

## **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 7     Receipt of Gifts**

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

##### Receipt of gifts in private capacity

7.1        Under Section 3 of POBO, any prescribed officer<sup>51</sup> who, without the general or special permission of CE, solicits or accepts any advantage shall be guilty of an offence. The Acceptance of Advantages (Chief Executive's Permission) Notice ("AAN") (Annex VI to **Appendix 35**) sets out the circumstances under which general permission has been given for prescribed officers to solicit or accept certain advantages in their private capacity. Outside of these prescribed circumstances, they have to seek special permission for their solicitation or acceptance of the advantage.

7.2        AAN gives general permission for prescribed officers to accept advantages that fall outside four restricted categories (i.e. gift, discount, loan of money and passage). For advantages which fall within the

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<sup>51</sup> According to the interpretation in Section 2 of POBO, a "prescribed officer" means any person holding an office of emolument, whether permanent or temporary, under the Government, including the Commissioner and any member of the staff of ICAC.

restricted categories, general permission has also been given in AAN for their acceptance in certain circumstances, and special permission has to be obtained in other circumstances. Applications made by the Commissioner of ICAC for special permission in respect of soliciting or accepting certain advantages in his private capacity are to be approved by CE.

7.3 In respect of gifts, general permission is given to prescribed officers in AAN for acceptance, but not solicitation, of gifts of values up to the following amounts:

	From relations	From close personal friends	From other persons
On a special occasion (such as the officer's wedding, birthday, retirement or any other occasion when gifts are traditionally given or exchanged)	No ceiling	\$3,000	\$1,500
On other occasion	No ceiling	\$500	\$250

7.4 Under AAN, the general permission given to prescribed officers for acceptance of advantages from close personal friends and other persons is conditional upon:

- (a) the donor of the advantage having no official dealings with the department in which the officer works;

- (b) the donor of the advantage not being a subordinate of the officer; and
- (c) the occasion on which the gift or passage is presented not being one which the officer attends in his official capacity or by virtue of the official position he holds at the time.

### Receipt of gifts in official capacity

7.5 According to the general principle stipulated in Civil Service Bureau Circular No. 4/2007<sup>52</sup> ("CSBC No. 4/2007") (**Appendix 35**), officers should as far as possible decline to accept gifts offered/presented to them by virtue of their official position. Where this cannot be done owing to protocol reasons or the need to avoid causing great offence or embarrassment, such as where a gift is offered/presented to an officer when attending a social/ceremonial occasion in his official capacity, he should take it back to his bureau/department and report to the approving authority for a decision on how to dispose of the gift.

7.6 The Select Committee has been informed by ICAC (**Appendix 36**) that in accordance with CSBC No. 4/2007, the Commissioner of ICAC shall apply to CE for approval if he wishes to

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<sup>52</sup> Section 8(4) of the ICAC Ordinance provides that subject to that Section and Section 11(2), the Commissioner and officers shall be employed subject to Public Service (Administration) Order, Government regulations and such administrative rules as apply generally to public officers, except insofar as the application of such Public Service (Administration) Order, Government regulations or rules may be modified by standing orders made under Section 11(2). Section 11(2) of the ICAC Ordinance provides that the Commissioner of ICAC may, with the prior approval of CE, by standing order modify the application to officers of Public Service (Administration) Order, Government regulations or administrative rules applicable by virtue of Section 8(4).

personally retain a gift received in his official capacity except under the following circumstances:

- (a) the value of the gift does not exceed \$50 or 0.1% of his substantive salary, whichever is the higher;
- (b) the value of the gift exceeds \$50 or 0.1% of his substantive salary, whichever is the higher, but less than \$400 and the gift is personally inscribed with the Commissioner's name or received by him at a function as the guest of honour or an officiating guest.

7.7 ICAC has also informed the Select Committee (**Appendix 37**) that regarding gifts received by the Commissioner of ICAC, his personal assistant will, on his instruction, write a memo to the Personnel Section of the Administration Branch listing details of the gifts and disposal methods. For items to be personally retained by the Commissioner of ICAC, the Personnel Section will on his behalf seek CE's approval, if required.

## **Receipt of gifts by Mr TONG during his tenure as the Commissioner of ICAC**

### Major concerns of the Select Committee and the information required from ICAC

7.8 As regards the matters relating to Mr TONG's receipt of gifts during his tenure as the Commissioner of ICAC, the major concern of the Select Committee is whether Mr TONG has, in accordance with the relevant requirements, kept for himself any gifts offered to him in his official capacity of the Commissioner of ICAC or in his private capacity only after approvals had been granted by the authorities. The Select Committee notes that receipt of gifts in a person's official capacity as the Commissioner of ICAC and receipt of gifts in private capacity are subject to different regulatory regimes (as set out in paragraphs 7.1 and 7.7 above). Insofar as values of the gifts are concerned, gifts received in official capacity are subject to more stringent regulation. Therefore, the Select Committee is concerned about how Mr TONG, on being offered gifts, distinguished personal gifts from those offered to him by virtue of his official capacity. The Select Committee is also concerned if the way in which Mr TONG disposed of the gifts offered to him was commensurate with his capacity as the Commissioner of ICAC.

7.9 Prior to the hearings, the Select Committee asked ICAC to provide a list of gifts received during Mr TONG's tenure as the Commissioner of ICAC together with the information on the occasions in which such gifts were received, the organizations or persons offering the

gifts, the nature and value of each gift, as well as the disposal methods of the gifts. However, ICAC declined to provide the information on the grounds that such information fell within the scope of ICAC's criminal investigation against Mr TONG.

The evidence given by Mr TONG on the disposal of the gifts offered

7.10 At the hearing of the Select Committee, Mr TONG responded that the gifts received during his tenure were handled in full compliance with the relevant requirements set by ICAC and the Government. Under specific situations, he would retain some of the gifts after applications were made to and approved by CE or CE's delegated authority.

7.11 According to Mr TONG's evidence, he did not keep a list of gifts of which the approvals for retention had been sought from CE. His impression was that the gifts retained by him were generally small souvenirs of no commercial value, including autographed books, a pottery figurine resembling his appearance made instantaneously during an event which he attended, etc. During his tenure as the Commissioner of ICAC, he would, if necessary, make applications to CE through ICAC staff for retention of such small items.

7.12 In this regard, the Select Committee notes that according to the provisions in CSBC No. 4/2007 (**Appendix 35**), the Commissioner of ICAC is given blanket permission to retain the items mentioned in paragraphs 7.6(a) and (b) above, subject to his report to ICAC.

7.13 On distinguishing gifts received in private capacity from those received in official capacity, Mr TONG informed the Select Committee that all the gifts he deemed related to or might be related to his work, such as gifts received through official dealings and on official occasions or gifts specifying "湯專員" as the recipient would be handed to ICAC for disposal. Regarding the receipt of gifts in private capacity, Mr TONG advised that as the Commissioner of ICAC at that time, he had an in-depth understanding of the requirements of section 3 of POBO and the ICAC Ordinance and would thus exercise particular caution in handling personal gifts by politely declining the offers of such gifts. He said he had received a very limited number of personal gifts and he had made applications to CE for retention of gifts.

Situation concerning Mr TONG's requests for personal retention of gifts offered

7.14 To gain further understanding of the situation concerning Mr TONG's personal retention of gifts offered to him during his tenure as the Commissioner of ICAC, the Select Committee asked both ICAC and the CE's Office to provide all the relevant records of Mr TONG's requests for personal retention of gifts offered during his tenure as the Commissioner of ICAC. In this connection, the CE's Office confirmed that Mr TONG had made three applications to CE for acceptance of gifts during his tenure as the Commissioner of ICAC. The information provided by ICAC and the CE's Office (**Appendices 38 and 39**) is highlighted as follows:

- (a) application for acceptance of the invitation extended by the Supreme People's Procuratorate of the People's Republic of China under which arrangements would be made for Mr TONG and his daughter to attend the Opening Ceremony of the Beijing Olympic Games on 8 August 2008, including admission to the ceremony and accommodation in Beijing; although CE approved the application, Mr TONG did not attend the event in the end;
- (b) application for acceptance of a total of four admission tickets to the Olympic Equestrian Events on 15 August 2008 and 21 August 2008 which were offered by the Hong Kong Jockey Club to Mr TONG and his daughter; Mr TONG withdrew the application on 12 August 2008; and
- (c) while on pre-retirement leave, Mr TONG made an application for personal retention of a retirement gift valued at about \$3,800 presented to him by a group of 30 personal friends; the application was approved by CE.

7.15 As to other relevant information, including the list of gifts offered to Mr TONG in his capacity as the Commissioner of ICAC which he requested for personal retention, ICAC refused to provide the information on the grounds that such information fell within the scope of ICAC's criminal investigation against Mr TONG.



7.16 Regarding the invitation of the Supreme People's Procuratorate of the People's Republic of China offering to arrange for him and his daughter to attend the Opening Ceremony of the Beijing Olympic Games, of which he applied to CE for acceptance (i.e. the application mentioned in paragraph 7.14(a) above) but he did not attend in the end, Mr TONG informed the Select Committee that he wished to attend the Opening Ceremony at first but he did not do so because of the difficulty in making due arrangements. Mr TONG also confirmed when giving evidence that his daughter did not attend the Opening Ceremony of the Beijing Olympic Games.

7.17 As regards the reasons for withdrawing the application he made to CE for acceptance of admission tickets to two Olympic Equestrian Events offered by the Hong Kong Jockey Club (i.e. the application mentioned in paragraph 7.14(b) above), Mr TONG admitted to the Select Committee that he was interested in the events and intended to attend them when making the application to CE. However, he also proceeded to purchase admission tickets in the meantime as the events were popular. Having bought the tickets, he withdrew the application which he had made to CE since it was no longer necessary to accept the offer then<sup>53</sup>.

7.18 The Select Committee notes that one of the reasons for Mr TONG's application to CE for acceptance of the offer made by the

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<sup>53</sup> According to the information provided by ICAC (**Appendix 38**), an e-mail was issued to the CE's Office by ICAC staff on 12 August 2008 to confirm that Mr TONG was "unable to make it" to the two Olympic Equestrian Events held respectively on 15 and 21 August 2008, and to withdraw the application made to CE by Mr TONG for acceptance of the admission tickets offered by the Hong Kong Jockey Club. In this regard, Mr TONG responded at the hearing of the Select Committee that he did not know why the CE's Office was told by ICAC staff that he was "unable to make it" to the events.

Hong Kong Jockey Club was that "it is the interest of the Commission to attend the events". The Select Committee requested Mr TONG to explain why attending the equestrian events by the Commissioner of ICAC was in the interest of ICAC. Mr TONG responded that he did not ask the Hong Kong Jockey Club to offer ICAC the admission tickets. The Hong Kong Jockey Club was among the organizations which ICAC worked with and he had met its Chief Executive Officer for discussions on work-related matters. Mr TONG emphasized that he had made the application in accordance with the regulations.

### **Findings and recommendations**

7.19 Regarding the receipt of gifts presented to him in his private capacity during his tenure as the Commissioner of ICAC, Mr Timothy TONG Hin-ming had, according to the evidence he gave at the hearing of the Select Committee, received a very limited number of personal gifts and he had made applications to CE for retention of gifts. According to the information provided to the Select Committee by the CE's Office, Mr TONG had only made an application to CE for acceptance of a retirement gift valued at about \$3,800 presented to him by 30 personal friends when he was on pre-retirement leave<sup>54</sup>. Given that Mr TONG is the only person in possession of full information on the gifts presented to him in his private capacity and he has merely provided very little

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<sup>54</sup> General permission has been given in AAN for prescribed officers to accept such advantages in their private capacity. Outside of these prescribed circumstances, they have to seek special permission for acceptance of the advantage. Application for special permission by the Commissioner of ICAC in respect of soliciting or accepting certain advantages in his private capacity should be approved by CE. Details are set out in paragraphs 7.1 and 7.4 above.

information to the Select Committee in this regard, the Select Committee is unable to conclude, based solely on the information provided by the CE's Office and the evidence given by Mr TONG, whether Mr TONG had disposed of the gifts presented to him in his private capacity in compliance with the requirements of AAN. Nor can the Select Committee draw any conclusion on whether he had properly distinguished the gifts received in private capacity from those received in official capacity during his tenure as the Commissioner of ICAC. In spite of this, the evidence given by Mr TONG shows that he seems to have a clear understanding of the regulatory requirements concerning the receipt of gifts in his private capacity.

7.20 In respect of the receipt of gifts presented to him in his official capacity, Mr TONG had made two applications to CE for acceptance of gifts offered to him in his capacity as the Commissioner of ICAC. One of the applications was withdrawn by Mr TONG. The other was approved by CE but Mr TONG did not accept it in the end. Since ICAC declines to provide the list of gifts which Mr TONG had accepted in his capacity as the Commissioner of ICAC and requested for personal retention, the Select Committee finds it difficult to come to a conclusion on whether Mr TONG had committed any acts of non-compliance in disposing of the gifts offered to him in his official capacity during his tenure.

7.21 The Select Committee, however, has reservation over the way in which Mr TONG handled the admission tickets to two Olympic

Equestrian Events offered by the Hong Kong Jockey Club<sup>55</sup>. Despite the collaborations between ICAC and the Hong Kong Jockey Club in combatting corruption and illegal activities, ICAC has statutory investigative functions over organizations including the Hong Kong Jockey Club and it has handled cases involving the personnel of the Hong Kong Jockey Club. Mr TONG however still made an application to CE to accept the gift on the grounds that attending such events was in the interest of ICAC. This reflects that he was not aware of the potential conflict of roles.

7.22 The Select Committee is of the view that the Commissioner of ICAC must exercise great prudence in respect of receipt of gifts. Apart from disposing of the gifts in compliance with the relevant requirements, he should also give consideration to various aspects, in particular that of whether the acceptance of such gifts would undermine the impartiality of ICAC or staff of ICAC in the discharge of their duties, or cause the public to have such a perception. To avoid any conflict of interests or affecting the reputation of ICAC, the Commissioner of ICAC should as far as possible decline to receive any gifts offered to him in his official capacity. While taking into account that declining to receive the gifts may cause great offence or embarrassment, he should ensure that the acceptance of such gifts will not give rise to any conflict of interests, affect the reputation of ICAC or arouse public query on the impartiality of ICAC.

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<sup>55</sup> Mr TONG made an application to CE for special permission as required for his acceptance of the offer which was subsequently withdrawn (details are in paragraphs 7.14, 7.17 and 7.18.)

7.23 The Commissioner of ICAC should also be alert when accepting gifts offered in his private capacity, and must avoid causing any conflict of interests and doing any harm to the reputation of ICAC or the Commissioner of ICAC.

7.24 To increase transparency of the disposal of gifts on the part of the Commissioner of ICAC, the Select Committee recommends that ICAC should maintain a register for recording all gifts of an estimated value above \$400 that are offered to the Commissioner of ICAC in his official capacity, and the respective ways those gifts are disposed of, and upload the register to ICAC's website for public inspection.