The Independent Anti-Corruption Agency: A Comparative Study

Charles A. Caruso
Regional Anti-Corruption Advisor
Introduction:

The American Bar Association Asia Law Initiative, in cooperation with the government of Malaysia and the Anti-Corruption Agency Malaysia, proposes a one day workshop, as outlined below, to be held in Kuala Lumpur, in 2005.

Goals:

The broad purpose of this workshop is three-fold. First: the workshop will acquaint the audience, best selected by the Anti-Corruption Agency Malaysia, with the mechanics of two of its counterpart institutions; the Independent Commission Against Corruption, Hong Kong, and the Corrupt Practices Investigation Bureau, Singapore. Second, the workshop will acquaint the audience with the inter-workings between a prosecutorial authority, in this instance the Director of Public Prosecutions, Hong Kong, and its investigative anti-corruption body, in this instance the Hong Kong Independent Commission Against Corruption. Third: the workshop will provide the forum for a discussion of specific problems currently faced by the Anti-Corruption Agency of Malaysia.

Methodology:  The workshop will consist of the presentation of papers by an expert in the field of international law as well as by public officials from governments within the region who are intimately familiar with: the organization and operation of the independent anti-corruption agency as an institutional entity and their associated prosecutorial services; the rigors of preparing national legislation that accommodates the demands of an independent anti-corruption agency; the demands made by Articles 6 and 36 of the United Nations Convention Against Corruption and the role of independent anti-corruption agencies in meeting those demands.

Following the presentation of papers by the selected experts, it is anticipated that an extended Question and Answer/Discussion Session will take place wherein the moderator and presenters will engage with the attendees in a frank discussion of those issues raised by the respective presentations (Despite this feature, each presentation will be interactive with participants being called upon to express their opinions and views during and following each presentation.). Considering the fact that those chosen to make presentations possess an expertise in more than their individual topic area, it is expected that all of the presenters will contribute to each other’s presentations.

As the central theme of the Question and Answer/Discussion Session the program contemplates the Anti-Corruption Agency Malaysia preparing and submitting beforehand a list of discussion topics derived from practical problems being encountered in its day to day operations. This submission will be forwarded to the expert presenters well in advance of the workshop in an effort to allow them to prepare a comprehensive discussion of possible solutions to the submitted problems.
It is anticipated that many of these discussion topics will involve problems that have surfaced in actual cases and investigations in which the Anti-Corruption Agency Malaysia has been involved. It is also anticipated that case studies experienced by of matters actually experienced by ICAC and CPIB will be submitted to the audience beforehand for treatment during this portion to the event. It is a part of the rationale behind this session that the issues raised therein will concern matters that recur on a regular basis or are amongst those that may be common to agencies of this genre.

**Expert Presentations:**

This portion of the program will be offered in a tri-partite fashion; i.e., three separate presentations through which the ‘best practices’ and ‘significant experiences’ of other independent anti-corruption agencies from within and from without the region will be shared and explicated. As mentioned above, two of the three speakers featured in this portion of the seminar will be managerial level members of two independent anti-corruption agencies within the region, i.e., one from Singapore’s Corrupt Practices Investigation Bureau and the other from the Hong Kong Independent Commission Against Corruption.

These particular agencies have been selected on the basis of their respective experiences and similarities with the ACA; eg., the CPIB, established in 1952, and ICAC, established in 1974, are both examples of highly respected world renown institutions of this genre. It is believed that the Anti-Corruption Agency Malaysia, an institution sharing many of the organizational features of the CPIB and the ICAC, may find much in the experiences of these two agencies which it can put to use in its daily operations. Further, inasmuch as Malaysia has signed the United Nations Convention Against Corruption, wherein it is mandated that each State Party “shall… ensure the existence of a body or bodies…that prevent corruption…” in accord with Article 6 of the Convention as well as insure “…the necessary independence” of that agency in accord with Article 36 of the Convention, it is anticipated that each expert will tailor his presentation with the UNCAC in mind. It is further anticipated that the ‘ Singapore and Hong Kong experiences’ will provide a proven track record which can be accurately evaluated and which can provide valuable insights into problems that Malaysia may currently be encountering in its present environment.

Whereas as all of the existing independent anti-corruption agencies have not had the successes enjoyed by the ICAC and the CPIB, the third speaker will offer a discourse on two separate topical areas; the successes and failures of other independent anti-corruption agencies and the relationship between anti-corruption agencies and their respective prosecutorial services. As is obvious, other independent corruption agencies have failed or have had less success than those in Hong Kong and Singapore. Thus this presenter will discuss some of the reasons for these failures, or less than acceptable levels of success. As importantly and more specifically, because the final work-product of any anti-corruption agency becomes the ultimate responsibility of an associated prosecutorial service, this speaker will discuss: 1) the working relationship between the office of the prosecutor and the anti-corruption agency; 2) the nature of the services, advisory as well as prosecutorial, provided by the office of the
prosecutor; 3) the organizational structure of the office of the prosecutor vis a vis the anti-corruption agency and 4) the necessity for the presence of the prosecutor in the functioning of the anti-corruption agency.

The purpose of this portion of the program will be to obtain an unbiased assessment of the overall efficacy of such institutions and to obtain a ‘lessons learned’ perspective from the community of independent anti-corruption agencies as a whole, investigative as well as prosecutorial. For purposes of a valid comparison, other than for those issues pertaining specifically to only one of the agencies, all of the presenters will form their talks around the same general topics.

Amongst these general topics are:

(a) the enabling legislation supporting such institutions, e.g., Prevention of Corruption Act (Chapter 241), the Prevention of Bribery Ordinance, the Anti-Corruption Agency Act etc;

(b) the jurisdiction, powers and responsibilities of the institutions as well as a description of their respective organizational structures;

(c) maintaining the independence of the agency;

(d) case management of matters brought before the agency;

(e) standards and rules for clearing and closing cases;

(f) inherent jurisdictional strengths and weaknesses encountered;

(g) ethical standards for agency personnel;

(h) prosecution of cases referred – possibilities for greater cooperation between prosecutors and investigators;

(i) the employment of special prosecutors;

(j) plans for expansion of agency jurisdiction;

(k) problems commonly occurring and solutions commonly applied, ‘common solutions to common problems’;

(l) the position of the agency within the government, i.e., to whom, when and how does it answer, and the effects this protocol has on its independence;

(m) oversight committees employed in policing such agencies;

(n) the means used to insure the integrity of investigations undertaken by the agency;
(o) the mechanisms used to internally police the activities of agency personnel;

(p) the need for specialized training of investigatory personnel on a continual and scheduled basis;

(q) the place of specialized investigative techniques, i.e., electronic surveillance, undercover operations, controlled deliveries, etc, in the regimen of such agencies;

The foregoing topics are offered as a partial list of those that may be of interest. It is anticipated that prior to the setting of a final agenda for the seminar other topics may be added.

Malaysian Speakers: It is understood that matters of special interest will require the expertise of members of the Anti-Corruption Agency Malaysia in order to be properly presented. Those speakers and their presentations will be included within the program following their identification by the ACA.

Follow-up: It is anticipated that following the seminar the Government of Malaysia and/or the Anti-Corruption Agency Malaysia may identify an area or areas where additional training or assistance is desirable. In this event, the Asia Law Initiative is prepared to seriously consider such requests and provide access to the needed assistance.

Conclusion: The program has been designed to provide information useful to those who are involved in the day to day operations of the Anti-Corruption Agency Malaysia. It is intended to be pragmatic, informative and a launching mechanism for constructive, albeit, spirited discussion.