

# ***HK Reflections on the "Independence" Feature of Hong Kong's Anti-Corruption System for Optimizing Chinese mainland's Supervisory System***

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**Abstract:** ICAC of Hong Kong gets global recognition for succeeding in fighting corruption due to its relative independence, great investigative ability, and good working mode. This independence refers more to be institutionally isolated from the executive rather than including aspects covering various areas like appointments, funding and ability to look into things. This article analyzes in depth the essence, characteristics, and operational logic of Hong Kong's anti-corruption mechanism, and contrasts them with the supervisory system led by the discipline inspection and supervision commissions in the Mainland. It also discusses the achievements of the mainland's supervisory commission system, as well as the issues arising from the integration and concentration of power and the lack of independence of supervisory commissions. Based on these aforementioned findings, this article gives several recommendation to improve the Mainland's supervision system, and draws upon Hong Kong's model in aspects such as relatively independent institutions, adequate supervisory resources and checks and balance on power exercising, and offer some theories and advice on enhancing the professionalization of the rule of law and the standardization of anti-corruption work in the Chinese Mainland.

## **1. Introduction: The Global Landscape of Anti-Corruption and the Unique Value of Hong Kong's Experience**

Anti-corruption has been etching the modern national government system and abilities since long ago, as an eternal theme. An effective anti-corruption plan is significant for efficiency of the local government and the trust of the public; and closely relates to the progress of an economy, fairness in society, and stability in politics. On a global scale, successful anti-corruption practices tend to highlight a common institutional characteristic, that is, anti-corruption agencies need to have a sufficient amount of power, be professional, and have a high degree of independence that matches their mission [1]. This is to ensure that they can rise above vested interest groups and administrative power networks, to do their duties with fairness and fearlessness. In this global discourse, the Hong Kong ICAC definitely provides a successful case study that is very exemplary and regionally comparable.

Founded in 1974 with the aim of eradicating the deep-rooted and systemic corruption within the colonial government of British Hong Kong, especially in the police force, the historical context and institutional formation of the ICAC bestowed on it an initially supra-administrative status. It's not that the ICAC's success is about stopping all the rampant corruption very quickly. Much deeper than that, it's about the whole transformation of society's social values and civic ethics by using strict law enforcement combined with prevention efforts and education of the public [2]. The change helped Hong Kong advance from an area known for being corrupt into a place the world recognized as one of the least corrupt areas, greatly restoring public trust in public institutions and the law. Hence, the ICAC's experience in Hong Kong serves as both a template for how to operate an anti-corruption agency, and a case study of success when institutional innovation and social and cultural reform work together. The Chinese Mainland, at present, is implementing the deepening reform of the national supervisory system by setting up supervisory committees at all levels to achieve the combination of internal supervision and national supervision [3]. This has created an all-round, authoritative, and fast, unified command and leadership supervisory system. This reform is in accordance with the advantages of socialism with Chinese characteristics and it is a response to the fragmented previous anti-corruption efforts, and the gap in supervision. But as reforms move from "being constructed" to "deep development," there arises an urgent theoretical and practical issue, which is: Under what conditions and with what principles should the Chinese Mainland draw on the experience of supervisory systems from other regions, especially Hong Kong and its geographical and cultural neighbors, to make its own supervisory system a more efficient, rule-of-law-driven, supervision quality-guaranteed supervisory system? Moreover, the "independence" of the Hong Kong ICAC, which basically includes personnel independence, financial independence, and operational independence, is a core feature of its anti-corruption mechanism, the financial independence, the functional independence, and the supervision power being constrained, has become the starting point in understanding how to further enhance the professionalism, impartiality and law-based operation of the Chinese Mainland supervisory system.

This article will make a profound analysis on the institutional essence, operational logic and influencing force to the entire society of independence in the anti-corruption system in Hong Kong, and carry out a comparison with the challenges of the power structure and operation of the supervision in the Mainland. By means of this cross-regional institutional referential thinking and reflection, it puts forward a series of constructive suggestions for optimization so as to provide some valuable academic references for the improvement of supervision in modernizing and standardizing it on the Mainland. In order to assist in creating a much more efficient, more just, more transparent, and more long term sustainable anti-corruption governance system with Chinese characteristics.

## **2. The Institutional Connotation and Operational Practice of the Hong Kong ICAC's "Independence" (Expanded)**

The independence of the H.K. Independent Commission Against Corruption is a complex, overarching idea with multiple layers of context. It is embedded in history, law, and operation. To comprehend the independence of the ICAC, we cannot treat it simply as some sort of isolated existence separate from the administration, but rather as one part of a whole, like a carefully contrived system of checks and a guarantee of power.

### **2.1. The Supra-Administrative Independence of Institutional Setup**

The ICAC's independence is most prominently manifested in its institutional positioning, that is, it is directly responsible to the Chief Executive and is entirely independent of all the government

bureaus and departments. This is a kind of "supra-administrative" status, thus it can perform its duties without being bound by routine administrative procedures or the interests of departments; institutionally cutting itself from the daily administrative setup [4]. It gives ICAC tremendous freedom and power in looking into high officials or essential sectors. Structurally speaking, the ICAC comprises three major departments – Operations, Anti-corruption Prevention and Community Relations – with clear functional assignments, covering the three main aspects of anti-corruption: investigation, prevention and education, all in an integrated and professional way. Operations Department has wide range of investigative power under specific legislature as ICAC Ordinance which comprise of arrest, search, seizing of property, and summons of witnesses. And so, it can fight against corruption swiftly, without needing to work together with or receive permission from other administrative or law enforcement agencies, aside from the Police Force or the Department of Justice. institutional independence and the statutory grant of power are the most basic guarantees of its high efficiency. It can truly be a "toothed independent agency".

## **2.2. Autonomous Guarantee of Personnel Appointments and Financial Resources**

The second pillar, which is important for ICACs independent running, is a high level of freedom in managing people and money. ICAC's Commissioner is nominated by the chief executive and appointed by the central people's government and enjoys a high level of political status which assures its political power. More importantly, the ICAC's personnel do not belong to the Hong Kong Civil Service. Their hiring, salary, promotion, and retirement are all carried out under a separate management system [5]. The ICAC's staff will be segregated from the dangers of getting absorbed into the vested interests and the relationships of the administrative system. Its staff does not belong to any administrative structure, so they can be neutral and objective when performing tasks. In terms of financial resources, even though the ICAC's budget is subject to scrutiny and approval of the Legislative Council, but its budget proposals are reviewed and suggested by independent committees; it is highly autonomous when executing the budget. This kind of independent budgetary guarantee mechanism can ensure that ICAC's investigation won't be delayed or shortened because of financial shortages or government departments' administrative restrictions during the investigation process, which is large-scale and labor-intensive, and provide a solid material support to guarantee the continuous and long-term operation of ICAC.

## **2.3. Transparency in Power Exercise and External Oversight Mechanisms**

The true independence of ICAC is not power without limitations, but rather efficient power under constraints. ICAC power exercise has strict external monitoring and constraint, which are also important sources of public credibility. The ICAC is independently overseen by Four Advisory Committees, including the Advisory Committee on Corruption and the Operations Review Committee (ORC).These committees consist mainly of non-officials (leading citizens, legal experts) who give the ICAC independent review, consultation and guidance about its work direction, investigation findings, and allocation of resources. Operations Review Committee especially, separately examines and watches over all the received corruption reports, the progress of investigations, and how they end so that the investigating work is fair and transparent. And Hong Kong has a very mature judicial review system and legislative supervision, which is the ultimate legal restraint on the ICAC's exercise of power. When citizens have doubts about whether the ICAC's search, arrest, etc., is legal, they can take their complaint to the court. It is due to this "balance between independent investigative power" and "strict checks and balances" that the ICAC can operate effectively and remain within the framework of the rule of law, gaining public confidence.

### **3. The Reform Process of the Mainland Supervisory System and the Necessity of Drawing on Hong Kong's Experience (Expanded)**

The reform of the national supervisory system is a significant strategic choice and move to improve national governance systems and capabilities in the new era. In 2018, the supervision commissions at all levels were established and the Chinese Mainland's supervisory system has undergone a historic transformation, with great achievements been obtained in increasing the scope, intensifying the pressure and reinforcing the deterrence against corruption. At the same time, as the system develops to a higher degree of professionalism, legalization, and standardization, the experience of the relative independence adopted by the Hong Kong ICAC also has very practical significance.

#### **3.1. Achievements and Core Features of the Mainland's Supervisory System Reform**

The central idea of the national supervisory system reform of the Chinese Mainland is to establish a centralized, unified, authoritative, and efficient national supervisory system. By setting up supervisory commissions and putting them together with discipline inspection commissions that are responsible for their own departments, the reform has united the anti-corruption capabilities that were once spread out among different departments like administration, prosecution, and others into one system that covers all public officials who exercise such powers. This system has been fundamentally led towards centralized and unified leadership, making anti-corruption into a national level strategic project and showcasing the organizational advantages of socialism with Chinese characteristics. As legally mandated supervisory bodies, supervisory commissions must have the three powers of supervision, investigation, and disposition. It can also take such investigative measures as detention in custody, investigation, inquiry, and freezing. It will be a strong force for fighting corruption. This addresses the chronic problems of 'fragmented oversight' and 'departmentalized anti-corruption'. The idea is to 'unify to foster unity and centralize to promote unity' to greatly improve the comprehensive enforcement and deterrent effect of anti-corruption efforts and unify the direction. [6] Moreover, the supervision law is enacted and puts the power of supervision into the framework of law, which marks that anti-corruption work has entered into the rule-of-law track.

#### **3.2. Deep-seated Challenges Faced by the Mainland Supervisory System Regarding "Relative Independence"**

While the Chinese Mainland's supervisory system had achieved great results, but when it is compared with Hong Kong ICAC model, it needs to acknowledge the "relatively independent" challenges which are inherent in the nature of supervisory organs. Under the "one institution with two names" mode, the supervisory commissions are fused with discipline inspector offices so that their operation is inevitably under the leadership and over-all political objectives. It is an essential guarantee of safety and political direction for anti-corruption activities, but at the same time, it gives rise to complex issues such as how to correctly balance internal disciplinary measures with nationwide rule-of-law operations, and how to protect the impartiality of investigation work. First, on an institutional level, although supervisory commissions have strong guarantees for their staffing and funding, at the local level, there is still insufficient separation from the local government in terms of day-to-day operations and personnel [7]. It depends very heavily upon the chain of command, which may put some kind of pressure on how thorough and impartial any investigations have to be done when the people being investigated are among those running the local government. Second, with regard to procedural rule of law, in the process of transitioning from disciplinary procedures to legal procedures, how to make the procedures and evidence of supervisory investigation meet the very

stringent requirements of judicial procedure, and how to further strengthen the rigid legal constraints of supervisory power. Thus, for the Chinese Mainland's supervisory system to improve, it must find ways to enable supervisory agencies to exercise a certain degree of relative independence in the actual supervision of specific cases, so as to enhance the impartiality and effectiveness of supervision, allocation of professional resources, and facing external supervision under the basic principle of leadership, to enhance the professionalization, credibility, and lawfulness of supervisory bodies.

#### **4. Paths for Optimizing the Mainland Supervisory System by Drawing on the ICAC's "Independence" Feature (Expanded)**

Drawing inspiration from the Hong Kong ICAC's "independence" does not equate to transplanting their institutional model; it is about absorbing the essence of how the Hong Kong ICAC realized concentrated and high-level power under the framework of effective check and balance. Based on the supervisory advantages embodied by "centralized uniformity" of the Mainland, the emphasis should be placed on increasing the supervisory commission's relative autonomy in terms of institutional operations, professional capabilities, and external oversight, in order to make them more subject to rule of law.

##### **4.1. Exploring Mechanisms for the Relative Independent Operation of Supervisory Organs in Specific Areas**

Adhering to the main principle of centralized and uniform command, the Chinese mainland should consider granting supervisory commissions a certain degree of relative independence and vertical management in specialized operations and resource allocation. Firstly, regarding personnel, learning from ICAC, it is necessary to build an independent set of supervision official management system compared to the local administrative cadre system [8]: Establish independent professional ranks, compensation systems, and career development paths in order to attract outstanding professionals from the fields of law, finance, and auditing. This kind of professionalization not only cuts off the link between supervisory personnel and the local administrative system but also weakens the role of personal connections in supervisory affairs. Second, in terms of case handling, we must further reinforce, formalize, and regularize the higher-level supervisory commission's direction, and ensure it takes direct jurisdiction over cases that would otherwise fall to lower-level supervisory commissions. Especially with leaders of local government and others deeply involved in key sensitive areas at hand, supervisory commissions at a higher level should also have sufficient back-up so that they can directly step-in, give direction, and take over at the jurisdiction, so as to eliminate potential interference and restraints from local administrative power, and thereby guarantee the independent, impartial, and thorough conduct of investigations into cases. Vertical command and resources are independent of each other in order to achieve greater independence for supervisory organs [9].

##### **4.2. Strengthening the Professionalization and Rule of Law in Investigative and Preventive Functions**

ICAC has relatively high efficiency because of its high professionalism and high degree of following the rule of law in investigation and prevention. The Mainland's supervision system should have such standards by fully improving the supervision level. on the other side, "the principle of evidence centrality" must be thoroughly implemented, and the conversion of the supervision investigation procedure into rules is required. That is to demand the Supervisory Commissions to adhere to the requirements and standards stipulated by criminal procedural laws and judicial trial procedures on how to collect, secure, save, and transfer supervisory evidence, guaranteeing the

legality, completeness, and reliability of the supervisory evidence chain and eliminating any legal impediments in ensuring the process is one of a continuous transition from discipline review all the way to judicial trial. Moreover, the legal professional training given to the supervisory team should be stepped up so that the supervisory team will have more advanced legal literacy and investigative skills, so as to guarantee that all investigative measures are carried out strictly in accordance with authorized legal procedures and statutory procedures [10]. On the other hand, the systematization and professionalization of corruption prevention work should be vigorously promoted. Based on the ICAC's "root-cause cure" in its Prevention Department, Supervisory Commissions need to increase cooperation with administrative departments to form a professional consultation mechanism for corruption risk assessment, institutional defect diagnosis, and technical improvement of public power operation. Anti-corruption needs to advance from mere education and publicity to the institutional design and process remodeling with proactive interventions and technical support, cutting off all the chances for rent-seeking via public power at its roots and forming a situation where "the investigation treats the symptoms but the institutions address the root."

#### **4.3. Perfecting the External Oversight System to Establish Rigid Checks and Balances**

The independence of the ICAC is built on its acceptance of the most stringent multi-level external oversight, which serves as the foundation of its credibility. To optimize the Chinese Mainland's supervisory system, it is essential to further deepen the construction of external supervision and restraint mechanisms, establishing a rigid system of constraints and oversight on supervisory power. Firstly, the oversight role of the National People's Congress (NPC) and its Standing Committee should be strengthened. The oversight of supervisory commissions by the NPC needs to be more detailed, institutionalized, and transparent, enabling NPC deputies and the public to better understand and supervise supervisory work. Secondly, judicial constraints on supervisory power must be enhanced. The relationships and responsibilities among supervisory organs, procuratorial organs, and judicial organs in the handling of cases should be further clarified, so as to ensure that judicial organs are granted the substantive right to review the evidence and the procedures of cases in the transfer process from supervisory organs. This prevents excessive supervisory power from interfering with the judicial trial process, truly upholding the principle of "trial-centered justice." Finally, drawing on the experience of Hong Kong's Advisory Committees, the Chinese Mainland should establish an independent social supervision and consultation mechanism composed of experts, legal professionals, and public figures outside the government system. These committees should have independent operating space and the right to consult and investigate the work policies, anti-corruption education effectiveness, and procedures of supervisory commissions. They should also be able to provide independent evaluations, recommendations, and public guidance, ensuring transparency to enhance credibility and realizing the combination of social oversight and internal constraints.

#### **5. The Implications of Hong Kong's Anti-Corruption Culture and Social Synergy for Mainland Education (New Chapter)**

Hong Kong ICAC's continuous success can't just rely on their independent investigative power and inflexible law. Its depth and duration of accomplishments depend greatly on its strong social culture of integrity and the thorough creation of broad social synergy mechanism through its Community Relations Department (CRD) foundations. This anti-corruption culture is the soft backup and root-cause remedy for making the anti-corruption system effective. Mainland's supervisory system reform intensifies, it needs to clearly understand the significance of culture and institution complementing each other, transforming anti-corruption work merely involving punishment and prevention into cultural formation and social management at a high place.

In Hong Kong building up an integrity culture is done through systematic, professional and full education process. ICAC's community relations department regards integrity education as a social engineering project, NOT a temporary political campaign. Its work is not just slogans or PSAs (public service announcements), but designed different levels and personalized education programs for many different social groups, like all kinds of government departments, private companies, schools, and local communities. For example, at the school education level, the ICAC works closely with the education sector to develop professional and interactive teaching materials and curricula based on young people's cognitive development. Using various media, comics, and other formats, it cultivates students' awareness of integrity and the rule of law from an early age, thereby realizing the front-loading and internalization of integrity awareness. In the private sector, the ICAC teams up with chambers of commerce and industry associations to give professional and pragmatic advice on corporate compliance management and ethical risk prevention, especially for small and medium-sized enterprises, so as to form good internal anti-corruption systems, linking public power oversight with the self-control of market players, and cultivating a fair operating environment by working together [11]. Promoting integrity education, the Mainland should adopt this concept of dividing by profession and clear objectives, expanding educational work into an all-round education of social ethics, professional ethics, and moral education, as well as legal consciousness on the basis of traditional political education, ensuring the scientificity and sustainability of the content.

The main factor for ICAC's integrity culture to be widely promoted is the good link between ICAC and media and the community. The ICAC, through many years of work, has successfully established a sound, professional, and trustworthy public image, and has greatly reduced the trust gap and trust cost between the general public and anti-corruption agencies. ICAC became an open operation and publicly communicated to turn anti-corruption work into collective tasks for society. Moreover, it has made extensive use of mass media to create many anti-corruption dramas and films based on real cases to popularize the dangers of corruption and the majesty of the law and reporting methods through moving stories. This "edutainment", deeply popular in the public mind, broke through people's taboos on reporting, established and improved the agency's credibility and trust among people, generating an uncountable force of social public opinion monitoring and moral pressure. That is, it means that when public officials exercise their power, they not only consider the risk of laws and regulations but also think about the moral evaluations from colleagues, neighbors, and public, making institutional constraint work hundreds of times more effectively. On social supervision, it stresses to safeguard the public's right to know and rule-of-law based public opinion supervision in the Mainland, creating more convenient, safe, and efficient reporting feedback mechanisms and media communication channels. Mainland could organically blend anti-corruption education with community governance and citizen civility building, step by step change anti-corruption work from government-led to multi-stakeholders social co-governance, awaken the public's inherent requirement and desire to keep integrity.

Therefore, the cultivation and formation of integrity culture is far from being an add-on of anti-corruption work; it is the essential optimization and soft support of the whole supervisory system. A social culture that extensively praises honesty and dares to exercise supervision can greatly cut down on the supervision cost and execution transaction cost of institutions, offering a solid social basis and cultural motivation for the swift and fair operation of the supervisory system. In advancing the basic cure of corruption, the Mainland should push up integrity culture building (soft rule of law) to the same level of importance as institutional reform and perfecting legal rules (hard rule of law), so as to create a clear, fair, and honest social culture which is consistent with the spirit of socialist rule of law with Chinese characteristics.

## 6. Conclusion: Constructing a Chinese-Style Efficient Anti-Corruption System on the Track of the Rule of Law

The “independence” feature of the HK ICAC is of great institutional enlightenment and governance wisdom to the mainland in furthering the reform and improvement of its supervisory system and supervision mechanism. At its core, it is the institutional support for achieving good, just, and sustainable anti-corruption results, rather than simply being a matter of power separation. In terms of its autonomy, it is shown through its superior administrative status given by the law, independent assurance of people and financial resources, as well as the rigorously enforced external supervision and checks and balances mechanisms. The ICAC’s success shows us: the authority of an anti-corruption entity can only be based upon its relative independence from the normal daily administration system and being bound to the rule-of-law procedure, and strict rule-of-law supervision and strict rule-of-law checks.

Taking advantage of the major benefit that centralized and unified leadership provides, reforming the supervisory system on the Chinese mainland has brought together anti-corruption actions on a supervisory network of great power and efficiency. It creates a solid institutional system for anti-corruption, it is a political advantage and an institutional innovation suitable for China's national conditions. But as the country moves into a new developmental phase, Anti-corruption work must progress from simply making sure that “there is no fear of corruption” to an all-encompassing approach that guarantees “corruption will not happen” and “corruption does not want to exist.” The supervisory system must quickly achieve new results in terms of method, expertise, and the rule of law.

Therefore, the optimization of the supervision mechanism of Chinese Mainland's supervisory organs means to find out the way to ensure the relative independence of supervisory organs in case handling, resource distribution and restraint of power from the perspective of the supervision mechanism. Adhering to the basic political principle of leadership. This also means employing vertical supervision mechanisms to oppose manipulation by local administrative power, elevating the legal standard and public credibility of supervised investigation activities through a specialized team and the “evidence-based” principle; It, in essence, is imposing strict external restrictions and checks on supervisory power itself, while fostering a strong anti-corruption social atmosphere through professional education and public engagement.

The final objective is to develop a Chinese model of an efficient rule-based anti-corruption system. To achieve this, it is necessary to balance the leadership's political guidance and anti-corruption efforts with ensuring the impartial, fair performance and professional capabilities of supervisory institutions. Drawing on the experience of the Hong Kong ICAC, we recognize that only by locking power in institutional cages and imposing strict, independent constraints on supervisory power can we fundamentally address corruption, establish a long-term, stable, and sustainable anti-corruption system, and thereby provide solid political and institutional safeguards for the modernization of China's national governance system and governance capacity.

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