

Statement by Department of Justice regarding case of Mr Donald Tsang Yam-kuen

In response to media enquiries concerning the case of Mr Donald Tsang Yam-kuen, a spokesman for the Department of Justice (DoJ) said the following today (October 5):

Acting upon the DoJ's legal advice, the Independent Commission Against Corruption (ICAC) has earlier today charged Mr Tsang with two counts of misconduct in public office, contrary to common law. The contents of the two charges can be summarised as follows:

(1) The first charge alleges that during the period between November 2, 2010, and January 20, 2012, Mr Tsang, in the course of or in relation to his public office (i.e. as the Chief Executive (CE) of the Hong Kong Special Administrative Region (HKSAR)), without any reasonable excuse or justification, wilfully misconducted himself by concealing from, or by failing to declare or disclose to, the Executive Council (ExCo) during the relevant ExCo meetings in which various licence or related applications by Wave Media Limited (WML) (subsequently renamed as Digital Broadcasting Corporation Hong Kong Limited) were discussed and approved, his negotiations with Mr Wong Cho-bau, a major shareholder of WML, concerning a lease in respect of a residential unit situated at East Pacific Garden in Shenzhen (the Residential Unit) and the related payment of RMB800,000 to a company of Mr Wong in November 2010.

(2) The second charge alleges that during the period between around December 2010 and July 2011, Mr Tsang, in the course of or in relation to his said public office (i.e. as the CE of the HKSAR), without reasonable excuse or justification, wilfully misconducted himself by failing to disclose to, or by concealing from, Mr Kenneth Mak Ching-yu (the then Permanent Secretary for the CE's Office), the Development Bureau and the Honours and Non-Official Justices of the Peace

Selection Committee, his interest in the lease of the Residential Unit and the engagement of Mr Barrie Ho Chow-lai for interior design work of the Residential Unit when he proposed that Mr Ho be referred for consideration for nomination under the HKSAR honours and awards system.

The decision to commence prosecution against Mr Tsang was made after careful and thorough consideration of the available evidence, the applicable law and the relevant provisions in the Prosecution Code. The DoJ has also obtained independent legal advice from overseas Queen's Counsel. It is a decision made independently in the due discharge of the DoJ's constitutional duty under Article 63 of the Basic Law, free from any interference.

The media have previously reported matters concerning Mr Tsang other than those covered by the aforesaid two charges, including matters relating to certain trips made by Mr Tsang to places outside the HKSAR. Since prosecution has been commenced and with a view to avoiding any possible prejudice to the pending trial, it is not appropriate for the DoJ to comment further on details concerning the case as well as those other matters reported by the media, save to say that:

(1) those other matters covered by the media have been covered by the ICAC's investigation and the DoJ's advice; and

(2) having carefully considered the available evidence, the applicable law and the relevant provisions in the Prosecution Code as well as having obtained independent legal advice from overseas Queen's Counsel, the DoJ is satisfied that there is no sufficient evidence to justify the commencement of criminal prosecution in respect of those other matters reported by the media.

Note: Whilst references are made to legal advice in this Press Statement, neither the ICAC nor the DoJ waives any legal professional privilege.

Ends/Monday, October 5, 2015