

Crunch time in corruption fight

Written by Sebastian Strangio
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Photo by: Photo Supplied Former Hong Kong anti-graft chief Tony Kwok Man-wai at a workshop in Phnom Penh earlier this week. **KEY PROVISIONS**

Law on Anticorruption

- **Article 4:** Exempts from prosecution any gift given “in accordance with custom or tradition”.
- **Article 11:** Chairman and vice-chairman of the Anticorruption Unit (ACU) to be appointed by the prime minister.
- **Article 36:** Empowers the ACU to punish “illicit enrichment”, the unexplained increase in an individual’s wealth.
- **Article 39:** Any person leaking confidential information about corruption can be punished with up to five years’ jail.
- **Article 41:** Complaints lodged with the ACU that lead to “useless inquiry” carry up to six months’ jail or 10 million riels in fines.

ONE month after passing its long-awaited Anticorruption Law, Cambodia is entering a make-or-break period in its fight against corruption, a veteran Hong Kong corruption fighter said this week, and the first year after the law comes into effect will be significant in determining the legislation’s ultimate success.

Under the law, set to come into effect in November, two new bodies will be tasked with fighting the Kingdom’s endemic levels of corruption: a National Anticorruption Commission (NAC), which will guide the country’s anti-graft policies, and an Anticorruption Unit (ACU), based at the Council of Ministers, which will carry out day-to-day investigations.

Tony Kwok Man-wai, the former deputy commissioner of Hong Kong’s Independent Commission Against Corruption (ICAC), said that Cambodia lies “at the crossroads” in its fight against graft.

“From my experience, it is most important that the ACU can have a good start for the first few months of this operation,” he said in an interview Wednesday. “This is a time when the public

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will be behind it. The government and the ACU should take advantage of the public support.”

Kwok, who served at the ICAC for 27 years and oversaw Hong Kong’s transition from a place of “womb to tomb” corruption to what he now calls one of the “cleanest societies” in Asia, said the first year of operation will be critical for both bodies.

“If they fail to get a good start, it will cause a lot of disappointment and the public will probably become even more cynical than before. It will be very difficult for the government and the ACU to get the proper amount of support they need again,” he said.

The law has already been criticised by some experts, who say it is merely a watered-down version of a draft formulated in 2006. According to a briefing paper on the new law put together by international corruption experts last month, a copy of which was obtained by the Post, changes to the 2006 draft included the removal of key provisions, resulting in an “overall narrowing effect” on the scope of the law. In particular, the briefing paper says an entire chapter – dealing with “large-scale specific actions” aimed at creating a “culture of intolerance” towards corruption – was removed from the 2006 draft.

Among its provisions, the redacted chapter called for the development of a “corruption-free personnel recruitment system for government”, as well as the development of a code of ethics for civil servants based on international standards. In addition, it called for the reform of election financing and greater transparency in public administration. It also recommended that a large-scale anticorruption education campaign be conducted in the country’s schools and universities. None of these provisions appear in the version of the law that was passed last month.

Other experts say the law contains provisions that are either too broad or too vaguely defined. Article 4 of the law bans the giving of gifts – as well as loans, fees, rewards or commissions – in exchange for favours, but exempts any gift that is given “in accordance with custom and tradition”.

Leslie Holmes, a professor of political science at the University of Melbourne who specialises in comparative corruption, said the wording of the article gives much leeway to the authorities.

“Few states now would accept the vague notion of ‘in accordance with custom or tradition’ – it’s far too obviously open to abuse,” he said.

He added that although many countries eschew the strict no-gift provisions adopted by Hong Kong’s ICAC in the 1970s, an increasing number have set explicit values for the gifts that are acceptable – permitting, for example, one US\$100 gift per source per year. No defined value limits are listed in the final version of the Cambodian law.

The paper also raises concerns about what international experts perceive as weak whistle-blower protections, saying Article 13 of the law – which states that the ACU will maintain the confidentiality of its sources – is “a vague statement ... not a robust protection of rights”.

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The law also introduces a new offence (Article 41) that carries fines and jail terms of up to six months for “defamation or disinformation complaints on corruption lodged with the Anti-corruption Unit or judges, which lead to useless inquiry”.

Alan Doig, a corruption expert at the UN Office on Drugs and Crime (UNODC) in Bangkok, said that although such laws exist in other countries, most draw a distinction between malicious and well-intentioned reports.

“As it stands ... most reporting persons will not know where their allegations might lead [and] will be put off by such draconian sanctions,” he said by email.

Holmes described Article 41 as “much more clearly a disincentive to blow the whistle” than exists in most other countries, but added that giving whistle-blowers total anonymity could create a flood of ill-intentioned allegations. “There’s no easy solution to this one,” he said.

Officials at the Council of Ministers directed questions about the new law to Om Yentieng, chairman of the government-run Committee of Human Rights, who said he was too busy to speak Thursday. Sar Sambath, who has been appointed to sit on the ACU, could also not be reached for comment.

A matter of trust

Despite criticisms about specific articles, Kwok said the new law was sufficient to fight corruption – he described the inclusion of provisions about illicit enrichment (Article 36) as “particularly commendable” – provided it is backed up by the necessary resources and professionalism on the part of the ACU.

“Resources are clearly inadequate,” he said, noting that the 80 staff members earmarked so far for the ACU is far less than the 1,300 deployed in Hong Kong, which has half Cambodia’s population. He also said that although he was struck by the enthusiasm of the young officials he met at workshops last week, they lacked much-needed experience.

“They probably need a lot more professional training and resources,” he said, adding that best practice, based on Hong Kong’s ICAC, is for anticorruption budgets to be pegged at around 0.33 percent of the national budget. Most countries in the region, he added, devote around 0.01 percent.

The government “should demonstrate its political will by giving them a lot more resources”, he said.

Doig said it was unclear whether the new institutions would have the capacity to deal with the wide range of crimes listed in the law, from petty street crimes to high-level graft.

“Such an agency has to be a strategic decision, given the levels of resources and expertise it may consume,” he said, adding that the failure to think through priorities, sequence and timing, can “overload a new agency and certainly compromise its organisational confidence and maturity”.

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Ultimately, however, Kwok said the law's success will hinge not on specific articles but on whether the public believes in and supports the system.

"We should not be too concerned with this nitty-gritty, because the whole system is based on trust," he said. "We should not criticise them before they've even started – we should give them a chance."