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Battling graft, ICAC endures a summer of discontent

BEN RIGBY 19 DECEMBER, 2016

Hong Kong's Independent Commission Against Corruption (ICAC) is widely respected, lawyers tell CDR, although the graft-busting agency has spent a summer in 2016 it would rather forget. Ben Rigby reports.

Few bodies are as respected in Hong Kong as the **Independent Commission Against Corruption**. Set up in 1974 when Hong Kong was under British colonial rule, ICAC is popularly portrayed in Hong Kong's gritty crime dramas and soap operas alike, as a bastion of the rule of law.

Shaun Wu of **Kobre & Kim** acknowledges that individual citizens will each have his or her own opinions of ICAC, but the investigator has "always had a reputation as an aggressive graft-busting agency since its inception in 1974 and it deserves much of the credit for transforming Hong Kong during the 1980s and 1990s into the international financial centre of today".

That reputation persists, says Wu: "Hong Kong always had a reputation for having strong anti-corruption laws and an effective enforcement regime. Indeed, recent high-profile cases have been brought against even the most senior former government officials and the most influential business tycoons."

Rob Hunt from **Herbert Smith Freehills** in Hong Kong calls ICAC "both active and successful" in its work investigating corruption allegations and referring cases meriting prosecution to the Hong Kong's Department of Justice to prosecute.

High-profile recent successes, Hunt notes, include the convictions of property tycoon Thomas Kwok and ex-deputy leader of Hong Kong Rafael Hui. The convictions were upheld by the Court of Appeal in February 2016 and face the Court of Final Appeal in May 2017.

Donald Tsang, Hong Kong's former chief executive, is currently facing prosecution for misconduct in public office, and faces trial in January 2017.

On the anti-money laundering side, the Court of Final Appeal recently confirmed the conviction of ex-Birmingham City owner Carson Yeung in another high-profile case.

"Policy-wise, these cases demonstrate the willingness of Hong Kong's regulators, the Department of Justice and the Hong Kong courts to prosecute and convict Hong Kong's wealthiest, most high-profile and senior ranking individuals," he says.

Likewise, Hunt's fellow partner, **Kyle Wombolt**, says that ICAC is seen "as a pillar of the community and globally recognised as a pioneer in anti-corruption enforcement and prevention".

ICAC'S LONG HOT SUMMER

ICAC, however, has not been without recent problems over the hot summer season. June saw the exit of ICAC's head of operations **Rebecca Li**, who departed after ICAC's chief commissioner **Simon Peh**, said that Li was no longer suitable for the "needs of the position".

Li's departure was followed by subsequent resignations in July and August, and, according to the *South China Morning Post*, the postponement of an annual staff dinner after an employee boycott.

Li's successor **Ricky Yau** then suddenly resigned, and then reversed his decision, leading to speculation as to the circumstances of his decision.

Speaking to the *ICAC Post*, an internal newsletter, Yau revealed that after initially accepting the role, he resigned four days into his new post, later changing his mind after pleas from colleagues.

In the newsletter, Yau wrote: "I was of the view that if I took up the post, the Operations Department would be subject to even more public queries, and the credibility of [ICAC] would be further undermined," he said.

"I made a verbal application to the commissioner for an early resolution of agreement on July 11, and tendered a written application to him the following day."

"Having considered such a genuine plea from my colleagues and the overall interest of the commission," Yau then reversed his decision.

Some media commentators queried the exits, asking as to whether they were linked to an ongoing investigation into Hong Kong's current chief executive **CY Leung**, although Peh himself, and Leung, have consistently and robustly denied such allegations.

Others, like Yau, point out the agency's work continues regardless, in telling the *ICAC Post*: "Between July and September this year, the Commission prosecuted a total of 81 persons for corruption and related crimes."

"Meanwhile, a total of 36 persons were convicted in the same period. These figures reflect that our law enforcement work remains effective and our officers have not slackened despite the recent staff reshuffle."

BUSINESS AS USUAL

Wombolt agrees that ICAC's success rate is impressive and high profile prosecutions show its determination to follow through "on even the most difficult and politically sensitive cases".

To him: "Hong Kong's business and political elite are left in no doubt as to the ICAC's power and efficacy. From time to time, issues within the ICAC are played out in the media, but it remains a formidable force."

Increasingly, ICAC is also looking internationally, says Hunt: "Information sharing, both at the national and international level, is on the rise. Domestically, enforcement authorities often work seamlessly."

He adds: "In Hong Kong, since the ICAC refers cases for prosecution to the Director of Public Prosecutions within the Department of Justice (a typical model), their information sharing will be comprehensive."

Hunt says: "As corruption allegations become increasingly international we have seen national enforcement agencies working together more and more often."

Such arrangements have also become formalised with memoranda of understanding or bilateral agreements being signed between various states. That has prompted an international mindset among Hong Kong's compliance lawyers, says **Melody Chan of White & Case**.

"Our clients are subject to a strict regulatory environment; we work with them often on the consequences of their working in a changing environment, including financial institutions. In that sector, it is not unusual for the firm to assist on global investigations across the UK, US, and Hong Kong."

"[They] want to maintain high standards of business, matching the international standards which regulators ask of them; including in Hong Kong, which also equally high standards."

To Chan, that means advising on compliance with local regulations, as well as dealing with wider corporate compliance needs, saying "our policy is to seek practical solutions to the problems they face".

She explains: "That could mean cross-border advice, helping a Chinese client on the implications of US enforcement action, but also advising US clients on the consequences of regulatory breach in Hong Kong."

Wu sums up how business must now react: "Businesses must now prepare for the regulatory landscape here with a more localised approach to risk regulation on the ground. Foreign

corporations, in particular, need to know how best to oversee [local policies] and when to conduct small-scope internal reviews should any issues arise.”

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