

DoJ statement in relation to ICAC investigation

The Independent Commission Against Corruption (ICAC) conducted a comprehensive investigation into allegations of corruption and misconduct in public office (MIPO) against former Chief Executive of the Hong Kong Special Administrative Region Mr Leung Chun-ying and member of the Legislative Council Mr Holden Chow Ho-ding. The allegations arose from (i) Mr Leung entering into an agreement with UGL Limited (UGL) and receiving payments thereunder during the time when he was the Chief Executive and (ii) suspected interference by Mr Leung and Mr Chow with the inquiry of the Select Committee to Inquire into the Matters about the Agreement between Mr Leung Chun-ying and the Australian firm UGL Limited (the Select Committee).

Having carefully considered the investigation reports and the relevant materials submitted by the ICAC, the Department of Justice (DoJ) has advised that there is insufficient evidence to institute prosecution against Mr Leung and Mr Chow.

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 is solely based upon insufficiency of evidence.

DoJ's decision

The available evidence reveals that in late 2011, Mr Leung, a director of DTZ Holdings (DTZ), in the negotiation of the takeover of DTZ by UGL, entered into an agreement with UGL for the receipt of £4 million on the basis of "non-compete non-poach". Part of the sum was received when Mr Leung was the Chief Executive.

The totality of the evidence is that as part of the arrangement of the takeover, DTZ had knowledge of Mr Leung entering into agreement with and accepting money

from UGL for Mr Leung's non-compete non-poach arrangements. Furthermore, Mr Leung's acts in negotiating the takeover with UGL were congruent with the interests of DTZ which was at the relevant time in financial difficulties. The evidence fell short of establishing DTZ did not consent to Mr Leung accepting the monies or that the conduct fell within the mischief of an agent accepting advantage charge within section 9 of the Prevention of Bribery Ordinance, Cap 201. There is no reasonable prospect of conviction of a corruption charge against Mr Leung.

As to the absence of declaration of such interests to the relevant authorities, since there is no conflict of interest on the part of Mr Leung, there was no legal requirement for him to make declaration of the amount that he was to receive under the agreement with UGL entered into before he became the Chief Executive. The absence of declaration hence did not constitute any MIPO offence.

Regarding the submission of amendments to the major area of studies of the Select Committee by Mr Chow which originated from Mr Leung, the amendments would not affect the proper functioning of the Select Committee. There is insufficient evidence to prove that such misconduct was serious enough to establish the

offence of MIPO.

For the sake of completeness, there is also insufficient evidence to substantiate other criminal offences against Mr Leung or Mr Chow.

The DoJ's decision not to institute prosecution against Mr Leung and Mr Chow 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/Wednesday, December 12, 2018