

## **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 4    Official duty visits**

#### **Relevant policy/regulatory systems during Mr Timothy TONG Hin-ming's tenure as the Commissioner of ICAC**

4.1        According to ICAC's written reply to the Select Committee (**Appendix 11**), ICAC follows government regulations in drawing up its policy, rules and guidelines on duty visits outside Hong Kong. Applications for duty visits outside Hong Kong are approved on a case-by-case basis, taking into account the need for such visits, such as the obligation to attend certain international conferences, duration and place of visit, and the status and number of officials to be met, etc. During his tenure as the Commissioner of ICAC, Mr TONG's duty visits were approved by CE. According to the written reply from the CE's Office to the Select Committee (**Appendix 12**), when approving applications made by the Commissioner of ICAC for duty visits outside Hong Kong, CE, in general, will consider factors including the purpose, place and date of visit, personalities or organisations to meet with during the visit, and the acting arrangements to be made.

## Official duty visits outside Hong Kong made by Mr TONG during his tenure as the Commissioner of ICAC

### Number, duration and expenditure of duty visits

4.2 Between 2007-2008 and 2012-2013, Mr TONG led 35 duty visits totalling 146 days outside Hong Kong, of which 20 duty visits were destined for the Mainland. The total expenditure for the 35 duty visits was \$3,907,612, of which \$757,921 was the expenditure incurred by Mr TONG (**Appendix 13**).

4.3 According to the information provided by ICAC to FC on 3 April 2013 for the special meetings of FC to examine the Estimates of Expenditure 2013-2014, the number of duty visits led by Mr TONG and his three predecessors, the average annual expenditure incurred and the average annual number of days of their absence from Hong Kong between July 2002 and June 2012 are as follows:

Name (Term of office)	Length of office	Number of duty visits	Commissioner's total number of days of visits outside Hong Kong during his/her term of office (average annual number of days of visits)	Commissioner's total individual expenditure on duty visits during his/her term of office (average annual expenditure)
Mr Ambrose LEE Siu-kwong (July 2002 to August 2003)	1 year and 2 months	3	14 (12)	\$39,101 (\$33,515)

<b>Name (Term of office)</b>	<b>Length of office</b>	<b>Number of duty visits</b>	<b>Commissioner's total number of days of visits outside Hong Kong during his/her term of office (average annual number of days of visits)</b>	<b>Commissioner's total individual expenditure on duty visits during his/her term of office (average annual expenditure)</b>
Mr Raymond WONG Hung-chiu (August 2003 to October 2006)	3 years and 3 months	19	77 (23.69)	\$182,154 (\$56,047)
Ms Fanny LAW FAN Chiu-fun (October 2006 to June 2007)	9 months	4	15 (20)	\$55,466 (\$73,954)
Mr Timothy TONG Hin-ming (July 2007 to June 2012)	5 years	35	146 (29.2)	\$757,921 (\$151,584)

4.4 The Select Committee notes the view of IRC that the number of duty visits led by Mr TONG, 35 in five years, was not particularly high compared to his predecessors and taking into account ICAC's enhanced involvement in the International Association of Anti-Corruption Authorities ("IAACA")<sup>8</sup>.

<sup>8</sup> IAACA, established in 2006, is an international anti-corruption association with membership drawn from anti-corruption agencies from all over the world. It aims to actively promote the effective implementation of the United Nations Convention Against Corruption. The First Annual Conference and General Meeting of the IAACA was held in Beijing in October 2006.

4.5 The Select Committee also notes from the information provided by ICAC to PAC that the United Nations Convention Against Corruption ("UNCAC") came into force for China on 16 February 2006 and became applicable to Hong Kong at the same time<sup>9</sup>. The incumbent Commissioner of ICAC informed PAC that upon ICAC being designated by the Central People's Government as the authority for the Hong Kong Special Administrative Region to assist other States Parties in developing and implementing specific measures for the prevention of corruption, ICAC had further enhanced its effort in promoting international co-operation. Fulfilling the obligations under the UNCAC aside, such efforts were in line with ICAC's work strategies<sup>10</sup>.

#### Reasons for visiting the Mainland

4.6 Regarding the 20 visits to the Mainland made by Mr TONG during his tenure as the Commissioner of ICAC, the Select Committee notes that Mr TONG told PAC that apart from visiting the Supreme People's Procuratorate and the Ministry of Supervision in Beijing annually to consolidate work relationship, other visits to the Mainland headed by him were mainly for attending and speaking at anti-corruption conferences upon invitation to exchange experience in combating corruption, strengthen mutual liaison and discuss the direction and scope of specific co-operation projects, and exchanging views with procuratorates of other parts of the Mainland on probity building and/or exploring opportunities for co-operation<sup>11</sup>.

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<sup>9</sup> Please refer to Appendix 76 of the PAC Report.

<sup>10</sup> Please refer to paragraph 166 of the PAC Report.

<sup>11</sup> Please refer to paragraph 77 of the PAC Report.

### Non-compliances in duty visits

4.7 The Select Committee notes that after reviewing all the duty visits led by Mr TONG, PAC and IRC identified the following two duty visits as cases of non-compliances:

- (a) the visit to Beijing-Kunming-Lijiang from 11 to 17 January 2009, the itinerary of which is at **Appendix 14**; and
- (b) the visit to Beijing-Chengdu-Leshan from 16 to 23 May 2010, the itinerary of which is at **Appendix 15**.

4.8 Consolidating the findings of the inquiries of PAC and IRC, the two duty visits mentioned above involved the following non-compliances:

- (a) the two duty visits involved excessive non-official duty related activities;
- (b) the respective trips to Lijiang and Leshan were included in the itineraries after approval for the two duty visits had been obtained from CE, but Mr TONG did not inform CE about such inclusion; and
- (c) regarding the visit to Beijing-Chengdu-Leshan, Mr TONG left Hong Kong two days earlier for private reasons, but IRC has not found any approval for such arrangement.

*Excessive non-official duty related activities*

4.9 The Select Committee notes Mr TONG's explanation to PAC that whilst the visit to Lijiang under the Beijing and Yunnan duty visit (i.e. the Beijing-Kunming-Lijiang trip from 11 to 17 January 2009) involved visits to Jade Dragon Snow Mountain and Shuhe Old Town, the visit to Lijiang was not entirely a pleasure trip as the visit also involved meeting with the Lijiang Municipal People's Procuratorate whose anti-corruption regime, developed after a major earthquake occurred several years ago, was modelled on that of ICAC, and attending a dinner with members of the Lijiang Municipal Committee at which views on anti-corruption experience were exchanged. Nevertheless, he agreed that visiting Jade Dragon Snow Mountain and Shuhe Old Town were not ideal<sup>12</sup>.

4.10 The Select Committee also notes that Mr TONG pointed out to PAC that whilst he agreed that the element of non-official duty related activities at Leshan was very high, it should be noted that a visit to Jiuzhaigou Valley proposed by the Mainland side for the Beijing and Chengdu, Sichuan duty visit was removed from the itinerary prior to the visit on his request<sup>13</sup>.

4.11 The Select Committee further notes that Ms Julie MU Fee-man, Director of Community Relations, ICAC, told PAC that she could not remember whether she had seen the details of the Lijiang trip after such

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<sup>12</sup> Please refer to paragraph 85 of the PAC Report.

<sup>13</sup> Please refer to paragraph 94 of the PAC Report.

details were received by CRD in the afternoon of 9 January 2009<sup>14</sup>. The fact that Mr TONG agreed to include the visit to Lijiang was thus an oversight on her part due to the lack of vigilance. Also, in the light of the Lijiang experience, she had alerted Mr TONG not to include visiting Jiuzhaigou Valley proposed by the Mainland side for the duty visit to Beijing-Chengdu-Leshan (16 to 23 May 2010)<sup>15</sup>.

*Failure to inform the Chief Executive of the subsequent changes to the itineraries*

4.12 Regarding the failure on the part of Mr TONG to inform CE of the subsequent inclusion of the visits to Lijiang and Leshan in the respective itineraries of the two duty visits, Mr TONG told the Select Committee in his evidence that in his opinion, failing to specify in the itinerary the various locations which the Commissioner would visit during his duty visit to a particular province did not constitute non-compliance if the visiting province was already named in the Commissioner's application for approval for the visit. He stated that there were past cases in which similar applications were made by former Commissioners of ICAC to CE<sup>16</sup>. Mr TONG explained that the scope of geographical areas in which official business would be conducted was already recorded in his applications and the subsequent changes were made in consequent to special arrangements. He therefore did not

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<sup>14</sup> It is also noted that ICAC refused to disclose to PAC the information received by CRD in the afternoon of 9 January 2009 from the Yunnan Provincial People's Procuratorate inviting ICAC delegation to visit Lijiang.

<sup>15</sup> Please refer to paragraph 117 of the PAC Report.

<sup>16</sup> ICAC provided PAC with a sample application (with a draft itinerary) made by a former Commissioner of ICAC in August 2005 to attend a duty visit outside Hong Kong (with a draft itinerary). Details are in Appendix 57 of the PAC Report.

consider it necessary to report these changes to CE so long as they would not affect the purpose and effectiveness of the entire duty visit.

4.13 Mr TONG also stated that the itineraries of the visits to Leshan and Lijiang were received from the relevant Mainland authorities at short notice, and some revisions were made to the itineraries by the ICAC officers concerned in the light of some late changes. Hence, it was not the case that he and the ICAC officers concerned were aware of these details at an early stage but had not reported them to CE. While admitting that the minor details of the arrangements for the two duty visits were less than ideal, Mr TONG stressed that there was no question of concealment.

*Departing Hong Kong two days earlier than scheduled for private reasons without prior approval*

4.14 The Select Committee notes from the IRC Report that, with regard to the duty visit to Beijing-Chengdu-Leshan, Mr TONG left Hong Kong on 14 May 2010, two days earlier, for private reasons. Although Mr TONG did not claim subsistence allowance for 14 and 15 May 2010, approval from CE was still required for modification of the air passage for private reasons. IRC has not found the required approval from CE to modify the air passage for private reasons.

4.15 The Select Committee also notes that Mr TONG told PAC that he was not aware of the non-compliance referred to in paragraph 4.14 above, until after the release of the IRC Report. Whilst he was not



personally involved in modifying the air passage in the procurement process, it could not be ruled out that such non-compliance was due to administrative oversight<sup>17</sup>.

#### Procurement of air passages

4.16 It is noted that IRC has reviewed whether compliance with the regulatory systems and procedures on procurement of air passages had been met and found a number of non-compliances<sup>18</sup>. These cases include four duty visits in which procurement orders for air passages of Mr TONG were issued before approval for the duty visits from CE had been obtained. With respect to such non-compliance, Mr TONG said when testifying before the Select Committee that while he had no knowledge of the relevant details, he agreed that he, as the then head of department, should bear the responsibility.

#### Post-visit review and follow-up

4.17 The Select Committee notes that Mr TONG told PAC that prior approval of CE must be sought for each and every duty visit outside Hong Kong. Apart from oral reports, written reports on significant aspects of his duty visits outside Hong Kong were submitted to CE periodically. The work of ICAC, including the purposes and outcome of conducting duty visits outside Hong Kong, were also reported to the Executive Council and ACOC. In this regard, ICAC informed the

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<sup>17</sup> Please refer to paragraph 81 of the PAC Report.

<sup>18</sup> Please refer to paragraphs 5.12 to 5.13 of the IRC Report.

Select Committee that Mr TONG had submitted reports to CE on two occasions after the respective duty visits (**Appendix 16**).

4.18 The Select Committee has also enquired with Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, about the need to formulate guidelines or procedures to facilitate follow-up or review after each duty visit to ascertain whether the visit has achieved the intended results or objectives. When testifying to the Select Committee, Mr PEH said that he was required to submit an application to CE for each and every duty visit, stating the objectives and purposes of the visit. However, there might not be detailed documentation after the conclusion of duty visits.

#### Information that ICAC has refused to provide to the Select Committee

4.19 The Select Committee encounters difficulties in obtaining comprehensive information relating to Mr TONG's duty visits outside Hong Kong as ICAC has refused to provide all such information on the grounds that such information falls within the scope of ICAC's criminal investigation against Mr TONG. Such information includes the itineraries of all the duty visits headed by Mr TONG, his role and involvement in making decisions on the various arrangements for his duty visits, and whether he had made any instructions or requests regarding the visit arrangements which were not directly related to context of the official business.

## **Findings and recommendations**

### Number, duration and expenditure of duty visits

4.20 The Select Committee notes the view of IRC that the number of duty visits led by Mr Timothy TONG Hin-ming, 35 in five years, was not particularly high compared to his predecessors and taking into account ICAC's enhanced involvement in IAACA. However, it has come to the attention of the Select Committee that during his tenure as the Commissioner of ICAC, the average annual number of days Mr TONG spent in duty visits outside Hong Kong was higher when compared to his three predecessors, and his average annual individual expenditure on duty visits was at least twice as much as that of his three predecessors. The Select Committee is of the view that the Commissioner of ICAC is mainly tasked with combating corruption in Hong Kong. Noting that Mr TONG had led 35 duty visits outside Hong Kong for a total of 146 days during his five-year tenure as the Commissioner of ICAC, the Select Committee is concerned whether he might have focused too much on duty visits which aimed, among others, to promote abroad the anti-corruption regime in Hong Kong and exchange experience with counterparts and might have neglected the duties and responsibilities expected of ICAC locally in Hong Kong<sup>19</sup>.

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<sup>19</sup> Members voted on Mr Dennis KWOK's proposal to add "高度" before "關注" of this sentence and to add "，沒有盡忠職守，履行廉政專員的責任" to the end of this sentence. The proposal was negatived (please refer to paragraph 32 of the Minutes of Proceedings of the meeting held in the morning of 23 June 2014 in this Report).

### Role and involvement in making decisions on the itineraries of duty visits

4.21 ICAC has refused to provide to the Select Committee all the information relating to Mr TONG's duty visits outside Hong Kong on the grounds that such information falls within the scope of ICAC's criminal investigation against Mr TONG (paragraph 4.19 above). According to Mr TONG's response at the hearing of the Select Committee, in respect of the visits to Yunnan and Sichuan, the fact that there was no mention of Lijiang and Leshan in his applications submitted to CE for approval for the duty visits did not, in his view, constitute non-compliance. It was only the minor details of the arrangements that were less than ideal but there was no question of concealment. The Select Committee notes that the Director of Community Relations, ICAC, admitted to PAC that Mr TONG's agreement to include the visit to Lijiang was a result of an oversight on her part due to the lack of vigilance.

4.22 Based on the information currently available and the evidence given by Mr TONG, the Select Committee is unable to ascertain the role and involvement of Mr TONG in the decision-making process for the various duty visits, including the point of time he became aware of the excessive non-official duty related activities in two of his duty visits, and whether he had made the best effort to change the itineraries or decline such activities after he became aware of it.

### Stipulation on procurement and modification of air passages

4.23 The Select Committee observes that during Mr TONG's tenure as the Commissioner of ICAC, there was no stipulation in the ICAC's CSO requiring the Commissioner to obtain prior approval before the procurement, or modification for private reasons, of air passages. It is pointed out in the IRC Report that in four duty visits, procurement orders for Mr TONG's air passages were issued before approval for the duty visits from CE had been obtained, and that Mr TONG left Hong Kong two days earlier on 14 May 2010 for private reasons and had his air passage modified for such purpose without seeking CE's approval. Regarding the aforesaid procurement of air passages, Mr TONG told both PAC and the Select Committee that he had no knowledge of the details since he was not personally involved in such procurement. In the absence of information on relevant facts, the Select Committee is not able to draw any conclusion as to the responsibility of Mr TONG in this regard.

4.24 The Select Committee notes the amendment made by ICAC to its CSO which provides that the Supplies Office will only confirm the reservation of air tickets after proper approval for the overseas trip is received, and applications of the Commissioner to modify his passage for private reasons are subject to the approval of CE. The Select Committee supports the above improvements to ICAC's CSO.

### Criteria for approving applications for duty visits

4.25 The Select Committee considers that ICAC should put in place stringent regulatory measures given the substantial public money involved in its duty visits conducted outside Hong Kong. Apart from incurring public expenditure, the Commissioner will find it difficult to attend to ICAC's work in Hong Kong while he is physically away on duty visits. Hence, the Select Committee considers that duty visits should only be undertaken by the Commissioner on an "absolute need" basis and CE should use this as an important basis for approving duty visits.

4.26 The Select Committee notes from ICAC's reply (**Appendix 17**) that, since the departure of Mr TONG, ICAC has made the following improvements to the relevant parts of ICAC's CSO relating to duty visits:

- (a) visits outside Hong Kong should only be approved when such visits are absolutely necessary in the discharge of the officer's duties or prominently conducive to the missions and/or function of the Commission;
- (b) the number of officers joining the trip should be kept to the minimum and the duration of the trip should be as short as possible covering only the part of the programmes/sessions pertaining to the official purposes of the visit; and

- (c) officers should avoid participating in any tour programmes arranged by the hosting organization, which would prolong the duty visit or incur additional public funds, upon completion of the official business.

The Select Committee notes that the above provisions also apply to the Commissioner's duty visits outside Hong Kong. The Select Committee supports the above improvements to ICAC's CSO.

#### Post-visit reviews and reports

4.27 Mr TONG told PAC that apart from oral reports, written reports on significant aspects of his duty visits outside Hong Kong were submitted to CE periodically. However, according to ICAC's reply to the Select Committee, among the 35 duty visits, Mr TONG only submitted reports to CE after the conclusion of two visits. Besides, Mr TONG told PAC that ICAC would report to the Executive Council and ACOC on its work, including the purposes and outcome of conducting duty visits outside Hong Kong, but ACOC only generally met three times a year<sup>20</sup>.

4.28 The Select Committee finds that it is necessary for ICAC to put in place a mechanism to review, upon completion of the Commissioner's duty visit outside Hong Kong, the effectiveness of the visit in achieving the intended objectives and results. It should also report to ACOC on such review and provide more details of Commissioner's duty visits in its

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<sup>20</sup> Please refer to paragraph 78 of the PAC Report.

Annual Report so as to facilitate public understanding of the Commissioner's duty visits and the achievements made.

Expenditure control on duty visits

4.29 To strengthen the control over ICAC's expenditure on duty visits outside Hong Kong, the Select Committee recommends that ICAC should clearly set out in its annual budget submitted to ACOC the estimated expenditure for the duty visits to be undertaken by ICAC in the following year. It should also report to ACOC on an annual basis the actual expenditure it spends on duty visits, including the actual expenditure for the Commissioner's duty visits.