

**Part II 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**

**Chapter 3 Basic information on the Independent Commission
Against Corruption and the Commissioner of ICAC**

Statutory status and functions

3.1 ICAC was established in 1974 under the Independent Commission Against Corruption Ordinance (Cap. 204) ("the ICAC Ordinance"), and was given statutory powers under the ICAC Ordinance, POBO, Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) to investigate corrupt offences. Article 57 of the Basic Law provides that ICAC shall function independently and be accountable to CE. ICAC carries out its work to combat corruption through its three functional departments, namely the Operations Department, the Community Relations Department ("CRD") and the Corruption Prevention Department, and its internal administrative work is handled by the Administration Branch.

3.2 Under the ICAC Ordinance, the Commissioner of ICAC, subject to the orders and control of CE, shall be responsible for the direction and administration of ICAC. The Commissioner shall not be subject to the direction or control of any person other than CE and his duties are set out in section 12 of the ICAC Ordinance. The Commissioner of ICAC is

one of the principal officials of Hong Kong⁵. In accordance with section 12 of the Public Finance Ordinance (Cap. 2), the Commissioner of ICAC is a controlling officer designated under the Ordinance and shall be responsible and accountable for all expenditure in respect of ICAC.

Regulations applicable to the Commissioner and officers of ICAC

3.3 The ICAC Ordinance provides that the Commissioner and officers of ICAC shall comply with Government regulations and such administrative rules as apply generally to public officers, but the Commissioner of ICAC may, with the prior approval of CE, by ICAC's Commission Standing Orders ("CSO") modify the application of Government regulations or administrative rules to ICAC officers. The ICAC Ordinance allows the Commissioner of ICAC to make ICAC's CSO, providing for:

- (a) the control, direction and administration of ICAC;
- (b) the discipline, training, classification and promotion of ICAC officers;
- (c) the duties of ICAC officers;
- (d) the financial regulation of ICAC; and
- (e) such other matters as may be necessary or expedient for preventing abuse or neglect of duty and for upholding the integrity of ICAC.

⁵ Principal officials are officials nominated and appointed by CE and the Central People's Government respectively under Article 48(5) of the Basic Law.

ICAC's Mission Statement and Code of Ethics

3.4 ICAC's Mission Statement and Code of Ethics⁶ are as follows:

Mission Statement

With the community, ICAC is committed to fighting corruption through effective law enforcement, education and prevention to help keep Hong Kong fair, just, stable and prosperous.

Code of Ethics

ICAC officers will at all times uphold the good name of ICAC and:

- (a) adhere to the principles of integrity and fair play
- (b) respect the rights under the law of all people
- (c) carry out their duties without fear or favour, prejudice or ill will
- (d) act always in accordance with the law
- (e) not take advantage of their authority or position
- (f) maintain necessary confidentiality
- (g) accept responsibility for their actions and instructions
- (h) exercise courtesy and restraint in word and action
- (i) strive for personal and professional excellence

⁶ Source: ICAC website.

Monitoring mechanisms

3.5 There are four advisory committees comprising people appointed by CE to oversee the different aspects of work of ICAC⁷. These advisory committees are chaired by civilian members. The four advisory committees are the Advisory Committee on Corruption ("ACOC"), Operations Review Committee, Corruption Prevention Advisory Committee and Citizens Advisory Committee on Community Relations. Among them, ACOC advises the Commissioner of ICAC on any aspect of the corruption problems in Hong Kong, and to:

- (a) keep the operational, staffing and administrative policies of ICAC under review;
- (b) advise on action being considered by the Commissioner of ICAC under section 8(2) of the ICAC Ordinance;
- (c) receive reports by the Commissioner of ICAC on disciplinary action taken;
- (d) consider the annual estimates of expenditure of ICAC;
- (e) scrutinize the annual report of ICAC before its submission to CE; and
- (f) submit an annual report to CE on the work of ACOC.

3.6 ACOC draws to the attention of CE, as it considers necessary, any aspect of the work of ICAC or any problem encountered by it.

⁷ Source: ICAC website.

3.7 In addition, the ICAC Complaints Committee monitors and reviews all non-criminal complaints against the ICAC or its staff. The Committee, which operates independently from ICAC, comprises of members from LegCo and prominent members of the community appointed by CE. The terms of reference of the Committee are as follows:

- (a) to monitor, and where the Committee considers appropriate to review, the handling by ICAC of non-criminal complaints by anyone against ICAC and officers of ICAC;
- (b) to identify any faults in ICAC procedures which lead or might lead to complaints; and
- (c) when the Committee considers appropriate, to make recommendations to the Commissioner of ICAC, or when considered necessary, to CE.

3.8 ICAC has also established an internal investigation and monitoring unit, namely L Group. According to the information provided by ICAC to the Select Committee, L Group investigates all complaints against ICAC officers. If a complaint relates to corruption or other criminal malpractice, ICAC will seek advice from the Department of Justice. If it is decided that ICAC should look into the case, as a general rule, L Group will take follow-up action and report to the Head of Operations before submitting the investigation report to the Department

of Justice. In addition, an internal investigation report will be submitted to the Operations Review Committee when the case is closed. If the complaint does not involve any criminal element, L Group will follow up on the case and report to the Director of Investigation/Private Sector. Regarding complaints not lodged by internal staff, L Group will submit the investigation reports to the ICAC Complaints Committee.