

Part I Establishment of the Select Committee and its work

Chapter 2 Various matters relating to the Select Committee

Membership of the Select Committee

2.1 On the recommendation of HC, the President of LegCo appointed on 17 June 2013 the Chairman, Deputy Chairman and members of the Select Committee in accordance with RoP 78(2) of LegCo. The 13 members of the Select Committee are as follows:

Hon IP Kwok-him, GBS, JP (Chairman)
Hon Cyd HO Sau-lan, JP (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Hak-kan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Kenneth LEUNG
Hon Dennis KWOK
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

Terms of reference, areas of study and work plan of the Select Committee

2.2 The Select Committee confirmed its terms of reference and endorsed its areas of study and work plan at the open meeting on 16 July 2013.

2.3 The terms of reference of the Select Committee are as follows:

"The terms of reference of the Select Committee, which reflect the substance of the petition jointly presented by Hon Dennis Kwok and Hon Cyd HO at the Council meeting of 8 May 2013 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure, are as follows -

To inquire into whether the official duty visits, entertainment, and the bestowing and receipt of gifts by Mr Timothy TONG during his tenure as Commissioner of the Independent Commission Against Corruption are commensurate with his official capacity and the values of probity and integrity advocated by the Independent Commission Against Corruption, and how the Independent Commission Against Corruption provided information related to the above matters to the Finance Committee of the Legislative Council."

2.4 Based on its terms of reference, the Select Committee decided to inquire into the following major areas:

- I. Matters relating to Mr Timothy TONG Hin-ming's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC
 - (a) ICAC's policies on, and approval mechanism and monitoring system for official duty visits, entertainment, and bestowing and receipt of gifts, as well as its regulatory systems and procedures for handling relevant expenses, including the arrangements for application, reimbursement and approval;
 - (b) the details of Mr TONG's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC;
 - (c) the role and involvement of Mr TONG in the official duty visits, entertainment, and bestowing and receipt of gifts, including but not limited to the following -
 - (i) the need for the official duty visits, the ICAC officers and other persons joining the visits,

the organizations/persons visited and the itineraries, etc.;

- (ii) the need for organizing the official entertainment activities, the organizations/persons entertained, the attending ICAC officers and other persons, the arrangements such as venues, the food and drinks served, etc.;
 - (iii) the need for bestowing gifts, their recipients, the nature and value of the gifts, the decisions to receive gifts or not, and the handling of the gifts received; and
 - (iv) the vetting and approval of and the accounting arrangements for all related expenses.
- (d) whether Mr TONG's official duty visits, entertainment, and bestowing and receipt of gifts are in full compliance with ICAC's policies, rules and guidelines for handling related matters; and
- (e) whether the way Mr TONG handled the official duty visits, entertainment, and bestowing and receipt of gifts is commensurate with his official

capacity and the values of probity and integrity advocated by ICAC.

II. Information provided by ICAC to FC

- (a) the authenticity and comprehensiveness of the information provided by ICAC to FC in respect of Mr TONG's duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC; and
- (b) the process and procedure for preparation and vetting of the aforesaid information, including but not limited to the respective roles and involvement of the ICAC officers involved in the preparation and/or vetting of the information.

2.5 The Select Committee decided to conduct its inquiry in three main stages:

- (a) Stage I for undertaking preparatory work, including drawing up and determining the practice and procedure for the Select Committee; deciding on the major areas of study and the information to be obtained from relevant parties, identifying the witnesses to be summoned; deciding on the order of the witnesses to be summoned and the main areas of evidence to be obtained;

- (b) Stage II for conducting hearings to obtain evidence from witnesses and for deliberating on the evidence obtained; and
- (c) Stage III for holding internal deliberations for preparing, discussing and finalizing the draft report of the Select Committee.

Practice and procedure

2.6 The procedure of the Select Committee is regulated by the RoP of LegCo, and the relevant provisions of the Legislative Council (Powers and Privileges) Ordinance insofar as they are applicable. In addition, the Select Committee endorsed its practice and procedure at the open meeting on 16 July 2013. The set of practice and procedure is modelled on the sets of practice and procedure adopted by previous select committees with necessary modifications taking into account that the Select Committee has been established pursuant to the referral of the Petition by the Council and is not authorized by the Council to exercise the powers under section 9(1) of Legislative Council (Powers and Privileges) Ordinance. A copy of the Practice and Procedure of the Select Committee is in **Appendix 2**.

2.7 In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select

committees and committees which carry out investigations and it has applied the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's Terms of Reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

Meetings of the Select Committee

2.8 In accordance with RoP 79(2), the meetings of a select committee shall be held in public unless the chairman otherwise orders in accordance with a decision of the committee. The Select Committee

decided that as a general rule, the taking of evidence should be conducted at open hearings. Nevertheless, witnesses were informed that if they wished their evidence to be taken at closed meetings, they should submit their reasons in writing to the Select Committee for a decision. As none of the witnesses sought to appear at a closed meeting, the two hearings of the Select Committee were held in public.

2.9 In line with the practice of previous select committees, the Select Committee decided that its internal deliberations should be held at closed meetings. The Select Committee agreed that members should not disclose its internal deliberations or documents considered at these meetings, and that the Chairman and Deputy Chairman should be the only persons authorized to handle enquiries from the media concerning the work of the Select Committee.

2.10 The Select Committee held three meetings between 16 July and 13 December 2013 to undertake preparatory work for the inquiry, followed by two public hearings on 25 January and 1 March 2014. The hearings lasted a total of about eight hours. In addition, the Select Committee held seven meetings comprising a total of 13 hours to discuss the evidence obtained and deliberate over its report and matters relating to the inquiry.

Transparency of the inquiry

2.11 In order to assist members of the public in understanding the proceedings of the Select Committee, written statements provided by

witnesses appearing before the Select Committee, once produced by witnesses at public hearings, were uploaded onto the LegCo website for public inspection and their copies were made available to members of the public and the media observing the public hearings. Their attention was, however, drawn to the fact that the written statements were made available to them only for the purpose of assisting them in understanding the proceedings at the public hearings. They were also reminded that the use of the contents of the written statements for other purposes was not protected by the privileges provided under the Legislative Council (Powers and Privileges) Ordinance, and they should obtain legal advice before doing so.

2.12 To enhance the transparency of its work, the Select Committee uploaded all unclassified documents it obtained onto the LegCo website as soon as practicable for public inspection. As for the classified documents obtained by the Select Committee, all of which were provided by ICAC, some of them have been uploaded onto the LegCo website immediately after their production by the Commissioner of ICAC at the public hearing on 1 March 2014, while the others are to be uploaded onto the LegCo website on the same day upon the publication of this report. ICAC has acceded to the above arrangements.

2.13 In order to keep the media updated on the work of the Select Committee, briefings for the media were conducted by the Chairman after a number of meetings/public hearings.

Verbatim transcripts of hearings

2.14 The minutes of evidence, in the form of verbatim transcripts made from the sound recordings of the proceedings of the meetings at which witnesses were examined, form part of the Select Committee's report to the Council. In order that witnesses could have a fair and reasonable opportunity to consider whether their oral evidence was accurately transcribed, the Select Committee sent to all witnesses the parts of the draft verbatim transcripts of their respective oral evidence so that they could have the opportunity to propose corrections, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The Select Committee accepted corrections proposed so long as they did not materially alter the general sense of the evidence so recorded. In this connection, Mr Timothy TONG Hin-ming had told the Select Committee before the relevant draft verbatim transcripts were issued to him that he would not comment on the draft verbatim transcripts of his evidence and hence there was no need to send him the draft verbatim transcripts. Although the relevant draft verbatim transcripts were not issued to him for comments, he was advised that upon correction by the Select Committee, the verbatim transcripts of hearings would become the official minutes of evidence and be incorporated into the report of the Select Committee.

2.15 To enhance the transparency of its work, the verbatim transcripts of hearings of the Select Committee, once corrected by the witnesses and

the Select Committee, were uploaded onto the LegCo website for public inspection.

Draft findings and observations

2.16 In order to ensure that the procedure was fair and seen to be fair to people whose interests or reputations might be affected by the proceedings, any party, person or organization against whom adverse comments were intended to be made in the report of the Select Committee was given an opportunity to comment on relevant parts of the draft findings and observations of the report. The comments received had been carefully considered by the Select Committee before its report was finalized.

Hearings of the Select Committee

Report of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits and Public Accounts Committee Report No. 60A

2.17 The LegCo Public Accounts Committee ("PAC") held five public hearings from May to June 2013 to obtain evidence from Mr TONG and ICAC on the findings and observations of Chapter 7 of the

Director of Audit's Report No. 60³. On 12 September 2013, the Government released the Report of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits (The Redacted Version) ("the IRC Report"). As some of the information contained in the IRC Report was inconsistent with that gathered by PAC at the aforesaid hearings and/or was related to its areas of study, PAC held three more public hearings in September and October 2013 to obtain evidence from Mr TONG and ICAC. PAC tabled the Public Accounts Committee Report No. 60A ("the PAC Report") in Council on 27 November 2013.

2.18 The original plan of the Select Committee was to start conducting hearings to obtain evidence from witnesses in late October 2013. As PAC would conduct further public hearing(s) to obtain evidence from Mr TONG and ICAC at that time, the Select Committee decided at its meeting on 3 October 2013 that to avoid duplicating the efforts of PAC, the Select Committee would conduct its hearings after the release of the report of PAC on the Director of Audit's Report No. 60. Following the tabling of the PAC Report in the Council, the Select Committee decided at its meeting on 13 December 2013 that for conducting its inquiry effectively, it should avoid repeating the work of PAC and IRC but it would make reference to their findings.

³ Chapter 7 of the Director of Audit's Report No. 60 sets out the review conducted by the Audit Commission of the work of the Community Relations Department of ICAC from 2008 to 2012 in providing preventive education and enlisting public support against corruption.

The process in which the Select Committee obtained evidence

2.19 On 14 May 2013, the Department of Justice and ICAC issued a press release and a statement respectively (**Appendices 3 and 4**), stating that the Department of Justice considered that there was sufficient basis to warrant a criminal investigation into allegations against Mr Timothy TONG Hin-ming of possible offences under the Prevention of Bribery Ordinance (Cap. 201) ("POBO") and the common law offence of "Misconduct in Public Office". The Commissioner of ICAC would lead a dedicated investigating team to conduct the investigation.

2.20 To ensure the integrity of the information to be obtained, the Select Committee wrote to ICAC on 19 July 2013, requesting it to retain and protect all information relating to the inquiry of the Select Committee. The Select Committee wrote to ICAC again on 25 July 2013, requesting it to provide information and records relevant to the major areas of study of the Select Committee. The list of information which the Select Committee requested ICAC to provide at that time is at **Appendix 5**.

2.21 ICAC provided its written reply to the Select Committee on 6 September 2013 (**Appendix 6**). In its reply, ICAC said that it was willing to cooperate with the Select Committee in its work, and it provided information relating to Part I (a) of the major areas of study of the Select Committee, i.e. information on the relevant policies and regulatory arrangements during Mr Timothy TONG Hin-ming's tenure as the Commissioner of ICAC, and Part II of the major areas of study,

i.e. information relating to ICAC's preparation and vetting of replies to Members' initial and supplementary questions on the Estimates of Expenditure 2013-2014. As for the information relating to Part I (b) to (e) of the Select Committee's major areas of study, i.e. information on Mr TONG's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner, ICAC considered that such information involved factual matters that were under investigation by its special investigation unit, and premature disclosure of facts under investigation could adversely affect the investigation that was underway in a number of ways. Furthermore, ICAC was concerned that if the ICAC investigation established evidence upon which the Department of Justice recommended a prosecution in the public interest, it could impact on any subsequent trial in relation to issues of admissibility of evidence and fairness of the trial if evidence collected by the special investigation unit had been examined and discussed in other forums.

2.22 The Select Committee wrote to ICAC again on 19 September and 11 October 2013 respectively, urging it to provide as soon as possible information on Mr Timothy TONG Hin-ming's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC. In its letter to ICAC, the Select Committee said that with regard to the concerns of ICAC that the requested information might prejudice the integrity of its investigation or any potential criminal prosecution, the Select Committee might consider taking appropriate measures to address the concerns of ICAC, such as treating certain information provided by ICAC in confidence or conducting part of the hearings in camera.

2.23 In its replies dated 27 September 2013 (**Appendix 7**) and 23 October 2013 (**Appendix 8**), ICAC explained that the arrangement of conducting the hearings "in camera" still could not entirely overcome the concerns of ICAC, including the deterrent effect of the examination on the prospective witnesses in the criminal investigation, and the fact that the memory of witnesses might be criticized as having been irreversibly tainted as a result of their being shown records which they had not seen or were not aware of. As such, ICAC maintained its original stance and would not provide information on Mr Timothy TONG Hin-ming's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC.

2.24 Taking into account the need for the Select Committee to proceed with its work without unnecessary delay, the Select Committee wrote to ICAC on 31 October 2013, requesting it to provide a full set of the papers, records and documents that ICAC had provided to PAC in relation to its consideration of Chapter 7 of the Director of Audit's Report No. 60. ICAC provided such information on 8 November 2013.

2.25 In the course of its subsequent study, the Select Committee also requested ICAC to provide information on a number of occasions. In response, ICAC provided a small amount of information in respect of Mr TONG (i.e. information about the two applications made by him to the CE for personal retention of gifts offered to him in his official capacity and that Mr TONG had submitted reports on two duty visits to CE after those duty visits) as well as some information relating to ICAC's policies, rules and regulations, and procedures. As the Select

Committee was not authorized to exercise the powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance, it could only conduct its inquiry based on the limited information provided to it by ICAC, the relevant information provided to PAC by ICAC, the information contained in the IRC Report (The Redacted Version), and the relevant information provided to FC by ICAC, and obtain evidence from witnesses at hearings on the basis of such information.

2.26 The Select Committee held two public hearings on 25 January and 1 March 2014 to obtain evidence from Mr Timothy TONG Hin-ming, Former Commissioner of ICAC, Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, Ms Julie MU Fee-man, Director of Community Relations of ICAC, and Mrs Jennie AU YEUNG WONG Mei-fong, Acting Assistant Director of Administration of ICAC.

2.27 In the course of the Select Committee's study, Ms Cyd HO, Deputy Chairman, Mr Kenneth LEUNG and Mr Dennis KWOK proposed that a number of former and serving ICAC officers be invited to attend before the Select Committee to give evidence. Their proposal was considered by the Select Committee at the post-hearing internal deliberation session on 1 March 2014. Ms Cyd HO, Deputy Chairman, said that as Mr Timothy TONG Hin-ming refused to provide information on a number of matters, and that ICAC also refused to provide the Select Committee with information about Mr TONG on the grounds that it was conducting an investigation in relation to Mr TONG, it was necessary for the Select Committee to find out the relevant facts by obtaining evidence from relevant officers working in ICAC during Mr TONG's tenure as the

Commissioner of ICAC. The majority of members of the Select Committee considered it unnecessary and inappropriate to invite those persons to attend before the Select Committee to give evidence. A member pointed out that as ICAC was conducting a criminal investigation in relation to Mr TONG and many of his former subordinates were probably witnesses of the investigation, it would be difficult for those persons to attend before the Select Committee to give evidence in respect of Mr TONG. The Select Committee decided at the meeting that if members wished to raise further questions with ICAC, the Select Committee would refer their written questions to ICAC for reply. Having so decided, the Select Committee would consider holding further hearings should new circumstances arise that warranted such further hearings⁴.

2.28 Ms Cyd HO, Deputy Chairman, submitted to the Select Committee a list of three sets of questions (**Appendix 9**) for reply respectively by the officers of the Office of Strategic Research, the Head of L Group, an internal investigation and monitoring group, and the Senior Staff Officer/Management and Administration of the Administration Branch who was responsible for handling claims for reimbursement of expenses during Mr TONG's tenure as the Commissioner of ICAC. In this connection, ICAC said in its reply dated 22 April 2014 to the Select Committee (**Appendix 10**) that as the officers concerned might be invited to act as witnesses in ICAC's criminal investigation and the legal proceedings, if any, relating to Mr TONG, the

⁴ Ms Cyd HO, Deputy Chairman and Mr Dennis KWOK expressed objection to this arrangement at the meeting. Mr Kenneth LEUNG did not attend this session of the meeting.

officers could not answer those questions to avoid affecting the impartiality of the relevant criminal investigation and legal proceedings. ICAC provided in the reply information on staff deployment arrangements, scope of responsibilities and handling procedures, etc. as requested by Ms Cyd HO. Nevertheless, ICAC refused to provide information on Mr TONG's official duty visits, entertainment and bestowing of gifts during his tenure as the Commissioner of ICAC on the grounds that such information fell within the scope of the criminal investigation conducted in relation to Mr TONG.

Report

2.29 The Report of the Select Committee consists of the main report, lists of written evidence and relevant documents, the minutes of proceedings, as well as the minutes of evidence in the form of verbatim transcripts in the original language used at the public hearings. For environmental protection purposes, the minutes of evidence are available on CD-ROM only. This Report is also accessible on the LegCo website at www.legco.gov.hk.

2.30 This Report comprises three Parts. Part I (Chapters 1 and 2) is mainly an introduction to the background of the establishment of the Select Committee as well as important matters relating to the work of the Select Committee. Part II (Chapters 3 to 8) gives an account of the relevant information and evidence obtained by the Select Committee on matters relating to Mr Timothy TONG Hin-ming's official duty visits,

entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC, as well as the findings and recommendations of the Select Committee on such matters. Part III (Chapter 9) sets out how ICAC provided FC of LegCo in April 2013 with information on matters relating to Mr Timothy TONG Hin-ming's official duty visits and bestowing of gifts during his tenure as the Commissioner of ICAC, as well as the findings and recommendations of the Select Committee.