

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 8 Conclusions and recommendations

Conclusions

Views 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

8.1 The ICAC Ordinance provides the statutory charter to protect the Commission's independent operations. Under the Ordinance, the Commissioner of ICAC enjoys a high degree of independence over the management of ICAC's staffing and financial matters. As head of the department and the controlling officer designated under the Public Finance Ordinance, the Commissioner is given wide discretion in determining the internal administrative matters of ICAC.

8.2 On another front, a corruption-free system and culture forms part of Hong Kong's core values that must not be shaken and is integral to maintaining its competitive edge in development. As ICAC is entrusted with the important task to combat corruption and safeguard a corruption-free Hong Kong, the general public have high expectation for ICAC, its Commissioner and other officers to spare no efforts to fulfil

this important task. As the head of ICAC, the Commissioner has a wide range of statutory duties and is responsible for the integrity and discipline of all ICAC officers under his leadership. As such, the Commissioner should set a good example by acting with great vigilance and serve as a role model of probity and integrity in public service.

8.3 The findings of 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 are summarized as follows:

Official duty visits

- (a) The Select Committee is concerned whether during his tenure as the Commissioner of ICAC, Mr TONG 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 Kong⁵⁶ (paragraph 4.20);
- (b) Based on the information currently available and the evidence given by Mr TONG, the Select Committee is

⁵⁶ During the examination of paragraph 4.20, members voted on Mr Dennis KWOK's proposal to add "高度" before "關注" in this paragraph 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 negated (please refer to paragraph 32 of the Minutes of Proceedings of the meeting held in the morning of 23 June 2014 in this Report).

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 them (paragraphs 4.21 to 4.22);

- (c) Regarding his four duty visits for which procurement orders for his air passages had been issued before approval for the duty visits from CE was obtained, and the modification of his air passage for making departure from Hong Kong for a trip two days earlier on 14 May 2010 for private reasons without seeking CE's approval, Mr TONG told both PAC and the Select Committee that he had no knowledge of the details of the procurement of air passages since he had not been 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 (paragraphs 4.23 to 4.24);

Official entertainment

- (d) The Select Committee considers that the percentage of overspending meals hosted by Mr TONG was unduly high. Not only did he fail to act with prudence in

exercising his discretionary power for approving official entertainment expenditure, he also ignored the principle of frugality and the need to avoid extravagance in entertaining guests with public funds. Besides, in approving the estimates of expenditure on official entertainment, he had not dealt with the irregularities of CRD and the Office of Strategic Research of excluding the expenses on alcoholic drinks from the total expenditure of the relevant entertainment activities. The Select Committee is of the view that Mr TONG had not properly fulfilled his responsibilities as a controlling officer designated under the Public Finance Ordinance. The manner he entertained guests of official entertainment activities is not commensurate with the values of probity and integrity advocated by ICAC, and has damaged the image of ICAC, thus tarnishing its reputation (paragraphs 5.30 to 5.35);

- (e) The Select Committee considers that Mr TONG's serving of hard liquor at official entertainment functions during his tenure is inappropriate⁵⁷ as consumption of hard liquor, even in a sensible and moderate way, by ICAC officers attending official entertainments will arouse public concern as to whether official confidential

⁵⁷ During the examination of paragraph 5.36, members voted on Mr Dennis KWOK's proposal to add "，並予以譴責" after "不恰當" in this sentence. The proposal was negated (please refer to paragraph 50 of the Minutes of Proceedings of the meeting held in the morning of 23 June 2014 in this Report).

information may be divulged under the influence of alcohol by those officers, thus undermining public confidence in ICAC (paragraphs 5.36 to 5.37);

- (f) The Select Committee has not been able to obtain relevant evidence to prove the truthfulness of the media report on the dinner hosted by ICAC for the Consuls General in Hong Kong on 8 September 2011, nor has it been able to ascertain the role and involvement of Mr TONG in making decisions on the content, scope and mode of the event. Nevertheless, the Select Committee takes the view that if activities like beer drinking contests or karaoke singing sessions are provided in official entertainment functions hosted by ICAC, this may give a negative perception to both the guests being invited and the general public, thus leading to queries that such arrangements do not conform to the solemn image of ICAC⁵⁸ ⁵⁹ (paragraphs 5.38 to 5.39);
- (g) While agreeing that proper liaison between ICAC and the Hong Kong offices of Mainland authorities as well as their staff is conducive to promoting the work of ICAC and consolidating the working relationship between the

⁵⁸ During the examination of paragraph 5.39, members voted on Mr Dennis KWOK's proposal to add " ,破壞廉署的形象，令廉署的聲譽蒙污" to the end of this sentence. The proposal was negated (please refer to paragraph 54 of the Minutes of Proceedings of the meeting held in the morning of 23 June 2014 in this Report).

⁵⁹ Ms Cyd HO proposed amendments to this paragraph (please refer to paragraph 3 of the Minutes of Proceedings of the meeting held in the afternoon of 23 June 2014 in this Report).

parties, the Select Committee is concerned whether Mr TONG had thoroughly considered that unduly close contacts between him and Mainland officials in Hong Kong during his tenure might have shaken public confidence in the impartiality of ICAC and himself as the Commissioner of ICAC in handling alleged corruption cases involving Mainland officials⁶⁰. Yet, the Select Committee has not been able to obtain any relevant evidence in this respect⁶¹ (paragraph 5.40);

Bestowing of gifts

- (h) The information gathered from different sources and the evidence given by Mr TONG to PAC and the Select Committee show that in deciding the gifts to be bestowed and procured for government officials of different places, 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 (paragraphs 6.16 to 6.17);

⁶⁰ During the examination of paragraph 5.40, members voted on Mr Dennis KWOK's proposal to add "，亦有可能損害廉署的形象" after "信心" in this sentence. The proposal was negated (please refer to paragraph 56 of the Minutes of Proceedings of the meeting held in the morning of 23 June 2014 in this Report).

⁶¹ Ms Cyd HO proposed amendments to this paragraph (please refer to paragraph 3 of the Minutes of Proceedings of the meeting held in the afternoon of 23 June 2014 in this Report).

- (i) Bestowing expensive gifts, particularly those of a personal nature, can easily give rise to corrupt practices. The Select Committee takes the view that Mr TONG lacked vigilance in this respect and 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 (paragraph 6.18);

Receipt of gifts

- (j) Due to the lack of relevant information, the Select Committee is unable to conclude whether Mr TONG had disposed of the gifts presented to him in his private capacity in compliance with the requirements of AAN. For the same reason, the Select Committee is also unable 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 (paragraphs 7.19 to 7.20); and
- (k) The Select Committee 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. 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 (paragraphs 7.21).

8.4 Overall speaking, due to the lack of relevant information and evidence, the Select Committee is not able to come to a conclusion on whether there was non-compliance or mishandling on the part of Mr TONG in respect of the matters relating to his official duty visits and receipt of gifts during his tenure as the Commissioner of ICAC. However, the information and evidence obtained by the Select Committee clearly show that in handling matters relating to official entertainment and bestowing of gifts, Mr TONG ignored the principle of frugality and the need to avoid extravagance, lacked the prudence expected of him as the Commissioner of ICAC, and failed to properly exercise the discretionary power vested in him as head of department in these respects. Therefore, the Select Committee is of the view that Mr TONG had not properly discharged his responsibilities as a controlling officer designated under the Public Finance Ordinance in handling matters relating to official entertainment and bestowing of gifts. The ways he handled such matters are not commensurate with the values of probity and integrity advocated by ICAC and fall short of public expectation of

the Commissioner of ICAC, and have damaged the image of ICAC, thus tarnishing its reputation.

Views on the refusal of ICAC to provide relevant information

8.5 At the early stage when the Select Committee commenced its work, ICAC assured the Select Committee that it was willing to co-operate with the Committee in its work. However, in the course of the inquiry when the Select Committee requested ICAC to provide information on Mr TONG's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner, ICAC declined to do so on the grounds that this might prejudice the integrity of its on-going criminal investigation or subsequent criminal prosecution, if any, against Mr TONG. In this connection, the Select Committee has made it clear to ICAC that the Select Committee does not subscribe to its view since the Select Committee is committed to eliminating any adverse impacts on the judicial proceedings that may subsequently be instituted by adopting appropriate measures in accordance with its Practice and Procedure in the course of its inquiry. These measures have proved to be effective as seen from the relevant experience of the past select committees of LegCo. However, ICAC has maintained its original stance of not providing to the Select Committee the information relating to Mr TONG's official duty visits, entertainment, and bestowing and receipt of gifts during his tenure as the Commissioner of ICAC. The Select Committee finds it unacceptable and regrettable.

Recommendations

8.6 The Select Committee notes that ICAC has made a number of amendments to its CSO⁶² to strengthen the provisions relating to official duty visits, entertainment and bestowing of gifts for enhanced clarity. The Select Committee supports the amendments and has made the following recommendations for improvement in the relevant chapters of this Report:

Official duty visits

- (a) Duty visits should only be undertaken by the Commissioner of ICAC on an "absolute need" basis and CE should use this as an important basis for approving the duty visits of the Commissioner of ICAC(paragraph 4.25);
- (b) It is necessary for ICAC to put in place a mechanism to review, upon completion of the Commissioner's duty visits outside Hong Kong, the effectiveness of the visits in achieving the intended objectives and results. It should also report to ACOC on such reviews and provide more details of the Commissioner's duty visits in its Annual Report so as to facilitate public understanding of the Commissioner's duty visits and the achievements made (paragraphs 4.27 to 4.28);

⁶² Please refer to paragraphs 4.24, 4.26, 5.32, 5.35, 5.37 and 6.19 of this Report.

- (c) 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 (paragraph 4.29);

Bestowing of gifts

- (d) In order to tighten the control over the expenditure on gifts, ICAC should set out clearly in its annual estimates of expenditure submitted to ACOC the estimated expenditure on gifts for the following year and report to ACOC the actual annual expenditure on gifts (paragraphs 6.19 to 6.21); and

Receipt of gifts

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

8.7 As regards the checks and balances on the power of the Commissioner over the administrative matters of ICAC, the Select Committee is concerned whether any ICAC staff had raised objections to or lodged complaints about the ways Mr TONG handled matters relating to official duty visits, entertainment, and bestowing and receipt of gifts during his five-year tenure as the Commissioner of ICAC, but it is unable to obtain any relevant evidence in this respect (paragraphs 2.28, 5.15 and 6.15 above). Nevertheless, the Select Committee notes that ICAC decides on many matters relating to ICAC's official duty visits, entertainment, and bestowing and receipt of gifts at the Commissioner's Weekly Meetings at which discussions are led by the Commissioner of ICAC. Key officers of ICAC attending the meetings include Head of Operations, Director of Community Relations, Director of Corruption Prevention and Assistant Director of the Administration Branch (**Appendix 21**). To enhance the checks and balances on the powers of the Commissioner of ICAC, the Select Committee recommends that views expressed by the attendees at the meetings which are obviously different from those of the Commissioner and are not accepted by the Commissioner must be clearly put on record in the minutes of the relevant meetings.

8.8 The Select Committee notes that there is an internal investigation and monitoring unit, namely L Group, in ICAC⁶³. The Select Committee has enquired with ICAC whether L Group has received any complaints against Mr TONG about the ways he handled official entertainment, bestowing of gifts or duty visits during his tenure, and how

⁶³ Information on L Group of ICAC is set out in paragraph 3.8 of this Report.

L Group has followed up such complaints. However, ICAC advised in its reply (**Appendix 10**) that it could not provide the relevant information since such information fell within the scope of its criminal investigation against Mr TONG. Having examined the information obtained, the Select Committee is concerned whether there is currently an effective mechanism for handling complaints against the Commissioner of ICAC. In this connection, the Select Committee recommends that the Chief Executive should consider putting in place such a mechanism.

8.9 The Select Committee hopes that apart from implementing the improvement measures announced, the Chief Executive and ICAC will actively consider adopting the improvement measures recommended by the Select Committee to introduce sufficiently effective checks and balances and enhance the transparency of ICAC's internal administration, with a view to maintaining the reputation of Hong Kong as one of the cleanest places in the world and that of ICAC as the forerunner in corruption prevention, as well as restoring the credibility of the work of ICAC in providing preventive education and enlisting public support against corruption.