

## **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 6      Bestowing of gifts**

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

6.1      According to the information provided by ICAC (**Appendix 29**), ICAC has since 1996 adopted a policy which requires that the exchange of gifts on official occasions should be limited to the minimum and should be made from organization to organization. This policy was incorporated into paragraph 7 of the part of ICAC's CSO relating to "Acceptance of Advantages" (**Appendix 30**) in August 2001.

6.2      ICAC has also informed the Select Committee that ICAC did not have any laid down rules or guidelines specifying the types and values of gifts to be presented. ICAC has been following the Government's Stores and Procurement Regulations in the procurement of gifts whereby subject officers must seek funding approval from the line management for the purchase of gifts and their certification when claiming for reimbursement of the expenses.

## **Bestowing of gifts by ICAC during Mr TONG's tenure as the Commissioner of ICAC**

### Expenditure on gifts and souvenirs

6.3 The Select Committee notes from paragraph 4.2 of the IRC Report that during Mr TONG's tenure as Commissioner, ICAC spent \$1.3 million on gifts and souvenirs, of which about \$723,000 were attributed to Mr TONG or Commission-wide events ("Commission-wide" gifts), and about \$589,000 were attributed to individual departments of ICAC.

6.4 The Select Committee also notes that according to Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, at the meeting of the LegCo Panel on Security held on 27 May 2013<sup>45</sup>, the \$723,873 spent on "Commission-wide" gifts comprised -

- (a) \$282,873 on gifts for officials from different places;
- (b) \$7,500 on souvenirs for academics, and representatives from public bodies and non-governmental organizations;

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<sup>45</sup> Please refer to paragraph 6 of the minutes of meeting of the Panel on Security on 27 May 2013.

- (c) \$201,500 on souvenirs for participants of seminars and talks organized by ICAC;
- (d) \$207,000 on souvenirs for visitors and participants of the ICAC Open Day and annual opinion survey of ICAC; and
- (e) \$25,000 on small disbursements for items such as copper plates with guests' names.

#### Types and values of gifts

6.5 Annexes 4 and 5 of the IRC Report set out examples of "Commission-wide" gifts and gifts procured by individual departments of ICAC respectively (**Appendices 31 and 32**). ICAC has submitted to FC a list of gifts presented by Mr TONG during his tenure as the Commissioner of ICAC to government officials of different places and paid out of public funds (**Appendix 33**). The Select Committee notes from such information that during his tenure as the Commissioner of ICAC, Mr TONG presented on a number of occasions gifts not inscribed with the ICAC logo, including the gifts presented by Mr TONG to government officials of different places, such as an ornament worth \$4,140, Hong Kong scenery crystal ornaments each worth \$2,352, a scarf worth \$2,082 and a camera worth \$1,650.

### Selection and procurement of gifts

6.6 Regarding the selection of gifts, Mr TONG told PAC and the Select Committee that generally speaking, gifts/souvenirs for presentation at an ICAC publicity project or activity were decided by the ICAC staff responsible for the project or activity. He would only be involved in the selection of such gifts/souvenirs if the publicity project or activity was a large scale one and/or the standing of the recipients was high<sup>46</sup>, but the final decision was not necessarily made by him. Yet, he agreed that he, as the Commissioner, should shoulder the ultimate responsibility if the selection and procurement of the gifts concerned was approved by him or he was involved in making the decisions.

6.7 Besides, in response to PAC, Mr TONG confirmed that the procurement of many "Commission-wide" gifts was approved by him. He told PAC that beef brisket and fish balls were given as gifts to a Mainland delegation visiting ICAC, after a brief internal discussion of which he had attended, to reciprocate the giving of lychee to ICAC by the Mainland delegation for enjoyment by ICAC staff. As regards the eight digital photo frames presented by ICAC as gifts, Mr TONG told PAC that they were for guest speakers at ICAC-organized seminars/conferences who did not receive any honorarium. As for the tankards, camera and scarves, he could not recall the reasons for giving out such gifts, albeit that, with hindsight, he agreed that giving out scarves as gifts by ICAC was inappropriate. He also agreed that certain "Commission-wide" gifts did not adhere to the ICAC's policy that the giving out of gifts by ICAC

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<sup>46</sup> Please refer to paragraph 124 of the PAC Report.

should be kept to the minimum and some of them were expensive. However, these gifts were all given out to organizations and in public<sup>47</sup>.

6.8 The Select Committee notes that Ms Julie MU Fee-man, Director of Community Relations, ICAC, told PAC that during his tenure, Mr TONG also suggested giving gifts, other than souvenirs inscribed with the ICAC logo, such as food and famous Hong Kong brand name products, during duty visits. She also told PAC that Mr TONG had on some occasions asked CRD to procure gifts with prices comparable to that of the Hong Kong Skyline model for duty visits, as the Hong Kong Skyline model was given as gifts too frequent. An example was the procurement of a goat-shape ornament referred to in Annex 4 of the IRC Report<sup>48</sup>.

6.9 The Select Committee asked Mr TONG at its hearing why food had been specially procured as gifts instead of using general promotional gifts inscribed with the ICAC logo. Mr TONG responded that according to the guidelines issued by the Civil Service Bureau on the acceptance of gifts, if the gift received was perishable food or drink that could not be stored, it might be shared among colleagues in the office of the department where the recipient worked. In his view, since there was mention of the disposal of food received as gifts in the guidelines, it seemed to reflect that it was not inappropriate for ICAC to bestow food as gifts.

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<sup>47</sup> Please refer to paragraph 127 of the PAC Report.

<sup>48</sup> Please refer to paragraph 136 of the PAC Report.

6.10 At its hearing, the Select Committee enquired with Mr TONG about the procurement of gifts not inscribed with the ICAC logo, including how, and by whom, such gifts were procured, and whether they were procured during office hours. Mr TONG responded that he was given to understand that ICAC had informed PAC that such matters fell within the scope of the criminal investigation instituted by ICAC against him, and hence it was not appropriate for him to provide information to the Select Committee on such matters as how, and by whom, the gifts in question were procured. Citing the remarks made by the incumbent Commissioner of ICAC at the meeting of the Panel on Security on 27 May 2013, he stated that in the past, ICAC had not stipulated any requirements on the prices and choice of gifts to be bestowed, and the selection of gifts at that time was based on such criteria as the identity and status of the recipients, as well as the nature of the occasions. However, he was not aware of the details of the procurement of such gifts.

6.11 At its hearing, the Select Committee asked Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, about the considerations that Mr TONG had taken into account in selecting certain special gifts (such as expensive carved ornaments) during his tenure as the Commissioner of ICAC. Mr PEH advised that the bestowal of such gifts was largely the personal decision of Mr TONG. As to whether ICAC had imposed any ceilings on the value of gifts to be bestowed, Mr PEH said that ICAC's CSO did not explicitly provide for a ceiling on the value of gifts to be bestowed. Nevertheless, he considered that it

should be up to the head of a department to give due regard to a range of factors such as the appropriateness of the gifts to be bestowed.

Mr TONG's awareness of ICAC's requirements regarding the bestowal of gifts

6.12 ICAC's policy on bestowal of gifts, i.e. the exchange of gifts on official occasions should be limited to the minimum and should be made from organization to organization, was formulated in 1996 and incorporated into ICAC's CSO in 2001. On whether he had complied with the relevant provisions under ICAC's CSO, Mr TONG said in his evidence that from 1996 to 2007, the years in which he took up the post of the Commissioner, ICAC had undertaken many duty visits over these 11 years and there were frequent occasions on which gifts were bestowed and received. A "usual practice" had been established and that was reflected in the arrangements for bestowing gifts by the Commissioner of ICAC and heads of individual departments on behalf of ICAC. He also pointed out that as mentioned in ICAC's CSO, ICAC officers, when invited to social functions, might consider the bestowing of gifts according to social norm and common sense, that is, the norm of reciprocity<sup>49</sup>. Mr TONG argued that most of the gifts presented by individual departments were the same as "Commission-wide" gifts which included food and some ornaments, and those gifts presented by departments were also of considerable quantity and value (see

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<sup>49</sup> Section 04, Chapter 25 of ICAC's CSO (**Appendix 22**) provides that if ICAC officers are invited to social functions hosted by local leaders (whom ICAC officers are acquainted with as a result of official contact), the expenditure involved in presenting gifts in such functions is reimbursable subject to the relevant ceilings prescribed. Paragraph 10 of that part of ICAC's CSO provides guidelines on the selection of gifts for such functions.

**Appendices 31 and 32)**<sup>50</sup>. He was not involved in the decisions of individual departments in this regard. He stressed that as reflected by the above fact, there was a common understanding in respect of the selection and procurement of gifts between the Commission as a whole and its departments.

6.13 According to Mr TONG, while it was stipulated in ICAC's CSO that the exchange of gifts on official occasions should be limited to the minimum, the term "limited to the minimum" was subject to different interpretations by different people at different times. As regards the provision in ICAC's CSO that "[w]here an exchange of gifts is unavoidable on a particular occasion, the exchange should be made from organization to organization", Mr TONG took it as a basic operational principle of ICAC. He also stressed that all the gifts presented to his counterparts had been presented in public and everything had been put on record. Furthermore, he was of the view that the provisions in ICAC's CSO on the bestowing of gifts merely set out a policy rather than

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<sup>50</sup> The Select Committee has requested ICAC to provide the details of the "Commission-wide" gifts and gifts procured by ICAC's individual departments that were not inscribed with the ICAC logo referred to in Annexes 4 and 5 of the IRC Report (that is Appendices 31 and 32 of this Report). These include the respective recipients of a goat-shape ornament (\$2,380), a tiger-shape ornament (\$4,140), an eagle-shape ornament (\$4,730), wine (\$1,960), 5 tankards (\$1,580 each), 5 pens (\$2,170 each) and 8 digital photo frames (with unit cost from \$590 to \$1,890); the occasions when the gifts were bestowed; the ICAC officers who presented the gifts; and the departments/units of ICAC responsible for procuring the gifts. In its reply to the Select Committee dated 19 February 2014, ICAC advised that apart from the eagle-shape ornament and 5 pens, all other gifts mentioned above were presented by Mr Timothy TONG Hin-ming, former Commissioner of ICAC, and that as information pertinent to Mr TONG might fall within the scope of an ongoing investigation conducted in relation to him, it was not appropriate for ICAC to provide such information. ICAC further indicated that the eagle-shape ornament was presented by the former Head of Operations to an official of the Malaysian Anti Corruption Commission at its Launching Ceremony on 24 February 2009. As for the pens procured by ICAC's individual departments, they were procured for future use and were still kept as souvenir stock.



imposing a restriction. Judging from the prevailing standards, there were inadequacies over the past years due to the absence of guidelines on bestowing of gifts.

Information that ICAC has refused to provide to the Select Committee

6.14 Although ICAC had provided some information on the gifts bestowed by ICAC during Mr TONG's tenure as the Commissioner of ICAC to the LegCo FC, Panel on Security, PAC as well as IRC, in order to have a full picture of the gifts bestowed by Mr TONG and paid out of public funds during his tenure as the Commissioner of ICAC, the Select Committee has requested ICAC to provide information and records relating to all the gifts bestowed by Mr TONG, including the occasions on which the gifts were bestowed, their recipients, the official relationship between the recipients and ICAC, details of the nature and values of the gifts, records relating to their procurement and expenditure approval. However, ICAC has refused to provide the Select Committee with the requested information and records on the grounds that such information and records fall within the scope of its criminal investigation against Mr TONG.

6.15 The Select Committee has, through ICAC, requested in writing:

- (a) the former officers of the Office of Strategic Research, ICAC to provide information on the special gifts such as cookies, cameras and scarves procured during Mr TONG's tenure as the Commissioner of ICAC, including the ICAC

officers giving the instructions to procure such gifts, whether the officers of the Office of Strategic Research had raised queries with the ICAC officers giving the instructions; and

- (b) the Senior Staff Officer/Management and Administration of the Administration Branch, ICAC responsible for handling claims for reimbursement of expenses to provide relevant information, including whether he/she had rejected any claims for reimbursement of expenses due to non-compliance with the ICAC guidelines during Mr TONG's term of office and the details of the rejected claims.

However, ICAC advised in its reply (**Appendix 10**) that as the ICAC 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 officers could not answer those questions to avoid affecting the impartiality of the relevant investigation and proceedings.

## **Findings and recommendations**

### Mr Timothy TONG Hin-ming's awareness and handling of matters relating to the bestowing of gifts

6.16 The Select Committee notes that during Mr Timothy TONG Hin-ming's tenure as the Commissioner of ICAC, there were provisions in ICAC's CSO clearly specifying that the exchange of gifts on official occasions should be limited to the minimum and should be made from organization to organization. The Select Committee is of the view that although ICAC did not have any laid down rules or guidelines on the types and values of the gifts to be bestowed, the Commissioner, as head of ICAC, should set a good example by committing himself to abiding by the aforesaid long-established requirements in ICAC's CSO and carefully exercising his discretion to determine the types and values of the gifts to be bestowed.

6.17 As revealed in the list submitted by ICAC to FC of gifts presented by Mr TONG during his term of office to government officials of different places (**Appendix 33**), among the gifts for government officials of different places, some are high-priced and some are of a personal nature. Although the Select Committee has not been able to obtain evidence on how the decisions on bestowing and procuring such gifts were made, the information gathered from different sources and the evidence given by Mr TONG to PAC and the Select Committee show that, as far as the bestowing of such gifts is concerned, Mr TONG was the approving authority for the procurement of such gifts and/or had a role in

the relevant decision-making process. As such, the Select Committee considers that he played a pivotal role in the bestowal of such gifts.

6.18 The Select Committee notes that bestowing expensive gifts, particularly those of a personal nature, can easily give rise to corrupt practices. The responses of Mr TONG at the hearings of the Select Committee have reflected his lack of vigilance in this respect. In using public money for bestowing gifts, he attached great importance to the "social norm" and gave primary consideration to the identity and status etc. of the recipients of gifts, which show that he lacked the prudence expected of him as the Commissioner of ICAC. In this connection, the Select Committee considers that the way Mr TONG handled the matters relating to the bestowing of gifts is not commensurate with the values of probity and integrity advocated by ICAC, and has damaged the image of ICAC, thus tarnishing its reputation.

#### Expenditure control on gifts

6.19 The Select Committee notes that ICAC has amended its CSO (**Appendix 30**) to the effect that officers should only present one standard souvenir inscribed with the ICAC logo (e.g. the ICAC Building model, ICAC Annual Report or ICAC plaque, etc.) to the organization concerned and no gift/souvenir should be given on a personal basis. ICAC's CSO also provides that if it is deemed appropriate to present non-standard gifts/souvenirs to an organization, the approval of the respective Head of Department should be sought and the Administration Branch should be duly alerted. In addition, the Administration Branch will report to

ACOC on a regular basis any departure from the aforesaid normal practice in respect of presenting gifts/souvenirs. Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, said at the hearing of the Select Committee that ICAC had reported to ACOC the implementation of the above mechanism, which was currently an integral part of the standing mechanism.

6.20 At the request of the Select Committee, ICAC has provided a list of the standard souvenirs currently available in ICAC (**Appendix 34**).

6.21 Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, responded at the hearing of the Select Committee that ICAC did not have an annual estimate of the expenditure for gifts and souvenirs to be bestowed. In this connection, the Select Committee recommends that in order to tighten the control over the expenditure on gifts, ICAC should state clearly in its annual estimates of expenditure submitted to ACOC the estimated expenditure on gifts for the coming year and report to ACOC the actual annual expenditure on gifts.