

DoJ statement in relation to ICAC investigation

The Independent Commission Against Corruption (ICAC) conducted a comprehensive investigation into various complaints against Mr Lee Cheuk-yan, Mr Alan Leong Kah-kit, Mr James To Kun-sun, Ms Claudia Mo Man-ching, Ms Tanya Chan, Mr Lai Chee-ying and Mr Mark Herman Simon. Having carefully considered the investigation reports and the relevant materials submitted by the ICAC, the Department of Justice (DoJ) has advised that there is no sufficient evidence to institute prosecution against the above-mentioned parties.

Prosecution Criteria

According to the Prosecution Code, a prosecutor must consider two issues in deciding whether to prosecute. First, whether there is sufficient evidence to justify instituting or continuing proceedings. Second, if there is sufficient evidence, whether the public interest requires a prosecution to be pursued. A prosecution should not be instituted or continued unless the prosecutor is satisfied that there is legally sufficient evidence to support a prosecution: that is, evidence that is admissible and reliable and, together with any reasonable inference able to be drawn from it, likely to prove the offence. The test is whether the evidence demonstrates a reasonable prospect of conviction. In the present case, the decision not to prosecute the above-mentioned parties is solely based upon insufficiency of evidence.

DoJ's decision

The available evidence reveals that Mr Lai offered \$1.5 million and \$300,000 to Mr Lee and Mr Leong respectively through Mr Simon, and that Mr Lee and Mr Leong accepted the respective payments. As for Mr To, Ms Mo and Ms Chan, there is no evidence that they accepted any payments from

Mr Lai or Mr Simon.

The major allegation against Mr Lee and Mr Leong is that they failed to declare to the Legislative Council (LegCo) their receipt of the respective payments, which may constitute the Common Law offence of Misconduct in Public Office (MIPO). Mr Lai and Mr Simon were alleged to have committed offences in connection with MIPO.

It is pertinent to note that against a similar background, Mr Leung Kwok-hung (Mr Leung) was prosecuted for one count of MIPO in the District Court (DCCC 546/2016). The allegation against Mr Leung was that he, in his capacity as a then LegCo Member, received a sum of \$250,000 from Mr Lai through Mr Simon but he failed to declare such receipt to LegCo.

After trial, Judge Alex Lee found that (1) there is no prohibition for a LegCo Member to receive donations/financial sponsorships from any person or organisation; (2) if a LegCo Member receives donations/financial sponsorships on behalf of his political party/organisation, the declaration requirement is not triggered; (3) on the evidence, it could not be disproved beyond reasonable doubt that Mr Leung might have received the said sum on behalf of his political party, namely the League of Social Democrats; and (4) on the basis of (3) above, it could not be concluded that Mr Leung was obliged to declare to LegCo such receipt. As such, the judge acquitted Mr Leung of the charge of MIPO on July 31, 2017.

Similar to Mr Leung, the existing evidence reveals that Mr Lee and Mr Leong might have received the respective payments on behalf of their political party/organisation. There is no reasonable prospect of establishing to the requisite standard that Mr Lee and Mr Leong received the respective payments beneficially for themselves. Adopting

the above basis, they were not obliged to declare their receipt to LegCo. It follows that no offence of MIPO against them can be substantiated.

Since no offence of MIPO can be made out against Mr Lee or Mr Leong, there is also no reasonable prospect of proving any MIPO-related offences (such as conspiracy) against Mr Lai or Mr Simon.

For the sake of completeness, there is also insufficient evidence to substantiate other criminal offences against the above-mentioned parties.

The DoJ's decision not to institute prosecution against the above-mentioned parties has been made in accordance with the Prosecution Code and the applicable law.

The decision taken has been explained so that the public are fully and properly informed about this case which has been the subject of public concern.

Ends/Thursday, February 1, 2018