Under the Public Finance Ordinance, the ombudsman is the controlling officer in respect of the estimates of expenditure of his office.

The ombudsman's powers and responsibilities are governed by the Ombudsman Ordinance. In complaints investigation, the Ombudsman Ordinance requires the ombudsman to act independently at his own discretion. The ombudsman's findings and conclusions are subject only to judicial review through the court. That is the only means of external scrutiny.

Hong Kong's ombudsman system is based on the classical ombudsman model adopted in most common-law countries. Under such a system, the question of public consultation does not arise. In effect, the buck stops with the ombudsman, whose findings are final. In fact, a cornerstone of this system is the secrecy requirement imposed on the ombudsman and his staff as regards any information that comes to their knowledge in the course of their duties. The secrecy requirement ensures that people providing information to assist the ombudsman's investigations need not worry about unwarranted disclosure. However, individual members of the public whose complaints are being investigated by the office may be consulted on disputed facts of the case or the stance adopted by the government department involved in the complaint.

The Ombudsman Ordinance requires the ombudsman to submit annually audited accounts of his office as well as a report on his activities, including a general survey of developments during that year, to the chief executive of the HKSAR government.

The ordinance requires the ombudsman to delegate his powers where it appears that he 'has or may have an interest in any matter which is the subject of an investigation.' In addition, the ombudsman has promulgated internal office guidelines for the declaration of conflict of interest by staff. With the ombudsman's consent, the Ombudsman Ordinance was amended in 2001 to extend the POBO to all staff. Internal office guidelines were also promulgated to govern the acceptance of gifts and advantages, including hospitality, by staff. These guidelines broadly follow those applicable to civil servants.

There are no post-employment restrictions, but the Ombudsman Ordinance requires all staff and ex-staff to maintain secrecy with respect to all matters that arise from any investigation or complaint and come to their knowledge in the exercise of their function. Breach of the secrecy provision entails criminal sanctions.

If the ombudsman decides not to undertake or continue an investigation into a case, the law requires him to inform the complainant of the decision and of his reasons. After investigation of a case, the ombudsman is required to inform the parties of the results of his investigation and any comments on the matter he thinks fit to make. If the ombudsman thinks that the public interest so warrants, he may publish a report of the investigation how he thinks fit. In such situations, these findings are usually announced in press conferences, published as press releases, and widely publicised through the printed and electronic media. For direct investigations, the reports are published, as they concern matters of public interest. The Ombudsman Ordinance empowers anyone who claims to have sustained injustice as a result of maladministration in respect of a government department or public organisation under the ordinance to lodge a complaint with the ombudsman against the department or organisation. The complaints received annually ranged from 3,000 to more than 4,000 in the past decade.³⁷ However, the ombudsman shall not undertake or continue an investigation into a complaint if the complainant cannot be traced or identified, according to the Ombudsman Ordinance. No petitioner can complain anonymously.

An internal monitoring system checks and updates the progress or implementation of the ombudsman's recommendations. Depending on the nature of the case that gave rise to the recommendations, the department/organisation involved is required to submit quarterly or half-yearly progress reports to the Ombudsman's Office until the recommendation has been fully

implemented. Since 1995, the administration has been submitting a Government Minute to the LegCo within three months after the tabling of the Ombudsman's Annual Report at the meeting of the council. This Government Minute summarises the follow-up actions taken by government departments and statutory bodies to implement the ombudsman's recommendations.

Key performance indicators for ombudsman achievement are measured by the number of recommendations for improvements accepted and implemented by government departments and public organisations.

The ombudsman is one of many independent checks and balances keeping watch over the executive branch of the government. Because of the secrecy requirement stipulated in the ordinance, the ombudsman works completely independently of other sector watchdogs such as the ICAC and the Audit Commission. Through investigating complaints from members of the public, the ombudsman seeks to redress grievances and address issues arising from maladministration in the public sector and to bring about improvements in public administration through independent and impartial investigation.

Anti-Corruption Agency

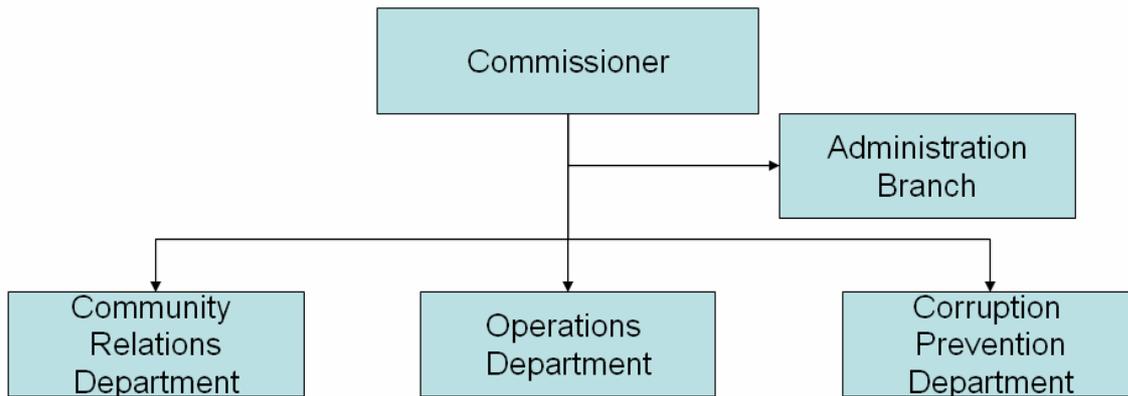
The ICAC is an independent agency dedicated to fighting corruption in Hong Kong. It is empowered by law to investigate corruption in both the public and private sectors. It has a statutory mandate to assist both sectors in preventing corruption as well as educating the community against the evils of corruption and fostering support for anti-corruption activities.

The ICAC has adopted a three-pronged attack for the fight against corruption, namely, investigation, prevention, and community education. On the investigative front, the Operations Department receives and investigates reports of corruption. At the conclusion of an investigation, a file of evidence will be submitted to the Department of Justice, which will independently decide if there are sufficient grounds to justify a prosecution. The courts will decide the outcome of prosecutions. The Corruption Prevention Department has a statutory duty to examine the practices and procedures of government departments and public bodies with a view to revising work methods and removing system weaknesses that are conducive to corrupt practices. On request, the department also provides free corruption prevention advisory services to private organisations, as mandated under the law. The Community Relations Department is responsible for educating the public against the evils of corruption and enlisting the community's support through media and education programmes. In fact, the ICAC has always been proactive in its preventive and education work. Its investigative work is largely based on complaints by the public. In recent years, the ICAC has also pursued a proactive strategy in seeking and detecting corruption cases through more effective use of undercover operations and intelligence as well as information technology.

The ICAC's independence is guaranteed by the Basic Law of HKSAR (Article 57). It is independent of the civil service and its commissioner is directly accountable to the chief executive of the HKSAR. The appointment of the commissioner, deputy commissioner, and all other ICAC officers is governed by the Independent Commission Against Corruption Ordinance (ICAC Ordinance) and is based on merit.

As provided for in the ICAC Ordinance, the commissioner of the ICAC shall not be subject to the direction or control of any person other than the chief executive of the HKSAR. The commissioner shall hold office on such terms and conditions as the chief executive may think fit. The ICAC Ordinance also provides a mechanism to appoint and terminate the appointment of ICAC officers. Under the ordinance, the commissioner may terminate the appointment of an officer if he is satisfied that it is in the interest of the commission to do so, after consulting the Advisory Committee on Corruption. However, the commissioner is required by the ordinance to inform the officer concerned in writing that termination of his appointment is under consideration and the justification for the action. The officer concerned is allowed to make submissions to the commissioner and to appeal the commissioner's decision to the chief executive, and he may also apply for judicial review of the decision. The commissioner is required to report any such case to the Advisory Committee on Corruption, which is an independent committee comprising respectable citizens appointed by the chief executive to oversee the overall policies and operation of the ICAC.

Figure 3 shows the organisational structure of the ICAC.

Figure 3 Simplified Organisation Chart of the Independent Commission Against Corruption

The ICAC is financed from a single head of expenditure in the HKSAR government's annual estimates. The Advisory Committee on Corruption and the Government Secretariat consider the annual estimates of expenditure that are submitted to the chief executive of the HKSAR for approval in accordance with section 14(1) of the ICAC Ordinance. As in the case of other government departments, the Finance Committee of the LegCo approves the ICAC's annual budget. The commissioner is the controlling officer of the finances of the ICAC, so he is required to attend meetings of the Finance Committee of the LegCo of the HKSAR to account for the use of the commission's resources and the commission's work. The ICAC's accounts are administered in accordance with government procedures and are subject to examination by the director of audit in the same way as the accounts of other government departments.

The budget provision of the ICAC for 2005–2006 was HKD663 million. At the end of 2005, the Commission had 1,196 serving staff. Its strength was 1,194: Operations Department, 904; Corruption Prevention Department, 50; Community Relations Department, 168; and Administration, 72.

The ICAC Ordinance constitutes both the establishing and the enabling legislation for the commission. In carrying out its statutory duties, the ICAC is directly accountable to the chief executive. When necessary, the commissioner attends meetings of the Executive Council to explain important policy issues. The ICAC publishes a report on its work each year. It is tabled to the LegCo of the HKSAR. The annual report is accessible to members of the public; it is uploaded onto the ICAC's official website and kept in public libraries for public access. The LegCo may also call upon the commissioner to attend its meetings to answer questions on policy, funding and issues concerning the ICAC's powers. In addition, the work of the ICAC comes under the scrutiny of four independent advisory committees comprising respectable citizens drawn from various quarters of the community and professions and appointed by the chief executive. These four advisory committees monitor all aspects of the commission's work. They are:

- Advisory Committee on Corruption
- Operations Review Committee
- Corruption Prevention Advisory Committee
- Citizens Advisory Committee on Community Relations

There is also an independent ICAC Complaints Committee, chaired by an Executive Council member, who monitors and reviews all non-criminal complaints against the ICAC staff and procedures to ensure they carry out their duties according to the highest standards of integrity and professionalism.

The media in Hong Kong also play an important role in monitoring the work of the ICAC. The commissioner and senior officers meet with representatives of the press regularly to brief them on the commission's latest work. An independent judiciary ensures integrity in the criminal justice system. All of the above are part and parcel of an effective system of checks and balances governing the commission.

In terms of public consultation, the ICAC regularly consults with the above-mentioned four independent advisory committees for valuable advice. At the district level, District Councils and

other district or community organisations are regularly consulted on the ICAC's works. The ICAC also conducts annual surveys to gauge the public's views on its performance and effectiveness as an anti-corruption agency.

The ICAC attaches great importance to the conduct and integrity of its staff. All ICAC personnel must strictly observe the Code of Ethics, which includes the following principles:

- Adhere to the principles of integrity and fair play;
- Respect the rights under the law of all people;
- Carry out one's duties without fear or favour, prejudice or ill will;
- Act always in accordance with the law;
- Do not take advantage of one's authority or position;
- Maintain necessary confidentiality;
- Accept responsibility for one's actions and instructions;
- Exercise courtesy and restraint in word and action; and
- Strive for personal and professional excellence.

For the conflict-of-interest issue, there are internal guidelines stipulated in the Commission Standing Order (CSO) of the ICAC. The ICAC also follows the detailed rules of the civil service on avoidance of any conflict of interest. They require all ICAC officers to avoid or declare any conflict of interest that may arise or has arisen between their private interests and official duties.

Like all other civil servants in Hong Kong, ICAC employees have to abide by Sections 3 and 4 of the POBO (see 'Conflict of Interest' under 'Corruption Profile'). ICAC officers are also obliged to observe relevant rules as laid down in the CSO. They will be subject to prosecution if they breach the POBO and to disciplinary measures if they act in violation of the CSO. While ICAC officers are employed on contract terms, the same as civil servants, its directorate officers are subject to post-employment restrictions in line with the regulations governing civil servants employed on pensionable terms.

The work of the ICAC is made public through various channels, including:

- Press briefings and interviews held by the ICAC commissioner and other officers;
- Press briefings by the chairmen of the four ICAC advisory committees to report on their work in monitoring the ICAC's performance and giving advice on ICAC's work;
- Seven regional offices of the ICAC throughout the territory;
- 'Meet-the-Public' sessions held by the regional offices;
- Press releases on subjects of public concern, including investigations and court cases;
- Face-to-face contact by officers of the ICAC's Community Relations Department;
- The ICAC corporate website; and
- Presentation by regional offices of the work plan of the Community Relations Department at District Councils and area committees.

Within the Hong Kong government, civil servants are required by the Civil Service Regulations to report to the ICAC all instances of attempted bribery they may encounter in either their official or personal capacities. Breaches of this requirement may result in disciplinary action. In addition, Section 16 of the POBO requires public officials to render assistance to the ICAC investigation officers when requested. Failure to do so may render an officer liable to disciplinary action or prosecution. All reports and cases will be treated with confidentiality by the ICAC. Civil service guidelines clearly spell out that officers will not be penalised for lodging complaints that are made in good faith.

The public can make corruption reports to the ICAC in person, on the ICAC report hotline (24 hours), by mail, or in writing. ICAC attaches great importance to the protection of informers and whistleblowers so that they are willing to report corruption or misconduct and to assist in investigation and prosecution. A number of measures are in place for such protection. It is the long-standing pledge of the ICAC to maintain confidentiality in the corruption reports it handles. Section 30A of the POBO provides specifically that witnesses shall not be obliged to disclose the names and identities of informants or answer questions if the answers may lead to the disclosure of the identities of informants who are not testifying in the proceedings.

The ICAC has a witness protection programme established under the Witness Protection Ordinance (Cap. 564) to offer protection at various levels to potential witnesses who may be whistleblowers

themselves. The programme involves the provision of specialised facilities and the availability of the ICAC investigators specially trained in witness protection techniques. The ordinance also prohibits disclosure of the identity of witnesses without lawful authority or reasonable excuse. According to the ICAC annual surveys, 90 per cent of respondents believe the ICAC would keep corruption reports confidential.

To deter people from making malicious complaints against innocent people and abusing the ICAC's resources, any person found to have knowingly made a false accusation to the ICAC may be liable to prosecution for actions contrary to section 13B of the ICAC Ordinance. Since the establishment of the ICAC, a total of 196 persons have been prosecuted for this offence, of whom 168 were convicted as of June 2006. Those complainants acting in good faith would not be subject to prosecution for making false reports even if their complaints turned out to be unsubstantiated.

The ICAC has maintained a unit, designated L Group, under the direct command of the director of investigation (private sector). Acting on the advice of the secretary for justice, the group investigates all allegations of corruption and related criminal offences made against ICAC personnel. All completed investigations are reported to the Operations Review Committee for endorsement. For non-criminal complaints concerning improper conduct or other alleged abuses, all completed investigations will be reported to the ICAC Complaints Committee through the ICAC commissioner.

Within the three departments and the Administration Branch of the ICAC, various channels exist for the airing of complaints and grievances. Staff can make complaints to their line management. The assistant director/administration, as the commissioner's principal staff officer, can be approached on complaints and grievances. Finally, the commissioner can also be approached if aggrieved officers are not satisfied with departmental action taken in response to their representations. Apart from these, the ICAC has also set up staff consultative committees in which representatives of various departments and ranks can air their views.

In terms of effectiveness of combating corruption, Hong Kong is now acclaimed for a clean civil service and a level playing field for business. Hong Kong has also been consistently rated as one of the least corrupt places in Asia. Since its inception (and up to June 2006), the ICAC has prosecuted 12,426 people for corruption and related crimes. In the past five years (2001–2005), a total of 918 civil servants have been referred to relevant departments for consideration of disciplinary or administrative actions. In these cases, the civil servants were found to be in breach of internal regulations or involved in malpractice although they were not subject to prosecution.

The ICAC is also active in cooperating with the Mainland authorities to fight corruption. For instance, on the operational front, the ICAC has established the Mutual Case Assistance Scheme with the procuratorate authorities since 1988. Under the scheme, investigators from both sides can interview witnesses in each other's jurisdictions. On the educational front, both sides have arranged training and duty visits for staff members to enhance understanding. ICAC commissioners and directorate officers and heads of Mainland procuratorates visit each other regularly to strengthen ties and exchange experience.

Media

In Hong Kong, the local media serves as an important forum for political expression; there is no doubt that Hong Kong has developed a respect for individual rights and freedom of the press. Freedom of expression and freedom of the press are fundamental rights enshrined in Article 27 of the Basic Law and Article 16 of the Hong Kong Bill of Rights. Regarding the protection of rights and freedoms, the Basic Law states that: 'Hong Kong residents shall have, among other things, freedom of speech, of the press and of publication; freedom of association, of assembly, of procession, of demonstration, of communication, of movement, of conscience, of religious belief, and of marriage; and the right and freedom to form and join trade unions, and to strike.'

The profession of journalism is represented through the Hong Kong Journalists Association, a member of the International Federation of Journalists. It has issued its own code of conduct, the Hong Kong Journalists Association's Code of Ethics.

Media have demonstrated they can positively contribute to reducing corruption by making a number of cases public. This was the case, for example, in 2003 when the media disclosed that the financial secretary had failed to declare the purchase of a new car that would be subject to an increased vehicle tax under the 2003 budget.³⁸

While free press flourishes in Hong Kong, some commentators fear that freedom of speech in Hong Kong may have been called into question, as revealed by some recent cases. For example, Anson Chan, Hong Kong's highly respected former chief secretary, was criticised for an article she wrote for the 14 June 2004 issue of *Time Asia* magazine, in which she expressed concerns about the state of affairs in Hong Kong.³⁹

In April 2006, the Privacy Commission launched an investigation into whether information provided by Yahoo Hong Kong led to the imprisonment of mainland journalist Shi Tao.⁴⁰ While this case does not directly relate to freedom of speech, it reflects that the privacy of individuals may be at risk when privately held organisations disclose customer information to the Chinese authorities and contravene the requirement of the Personal Data (Privacy) Ordinance.

Civil Society

Hong Kong offers a proper environment to civil society organisations to operate freely. Among active organisations, for example, the independent nonprofit Webb-site website initiated by corporate governance advocate and activist David Webb provides regular information and commentaries on Hong Kong's corporate and economic governance.⁴¹ The Civic Exchange, an independent public policy think-tank that was established in October 2000, provides an independent platform for those who care about public policy issues to come together and explore alternatives and solutions.

A range of organisations promoting transparency and ethical values across the Asia Pacific region is hosted in Hong Kong. For instance, the Association for Sustainable and Responsible Investment in Asia is a nonprofit membership association dedicated to promoting corporate responsibility and sustainable investment practice. Community Business is a Hong Kong-based charity that works with companies on corporate social responsibility issues.⁴² The Asian Corporate Governance Association, based in Hong Kong, plays a leading role in promoting corporate governance in the business sector.

Although it is sometimes difficult to measure the impact of those organisations on the real day-to-day running of the HKSAR by government and business leaders, they bring an essential vitality to the Hong Kong community in addressing governance issues. During the July 2003 protests, members of Hong Kong civil society demonstrated their attachment to freedom of expression, exercising the right to seek peaceful redress of their grievances.

Business Sector

Hong Kong has become a leading international financial centre in Asia and benefits from a strong legal framework, world-class regulatory and supervisory apparatus, and strong financial infrastructure. ACGA, a leading independent non-profit organisation promoting corporate governance across Asia, has ranked Hong Kong in second position in its list of countries in terms of corporate governance performance.⁴³ Hong Kong has been very active in the past 10 years in conducting corporate governance reforms; the business community recognises the importance of good corporate governance and transparency for maintaining and improving the status of Hong Kong as a leading global financial centre in an increasingly competitive environment. At the same time, the increasing trade with the Mainland also creates a more challenging environment for corruption, given the relatively high number of reported cases in Mainland China of cadres abusing their power for personal gains.⁴⁴

Hong Kong has made huge efforts to reinforce its governing capability in the business sector, including the creation of codes and regulations and the establishment of the institutions in place. Institutions overseeing financial services comprise: Financial Services and the Treasury Bureau, Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC), the Office of the Commissioner of Insurance and the Mandatory Provident Fund Schemes Authority.

The POBO, ensuring effective investigation and sanction against bribery of public officials and of agents, also applies in the private sector. Section 13 provides that special powers to investigate bank accounts, books, documents, and the like are conferred on the enforcement authority if it is believed that an offence under the POBO has been committed and these materials are relevant for the purposes of investigation of such an offence. Sections 14 to 17A enable the ICAC to apply to the court for an order to obtain further information, restrain property, and enter and search premises, or for a notice for the surrender of travel documents possessed by a suspect and so on. It should be noted that in 2005, 61 per cent of the corruption reports concerned the private sector, against 32 per cent related to government departments and 8 per cent involving public bodies. Although reports against the government sector dropped by 10 per cent, reports concerning the private sector increased by 3 per cent compared with 2004.⁴⁵

Banks largely come under the purview of the HKMA. Prudent and clear provisions under the Banking Ordinance (Cap. 155) apply to the authorisation and ongoing supervision of authorised institutions. Similarly, in the insurance industry, authorisation criteria for an insurer can be found in the Insurance Companies Ordinance, supplemented by the relevant guidance notes issued by the Office of the Commissioner of Insurance. The Organised and Serious Crimes Ordinance (Cap. 455)

provides for the confiscation of proceeds of crime and creates offences relating to this. Laundering of corruption proceeds is an offence under Section 25 of this ordinance. Section 25 provides that a person commits an offence if, knowing or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of an indictable offence, he deals with that property. Penalty for this offence on conviction on indictment is a fine of HKD5,000,000 and imprisonment for 14 years.

The SFC is responsible for the regulation of Hong Kong's securities and futures markets. It supervises market participants and conducts market surveillance. While the government has the overall responsibility under the Basic Law to provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre, the government is on principle not involved in the day-to-day regulatory functions of the SFC. The government's role is to ensure that the SFC has the necessary statutory powers to carry out its regulatory objectives effectively and independently and that its powers are checked by sufficient safeguards as set out clearly in the legislation. Regulatory oversight is primarily divided between the stock exchange and the SFC. The Hong Kong Stock Exchange (HKSE), a wholly owned subsidiary of the Hong Kong Exchanges and Clearing Limited, holds frontline responsibility for regulation of listed companies and enforces information disclosure controls through the listing rules. The SFC is the statutory regulator of the securities and futures markets and administers the Securities and Futures Ordinance and Parts II and XII of the Companies Ordinance. It supervises and monitors the exchanges. All rules made by the exchanges are subject to SFC approval. The Institute of Certified Public Accountants (HKICPA) is the regulator of auditors serving listed companies.

The SFC has certain statutory powers to investigate the affairs of listed companies. Under Section 179 of the Securities and Futures Ordinance, if it appears that fraud or oppression of minority shareholders (among other things) has taken place, or if shareholders have not been given all the information that they might reasonably expect, an investigation can be launched. The Securities and Futures Ordinance, which came into force on 1 April 2003, clarified the regulatory regime by consolidating the 10 previous securities, futures, and leveraged foreign exchange ordinances into a single law; it also enhanced the investigative power of the SFC, boosting the level of transparency and disclosure, and allowed for civil action against directors and senior officers for recovery of pecuniary losses in all cases of market misconduct (insider dealing, false trading, misleading disclosures, and the like).

The HKSE also issued the Code on Corporate Governance Practices in November 2004. The code supersedes the Code of Conduct. The exchange also revised the Model Code in January 2004 as part of its corporate governance-related rule changes. The Model Code is a set of guidelines regulating directors' dealings in their company's securities.

However, despite all those elements being in place, Hong Kong offers a challenging environment for corporate governance and transparency in the business sector for several reasons. Some commentators argue that ownership of the Hong Kong corporate sector is dominated by a small number of families who exercise a disproportionate amount of control over total listed corporate assets.⁴⁶ Institutional ownership, both foreign and domestic, remains relatively sparse. The high family concentration in the ownership structure of Hong Kong-based companies, as well as the complexity of pyramid structures of those private companies, are less transparent. Although it is difficult to assess the extent of informal networks that incur a high degree of integration between the business elite and the government, such a situation clearly creates a risk of collusion that may impair governance and integrity of the system. Some governance advocates have conducted extensive research to evaluate this risk of collusion, quantifying the presence of tycoons and their staff on the 800-member Election Committee, the listed company directorships held by members of the Executive Council, and the many advisory committees.

With the fast-growing number of initial public offerings (IPOs) in Hong Kong, especially from companies from the Mainland, transparency is under the scrutiny of a number of organisations and institutions. For example, Standard and Poor's and the Conference Board have published insightful reports on corporate governance in Hong Kong in recent years, concluding that 'HK corporate governance is good but could improve.'⁴⁷ In such a context the need for more stringent disclosure rules has been emphasised by many governance advocates, such as David Webb, and is regularly exposed by newspapers. Some Hong Kong leaders also advocate for more transparency in listing procedures and conducting proper diligence reviews in Hong Kong.⁴⁸ The SFC has recently taken steps to strengthen the regulation of IPO sponsors.⁴⁹

Indeed, shareholder activists have been very vigorous in criticising managements for what they consider to be unfair treatment of minority shareholders in many cases. For example, the failure of the Standing Committee on Company Law Reform (which is an advisory body comprising independent members and representatives from the SFC and HKSE) in April 2002 to pursue the

Hong Kong Association of Minority Shareholders' initiative to protect shareholders, despite a widespread endorsement,⁵⁰ may have thrown doubt over the real commitment of the Hong Kong government to transparency. Behind this issue is the capacity of independent directors on boards to protect the rights of minority shareholders.

To enhance shareholder protection, the Companies (Amendment) Ordinances 2003 and 2004 have been enacted to give shareholders greater powers such as the removal of directors by ordinary resolution, the reduction of the threshold for circulating shareholders' proposals, the personal right of shareholders to sue to enforce the terms of a company's Memorandum and Articles, or shareholders' access to corporate records and a statutory derivative action. Schedule 3 to the Companies (Amendment) Ordinance 2004 has been effective since July 2005 and provides an avenue for shareholders to take statutory derivative action on behalf of a company against, for example, directors or management on expropriation or other wrongdoing. The court is also now given power to award damages to shareholders whose interests have been unfairly prejudiced. All these new measures aim to empower investors in exercising their rights over company affairs and thus afford them better protection.

The SFC faces a number of practical difficulties in carrying out its oversight role, showing the need for more regulatory backing.⁵¹ Most of the corporate governance-related rules and principles are embodied in the Listing Rules, and the Listing Rules are not statutory. As a result the most severe punishment that can be meted out by the Stock Exchange, short of de-listing, is public censure.⁵² More statutory protection for whistleblowers (currently limited to the accounting profession) would also be beneficial. In February 2006, Hong Kong Exchanges and Clearing announced a new and expanded Listing Committee. This committee has input into policy decisions regarding the Listing Rules, approves new listings, and holds disciplinary hearings related to listed companies. Its membership has been expanded to 28, with 8 investor representatives and others who have a strong interest in corporate governance matters. To give the SFC the necessary enforcement powers, the government drafted an amendment bill to be introduced to the LegCo in 2006 to reinforce statutory backing to major listing requirements so that breaches of such requirements will be sanctioned.

Finally, while the fundamental legal and regulatory infrastructure is sound, local advocates of corporate governance voice the concern that improvements may be limited if the quality of written law and regulation is not matched with a similar quality of enforcement.⁵³

As a response to those challenges, Hong Kong has undertaken a number of improvements in its governance systems in the business sector. Several proposed amendments to the Companies Ordinance have been made by the Standing Committee on Company Law Reform (SCCLR), along with proposed amendments to the Listing Rules of the HKSE, which aim to bring rules governing listed companies more in line with international standards. For example, the SCCLR has recommended that directors should be prohibited from voting on transactions in which they have an interest, connected transactions of significance involving directors should be subject to disclosure and shareholders' approval, the board of listed companies should have a minimum of three independent non-executive directors, and the long-term objective should be for one-third of the board to comprise independent non-executive directors. Many of the proposals spelled out in the SCCLR's consultation documents have been adopted as proposed Listing Rules amendments.

The Securities and Futures (Amendment) Ordinance 2006, which amends the Securities and Futures Ordinance, commenced operation on 23 June 2006. Under the new structure, the SFC is to be led by a chairman whose role is separated from the executive arm, while the executive arm is headed by a chief executive officer. This model is in line with best governance practices both locally and internationally.

As regards the regulation of the accountancy profession, the HKICPA operates a largely self-regulatory framework under the Professional Accountants Ordinance over accountants and auditors. The Hong Kong Financial Reporting Standards, which are issued by the HKICPA, have converged fully with International Financial Reporting Standards in all material aspects since 1 January 2005. This uniform accounting platform, well understood by global investors and financial analysts, is conducive to the comparison of corporations and their results in different jurisdictions and leads to greater confidence in the transparency and quality of Hong Kong's financial markets.

Legislators have recently taken a key step forward by passing a law to establish a Financial Reporting Council to investigate accounting failures of listed companies, taking over the duties currently handled by the Hong Kong Institute of Certified Public Accountants.⁵⁴ The Financial Reporting Council Ordinance was enacted by the LegCo on 13 July 2006 with a view to providing the statutory framework for the establishment of the Financial Reporting Council by, tentatively, early 2007. It will be vested with enhanced statutory powers to investigate auditors' irregularities and non-compliances of financial reports concerning corporations and collective investment schemes listed in Hong Kong. The establishment of the Financial Reporting Council is expected to

reassure the markets and the investing public that Hong Kong's financial reporting frameworks are, and will continue to be, robust and on par with international regulatory trends.

Hong Kong has also engaged to rewrite the Hong Kong Companies Ordinance to ensure that it will provide Hong Kong with an up-to-date legal infrastructure attuned to its current needs. Specifically, it will:

- Streamline and modernise the ordinance provisions such as updating the out-of-date regulatory requirement of sending documents to shareholders in paper as opposed to electronic form;
- Strengthen the existing corporate governance framework in the ordinance such as enhancing the disclosure requirements relating to directors' remuneration; and
- Leverage from company law developments around the world such as the simplification of the procedures for the conduct of business in the UK company law reform.

The rewrite started in mid-2006. The new Companies Bill project draft will be available for public consultation in 2009 before it is introduced in the LegCo in the third quarter of 2010.

There is an overall absence of competition laws in Hong Kong; authorities intervene only when distortions damage consumer interests. Despite the existence of oligopolies, the government does not push forward anti-trust regulations in, for example, the retail or electric power sector. Hong Kong is currently reviewing whether there is a need to introduce legislation to guard against anti-competitive behaviour in all sectors. It may also be argued that due to Hong Kong's small size, it is inevitable that some sectors characterised by significant economies of scale would be dominated by a few big players.

Some observers argue that Hong Kong's retirement scheme industry needs improvements, not for its checks and balances systems and extensive regulations—which include the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and MPFS General Regulation (Cap. 485A)—but for its opacity at the top regarding the effective contribution of trustees, appointment and independence of investment managers, and governance practices.⁵⁵ The total assets of Hong Kong pension funds are growing, but the market is highly fragmented (46 registered Mandatory Provident Fund schemes and 7,725 registered Occupational Retirement Schemes Ordinance schemes as of June 2006). The pension scheme industry in Hong Kong would certainly benefit from creating an independent and experienced board of trustees and developing a proper policy of corporate governance.

International Institutions

Hong Kong, being a very international city, is naturally open to cooperation with a range of international institutions. For example, the HKSAR government conducted jointly with the Organisation for Economic Co-operation and Development an action plan exercise in 2005 addressing improvements in its key governance systems.

In the business sector, cooperation with international organisations includes the Financial System Stability Assessment on Hong Kong by the International Monetary Fund (IMF) and the Financial Action Task Force on Money Laundering in the field of money laundering. Hong Kong is also a founding member of the Asia/Pacific Group on Money Laundering, established in 1997, and ICAC is a member of the Interpol Group of Experts on Corruption.

Hong Kong itself hosts a number of international organisations promoting good governance across the Asia region. For example, in the academic field, the Centre for Institutions and Governance of the Chinese University of Hong Kong in Shatin promotes research and education on corporate governance issues in Asia and China, and Hong Kong Baptist University is one of the organisers of the 2006 World Business Ethics Forum.

As another example, the Americans' National Democratic Institute (NDI) has conducted a series of assessment missions to Hong Kong to consider the development of the HKSAR's 'post-reversion' election framework, the status of autonomy, rule of law and civil liberties under Chinese sovereignty, and the prospects for democratisation beyond the 10-year transition period set forth in the Basic Law. NDI meets extensively with Hong Kong government officials, political party leaders, election administrators, civil society and business representatives, legal and academic experts, and the diplomatic community. NDI works with political parties and democratic activists to encourage public discussion and debate on political reform. The institute shares information with and provides technical assistance to Hong Kong political parties, political groups, and civil society organisations seeking to enhance their ability to increase citizen participation in the HKSAR's political life. NDI does not provide funding to any political party or political group in Hong Kong.

Evaluation of the Integrity System

When it comes to evaluating Hong Kong's integrity system as a whole, it appears that the authorities have put significant effort into designing a sophisticated system of governance. Most components are already in place that aim at maintaining transparency and effective governance. Notably, what makes the Hong Kong integrity system somewhat unique is that it has established well-advanced frameworks and definitions of corruption in both theory (law) and practice (corruption reports, investigation, and prosecution) that create the basis of a sound anti-corruption system, not just in the public sector but also in the private sector. Corruption is not only well defined in Hong Kong but also routinely investigated and prosecuted. Regarding the statistics, it seems that the ICAC model works very well, and analyses show that corruption is well under control in Hong Kong. Clearly Hong Kong has successfully controlled corruption in law enforcement and public administration since the 1970s.

However, there is always some risk of abuse in a well-functioning system. For example, as the system makes it easier and easier to report corruption, more reports arise that may not directly translate into corruption cases. More generally, the complexity of governance systems in place in Hong Kong reinforces the need for a regular system to monitor and supervise the effectiveness of internal control towards governance objectives. In fact, internal auditors can provide a useful assistance to government institutions in order to help them monitor and ensure the effectiveness of the systems of checks and balances. It seems, however, that Hong Kong lags behind other developed countries in the promotion of internal audit as well as the education of internal audit professionals. While very active at promoting and administering professional qualifications, neither the Institute of Internal Auditors Hong Kong Chapter nor the Hong Kong Institute of Certified Public Accountants offers specific continuous development programmes for audit professionals on internal audit, which remains the initiative of privately held organisations or individuals.

In contrast, the integrity system is operating well in maintaining the public debate in Hong Kong; the press reports freely, commenting extensively and critically on local and Mainland matters. Hong Kong hosts a range of nonprofit institutions and international organisations that play an active role in the Asia-Pacific region in the field of governance and transparency.

Regarding its contribution to the business sector, the integrity system of Hong Kong undeniably plays a key role in sustaining the region's economic position as a global finance and trade centre. Hong Kong preserves a range of rules different from those of the PRC, enabling it to ensure free inflow and outflow of capital and the free flow of a wide range of information (including political information that affects financial markets). However, more volatility and nervousness in the financial markets may be seen in the coming years under the impact of the fast-growing economy of the Mainland. Simultaneously, as international standards of corporate governance become more demanding, the room for improvement in corporate governance in Hong Kong remains significant. Some corporate governance reforms and improvements are still under way that are essential to instil confidence among citizens and stakeholders.⁵⁶

Finally, Hong Kong benefits from a world-class, independent judicial system based on common law. Hong Kong society and especially the business community are strongly attached to preserving the key advantage of a sound judiciary, which enables it to sustain its leading position in Asia. There is a global consensus about Hong Kong's proven capacity to sustain and develop its judicial system. Such strength needs to be maintained in the future.

List of references

- Asian Corporate Governance Association, www.acga-asia.org
- Audit Commission website, www.aud.gov.hk
- Bilingual Laws Information System (BLIS), searchable electronic database of the statute laws of Hong Kong established and updated by the Department of Justice of the HKSAR, www.legislation.gov.hk
- Dr Carolyn Kay Brancato, 'Hong Kong Corporates and Investor Confidence: a corporate governance handbook for directors and officers of corporations in Hong Kong' (The Conference Board, 2003)
- Richard Cullen and Tor Krever, *Taxation and democracy in Hong Kong* (Civic Exchange, November 2005)
- Democratic Party website, www.dphk.org
- Editor David Webb, www.webb-site.com
- Electoral Affairs Commission website, www.eac.gov.hk
- The fifth report of the Constitutional Development Task Force: package of proposals for the methods for Selecting the Chief Executive in 2007 and for forming the LegCo in 2008, October 2005
- Anthony Y. H. Fung, 'The Dynamics of Public Opinion, Political Parties, and Media in Transitional Hong Kong,' *Asian Survey* 38, 5 (May 1998): 474–93.
- Government Logistics Department website, www.gld.gov.hk
- HKSAR Government website, www.info.gov.hk
- HKSAR ICAC website, <http://www.icac.org.hk>
- HKSAR ICAC, 2005 Annual Report
- Hong Kong Journalists Association website, www.hkja.org.hk
- Hong Kong Judiciary website, www.judiciary.gov.hk
- Hong Kong Police website, www.info.gov.hk/police
- Hong Kong Trade Development Council, <http://www.tdctrade.com>
- Legislative Council website, <http://www.legco.gov.hk>
- Christine Loh and Civic Exchange, eds., *Building Democracy* (Hong Kong University Press, 2003)
- Office of the Ombudsman, Hong Kong website, www.ombudsman.gov.hk
- 'The Promise of Democratization in Hong Kong,' National Democratic Institute, Focus Group Research Report on Political Parties in Hong Kong (APCO Asia, June 2005)
- SFC guidelines on professional training, March 2003
- Henry Wai-Chung Yeung, 'Network and Transnational Corporations: a Study of Hong Kong Firms in the ASEAN Region,' *Economic Geography* 73, 1 (Jan. 1997): 1–25.

Notes

¹ Details of the NIS can be found in *The TI Source Book* 1997 and 2000 and the *TI Anti-Corruption Handbook* (Berlin: Transparency International [TI], 1997, 2000), www.transparency.org.

² See www.transparency.org.

³ Hong Kong government website: <http://www.info.gov.hk/info/hkbrief/eng/ahk.htm>.

⁴ This assertion is based on the results of this study's September 2006 focus group, who was asked: 'How would you rate the degree of risk in maintaining the "delicate balance" mentioned above in the coming years in Hong Kong?' Four of 6 respondents replied that the level is medium, one replied that this level is high, and one replied that the level is low.

⁵ For example, from the Hong Kong Corporate Governance Council or the Centre for Institutions and Governance of the Chinese University of Hong Kong in Shatin.

⁶ It should be noted that the contribution of auditing to governance is also part of the main recommendations issued in the NIS study on Mainland China. See *National Integrity Systems Country Study Report: China* (Berlin: Transparency International, 2006).

⁷ 'The role of auditing in public sector governance,' Practical Guidance, Institute of Internal Auditors, November 2006.

⁸ A parallel can be drawn with Grant Thornton, First HSCI Corporate Governance Review 2006, page 22; 'where there was an internal audit function, there was often no further disclosure of how this function was carried out and whether any external professional advisors were used to help carry out a complete and effective function.' The 2004 and 2005 annual reports of the ICAC do not mention international standards for the practice of internal auditing (IIA standards) nor reference the existence of an audit charter and Code of Ethics for the practice of Internal Auditing. This applies to annual reports of the Audit Commission as well; the director of audit of the Audit Commission of Hong Kong is the external auditor, not internal auditor, of the HKSAR government.

⁹ See Comments on behalf of the Institute of Internal Auditors, Asia Pacific Economic Cooperation Forum, Financiers Group meeting, Best Audit Practices, August 2002.

¹⁰ 'We can not rely on legislation alone to enhance corporate governance standards. [The Enron case] illustrates that besides making and enforcing legislation, corporate culture is equally important. By corporate culture, I mean whether companies comply with both the spirit and provisions of the law, whether they recognise the direct impact of Corporate Governance on the value of their shares, whether they recognise their responsibilities to shareholders, employees and creditors as well as to the general public as a whole,' extract from speech from Stephen Ip, Secretary for Financial Services, at the Legislative Council Panel on Financial Affairs meeting, 2002.

¹¹ Of note are the initiatives recently taken by the Hong Kong Baptist University such as the organisation of the World Business Ethics Forum in Hong Kong and Macau in November 2006 and the 2nd Asia-Pacific Corporate Governance Conference to take place in August 2007.

¹² 'Anti-corruption drive a strategic task,' *China Daily*, 1 July 2006.

¹³ 'The inability to have investigations conducted in the mainland translates into a lack of evidence with which to support prosecutions or enforcement action in Hong Kong, and this should be recognised'. Martin Wheatley, chairman of the Securities and Futures Commission, in 'Hong Kong regulator admits weaknesses,' *Financial Times*, 11 May 2006.

¹⁴ For more on the potential benefits of constitutional developments, see 'Democracy makes a difference,' *China Daily*, 3 July 2006.

¹⁵ Hong Kong government website: <http://www.info.gov.hk/info/hkbrief/eng/ahk.htm>.

¹⁶ Hong Kong government website: <http://www.info.gov.hk/info/hkbrief/eng/ahk.htm>.

¹⁷ The code was published in the Gazette on 28 June 2002 (GN No. 3845).

¹⁸ <http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp>.

¹⁹ Some statistics reveal a drop in the number of private member bills passed between 1991 and 2001; the total number for the 4-year period 1993–1997 is 47, compared with 5 for the 4-year period 1998–2001 (Hansard, 1999–2001, cited in Christine Loh and Civic Exchange, eds., *Building Democracy: Creating Good Government for Hong Kong* [Hong Kong: Hong Kong University Press, August 2004]).

²⁰ 'United Nations release. Human rights committee urges Hong Kong to boost efforts to ensure freedoms of press, religious expression,' *US Fed News*, 21 March 2006.

²¹ A poll conducted by Hong Kong University's Public Opinion Programme in October 2004 showed 42.2 per cent of respondents were dissatisfied while 22.4 per cent were satisfied with the pace of democratic development in Hong Kong, and the dissatisfaction figures have continued to rise, while the percentage of satisfied people remains relatively stable. In January 2005 the survey showed 46.7 per cent dissatisfaction versus 20.1 per cent satisfaction, and in April 2005, 51.8 per cent of respondents said they were dissatisfied with the pace of democratic development in Hong Kong. Statement of Peter M. Manikas, National Democratic Institute for International Affairs, Subcommittee on Asia and the Pacific, House Committee on International Relations, 23 June 2004.

²² 'A vote for democracy,' *South China Morning Post*, 26 November 2003; 'Allen Lee calls for multi-party democracy,' *South China Morning Post*, 23 September 2003; 'End the culture of secrecy,' *South China Morning Post*, 13 July 2004.

²³ <http://www.legislation.gov.hk/eng/home.htm>.

²⁴ National Democratic Institute for International Affairs (www.ndi.org); Hong Kong webpage.

²⁵ *The Guardian*, 10 January 2003.

²⁶ The EAC Ordinance (Chapter 541 of the Laws of Hong Kong), www.legco.gov.hk/yr02-03/english/subleg/brief/47_br.pdf.

²⁷ EAC's website, www.eac.gov.hk.

²⁸ The Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), www.legco.gov.hk/yr02-03/english/subleg/brief/81_brf.pdf.

²⁹ In terms of transparency, the budget of all government bureaux/departments and reports of the director of audit are available on the government budget's official website and the Audit Commission's official website (www.aud.gov.hk), respectively. The public can also purchase printed copies of the reports at the Publication Sales Section of the Information Services Department of the HKSAR government.

³⁰ <http://www.Judiciary.gov.hk>.

³¹ Tier I posts are centrally designated. At present, the Tier I list consists of all permanent secretaries; commissioner of police; commissioner, Independent Commission Against Corruption; director of immigration; commissioner of customs and excise; director of audit and head, Central Policy Unit. Tier II posts include (a) administrative assistants and personal secretaries in support of Tier I posts; (b) all directorate posts, other than those in Tier I; and (c) non-directorate posts designated by permanent secretaries/heads of departments for declaration of investments, on the basis of their high risk of exposure to potential conflict-of-interest situations. At present, there are about 3,400 Tier II posts in the Hong Kong civil service.

³² Michael Ng, 'Report into police data leaks on way,' *The Standard*, 26 April 2006.

³³ 'Report into police data leaks on way,' *The Standard*, 26 April 2006.

³⁴ [Webb-site.com](http://www.webb-site.com), 26 March 2006.

³⁵ <http://www.info.gov.hk/police>.

³⁶ Author's calculation based on Hong Kong's GDP in 2004 (HKD1,290 billion) and the total value of government procurement in 2004 (HKD41.15 billion) (Census and Statistics Department).

³⁷ According to information provided to the author by the Office of the Ombudsman.

³⁸ Christine Loh and Civic Exchange, eds., *Building Democracy: Creating Good Government for Hong Kong* (Hong Kong: Hong Kong University Press, August 2004).

³⁹ Statement of Peter M. Manikas, House Committee on International Relations, 23 June 2004.

⁴⁰ BBC Monitoring, Asia Pacific, 26 April 2006.

⁴¹ www.webb-site.com.

⁴² 'Diversity moves up the agenda in Hong Kong,' *Financial Times*, 25 May 2006.

⁴³ In its last release of *Corporate Governance Watch* in October 2005, the Asian Corporate Governance Association (ACGA) ranked Hong Kong in second position after Singapore in terms of corporate governance of markets over Asia. Macro-determinants of corporate governance include: rules and regulations, enforcement, political and regulatory environment, adoption of international accounting standards, and corporate governance culture.

⁴⁴ 'Anti-corruption drive a strategic task,' *China Daily*, 1 July 2006.

⁴⁵ According to information provided to the author by the ICAC.

⁴⁶ See Dr. Carolyn Kay Brancato, 'Hong Kong Corporates and Investor Confidence: a corporate governance handbook for directors and officers of corporations in Hong Kong' (New York: The Conference Board, report, 2003).

⁴⁷ 'Hong Kong corporate governance good but could improve,' "Standard & Poors," January 2002.

⁴⁸ In an article titled 'Clean listings urged,' the writers comment, 'Hong Kong must move quickly to improve disclosure standards of its IPO candidates, if the city wants to remain as the top destination for overseas listings of mainland enterprises.' *The Standard*, 20 September 2004.

⁴⁹ 'New Sponsor Regime to Herald in Higher Standards,' SFC website, 15 December 2006.

⁵⁰ 'Widespread Endorsement for HAMS Proposal,' [webb-site.com](http://www.webb-site.com), 3 September 2001.

⁵¹ 'Hong Kong regulator admits weaknesses,' *Financial Times*, 11 May 2006.

⁵² 'HK watchdog warns it lacks teeth: SFC chairman says it lacks powers to pursue local-listed Chinese companies,' *Financial Times*, 11 May 2006.

⁵³ 'Reformers gain votes and influence—HKEx has long been dominated by an establishment elite. But as Tom Mitchell reports, things are finally changing,' *Financial Times*, 28 April 2006.

⁵⁴ 'Governance advocate quits institute over Ocean Grand troubles,' *South China Morning Post*, 25 July 2006.

⁵⁵ 'The Hong Kong retirement scheme industry: Is there a governance vacuum?' (Hong Kong: Asian Corporate Governance Association, presentation, 26 April 2006).

⁵⁶ 'Reformers gain votes and influence—HKEx has long been dominated by an establishment elite,' *Financial Times*, 28 April 2006; 'Hong Kong regulator admits weakness,' *Financial Times*, 11 May 2006.