

**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.

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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)

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 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")⁸.

⁸ 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 time⁹. 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 strategies¹⁰.

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-operation¹¹.

⁹ Please refer to Appendix 76 of the PAC Report.

¹⁰ Please refer to paragraph 166 of the PAC Report.

¹¹ 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 ideal¹².

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 request¹³.

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

¹² Please refer to paragraph 85 of the PAC Report.

¹³ Please refer to paragraph 94 of the PAC Report.

details were received by CRD in the afternoon of 9 January 2009¹⁴. 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)¹⁵.

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 CE¹⁶. 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

¹⁴ 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.

¹⁵ Please refer to paragraph 117 of the PAC Report.

¹⁶ 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 oversight¹⁷.

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-compliances¹⁸. 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

¹⁷ Please refer to paragraph 81 of the PAC Report.

¹⁸ 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 Kong¹⁹.

¹⁹ 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 year²⁰.

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

²⁰ 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.

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Chapter 5 Official entertainments

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

5.1 According to the information provided by ICAC (**Appendices 18 to 20**), ICAC follows government policy, rules and guidelines in drawing up its policy and rules on entertainment functions in the form of ICAC's CSO, internal circulars and guidelines.

5.2 Entertainments related to ICAC's major events or involving visitors of prominent status are normally discussed at the Commissioner's Weekly Meeting²¹, with others handled by individual Heads of Departments. Formal approval from the following approving authorities for entertainment expenditure must be sought in writing in advance with justifications for holding the function, details of the guests invited and officers to attend etc. by the subject officers in order to be eligible for reimbursement of official entertainment expenses:

²¹ According to the information provided by ICAC to the Select Committee (**Appendix 21**), members of the ICAC's Commissioner's Weekly Meeting include: Commissioner of ICAC, Head of Operations, Director of Community Relations, Director of Corruption Prevention, Assistant Director of Administration and Chief Staff Officer/Management & Administration. In addition, Assistant Director/Community Relations 1 and Principal Press Information Officer also attend the meeting in relation to the public relations items.

- (a) the Commissioner: for Commission-wide functions or for entertainments hosted by the Corruption Prevention Department and the Administration Branch and for operational liaison lunch with government servants, normally from disciplined services departments;
- (b) the Deputy Commissioner (being also Head of Operations): for entertainments hosted by the Operations Department; and
- (c) the Director of Community Relations: for functions hosted by CRD.

5.3 Unless the Commissioner of ICAC has approved otherwise, the expenditure per person, inclusive of food, beverages and tips, is subject to the following ceiling rates:

- (a) Operational liaison lunch: \$150
- (b) Lunch: \$300 (revised to \$350 from 1 January 2011); and
- (c) Dinner: \$400 (revised to \$450 from 1 January 2011).

Official entertainments hosted by Mr TONG during his tenure as the Commissioner of ICAC

Expenditure control on official entertainments

5.4 The Select Committee notes from paragraphs 3.2 and 3.24 of the IRC Report that, during the term of Mr TONG's office, ICAC hosted 899 entertainments at a total expenditure of \$3,576,000²², of which 240 were hosted by Mr TONG²³. Among these 240 lunches and dinners, 85 (i.e. about 35%) of them exceeded the expenditure ceilings set out in paragraph 5.3 above, if taking into account the cost of food and alcoholic drinks procured separately.

5.5 The Select Committee takes note of IRC's finding that, during Mr TONG's tenure as the Commissioner of ICAC, the cost of alcoholic drinks procured separately had not always been included when calculating the expenditure for entertainments. Generally, the Operations Department and the Administration Branch did include such cost in the calculation of entertainment expenditure while CRD and the Office of Strategic Research²⁴ had different practices. The Corruption Prevention Department rarely organized entertainments. To illustrate

²² The expenditure did not include the \$205,000 for procurement of alcoholic drinks and the \$11,000 for procurement of gifts by ICAC officers when attending local social functions.

²³ There is no mention of the total expenditure on the 240 entertainments in the IRC Report.

²⁴ According to the information provided by ICAC to PAC, the Office of Strategic Research was set up in August 2007 under the Administration Branch with a view to strengthening the capabilities of ICAC in the areas of policy planning, strategic and administrative management, and to enhance the coordination of work among the Operations Department, CRD and the Corruption Prevention Department to achieve maximum efficiency in performance. The Office of Strategic Research was finally disbanded in September 2012.

the inconsistent practices, IRC cited two examples, one being the lunch organized by the Operations Department on 15 August 2007, the other being the dinner organized by CRD on 18 September 2007. The entertainment expenses on both occasions were approved by Mr TONG as the then Commissioner of ICAC²⁵.

5.6 The Select Committee further notes from the PAC Report another instance²⁶ where Mr TONG, the then Commissioner of ICAC, approved a budget of \$450 per head for a dinner organized by CRD on 6 December 2011. The actual cost of the dinner charged by the restaurant concerned was \$431 per head. However, when including six bottles of wine bought separately for the dinner and dessert consumed at a separate shop (totalling \$92 per head), the actual expenditure was \$523 per head.

5.7 According to the information provided by ICAC (**Appendices 19 and 22**), in June 2008, ICAC introduced the ICAC Form 569 (**Appendix 23**), a standard form by which ICAC officers were required to include beverages, in addition to food and tips, in the expenditure of a meal in their application for approval and reimbursement of entertainment expenses²⁷. In July 2009, ICAC revised its CSO to

²⁵ Please refer to paragraph 3.7 of the IRC Report.

²⁶ Please refer to paragraph 141 of the PAC Report.

²⁷ According to paragraph 3.8 of the IRC Report, when asked by IRC, the then Assistant Director of the Administration Branch said that, to better comply with the spirit of the Government guidelines on entertainment expenditure per person, the cost of alcoholic drinks procured separately should be included in the calculation of the total expenditure for entertainments. The Administration Branch attempted to improve the practice by introducing the ICAC Form 569 in mid-2008.

explicitly spell out the requirement that "beverages" should also be counted towards the expenditure per head in entertainment expenses.

5.8 In his response to PAC, Mr TONG stated that he was aware of the ICAC Form 569 as he had signed the Form before. However, he was also aware that file minutes were sometimes used by ICAC officers in seeking approval for entertainment expenditure. To his understanding, both approaches were acceptable as the use of the ICAC Form 569 was not mandatory²⁸. Regarding the aforesaid amendment to ICAC's CSO, Mr TONG said in his reply to PAC that he did not have any impression of the amendment then, as he was on vacation leave when the amended CSO was promulgated on 10 July 2009²⁹. With hindsight, he admitted that he was not sensitive to the requirements of ICAC's CSO on "Entertainment Expenses", albeit the making of ICAC's CSO was the duty of the Commissioner of ICAC under the ICAC Ordinance³⁰.

5.9 According to the information provided by ICAC to PAC, Mr TONG, the then Commissioner of ICAC, was not involved in the revision of Form 569 and the ICAC's CSO referred to in paragraph 5.7 above. Nonetheless, ICAC staff, including Mr TONG, were kept posted of the revisions in ICAC's CSO chapters vide ICAC's intranet emails.

5.10 The Select Committee asked Mr TONG at its hearing why some ICAC departments, when seeking approval for reimbursement of

²⁸ Please refer to paragraph 148 of the PAC Report.

²⁹ According to the information provided by ICAC to the Select Committee, the promulgation of the revised ICAC's CSO chapter was made on 10 July 2009 while Mr took leave from 6 July to 1 August 2009.

³⁰ Please refer to paragraph 153 of the PAC Report.

entertainment expenses in respect of official entertainments, did not follow the internal guidelines and complete Form 569 which clearly set out that beverages should be included in the entertainment expenses. Mr TONG responded that ICAC had already confirmed that the use of the form was not mandatory³¹. The reason for some ICAC departments seeking approval for entertainment expenditure by file minute instead of Form 569 was that this could facilitate the provision of more detailed information on the justifications for having such entertainments. Regarding the exclusion of the cost of alcoholic drinks procured separately from the expenditure for official entertainments, Mr TONG responded that Ms Julie MU Fee-man, Director of Community Relations, had explained to PAC the background to CRD's adoption of such a practice in the calculation of entertainment expenditure³², and had highlighted that this was a long-established practice. As such, he did not consider it a case of non-compliance. As to whether the splitting of bills for the procurement of alcoholic drinks would lead to overspending, Mr TONG stated that the issue was only raised and described as "grey area" for the first time in the Director of Audit's Report (of early 2013)³³.

³¹ According to ICAC's reply to PAC, since it was not a mandatory requirement of ICAC's CSO that ICAC staff must seek approval for entertainment expenditure using Form 569, the decision to stop using the Form did not contravene the ICAC's CSO.

³² Please refer to paragraph 155 of the PAC Report.

³³ It is stated in paragraph 3.24 of Chapter 7 of the Director of Audit's Report No. 60 that "Audit is also concerned that the Commission Standing Orders do not clearly specify that the costs of all food and beverages (e.g. the wine and dessert mentioned in para. 3.23(a)) should be included as part of the lunch/dinner expenditure for control purposes. In Audit's view, the ICAC needs to tighten the control over the expenditure on official entertainment." In his subsequent reply to PAC's enquiry, the Commissioner of Audit advised that in the course of the value for money audit, the Audit Commission was not given any information regarding ICAC Form 569 (please refer to paragraph 157 of the PAC Report for details).

Serving of hard liquor

5.11 According to the information provided by ICAC to PAC, there were significant increases in the purchases of wine and hard liquor, notably moutai, by CRD and the Administration Branch for use in official entertainments during Mr TONG's tenure as the Commissioner of ICAC. The stock of wine and hard liquor was purchased on the instruction of Mr TONG. All the hard liquor consumed (totalling 114.5 bottles) was used in official entertainments attended by Mr TONG, and all the wine consumed (totalling 748 bottles), with the exception of a few occasions where the presence of Mr TONG was not required, was also used in the official entertainments attended by Mr TONG³⁴.

5.12 At the hearing of the Select Committee, when being questioned as to why hard liquor was served at official entertainments, Mr TONG responded that since the considerations and needs for entertainments differed at different times, the then arrangement was made having regard to the prevailing customs and serving liquor to guests was considered conducive to entertainment functions. He also indicated that about two bottles of hard liquor and 12 bottles of wine were consumed at official entertainments each month during his tenure. He had no impression that consumption of the said amount of hard liquor and wine had caused any inconvenience to his work or adversely affected any matters of confidentiality. In his view, a sensible and moderate consumption of hard liquor would not affect one's work.

³⁴ Please refer to paragraph 195 of the PAC Report.

Dinner hosted for the Consuls General in Hong Kong on 8 September 2011

5.13 In the course of the Select Committee's inquiry, there was a press report³⁵ stating that a dinner hosted by ICAC for the Consuls General in Hong Kong at ICAC Staff Mess on 8 September 2011 was catered by five chefs from the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region ("OCMFA"), and CRD bought five tankards worth nearly \$8,000 in total for the chefs as gifts. The report also stated that the banquet, which comprised a pre-dinner cocktail reception, karaoke singing sessions and beer drinking contests, cost nearly \$1,200 per head.

5.14 In the light of the above report, the Select Committee requested ICAC to provide details on the six lunches/dinners hosted by Mr TONG for the Consuls General in Hong Kong during the period between 2007-2008 and 2012-2013³⁶, including the dates, venues, nature of the banquets (be they lunches or dinners), number of guests, expenditure per head, gifts bestowed, and whether any external institutions were engaged to provide services. However, ICAC said in its reply (**Appendices 24 and 25**) that it could not provide the information requested since such

³⁵ A press report entitled "廉署宴客 外交部大廚主理" of Ming Pao Daily News dated 4 February 2014.

³⁶ ICAC informed PAC that from 2007-2008 to 2012-2013, Mr Timothy TONG, the former Commissioner of ICAC and Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, had respectively hosted a total of six and one official lunches/dinners for the Consuls General, i.e. three in 2008-2009 and one in each year from 2009-2010 to 2012-2013 for the liaison purpose of enhancing working relationship and thus international co-operation with the countries represented by the consular corps.

information fell within the scope of ICAC's criminal investigation in relation to whether Mr TONG has contravened POBO and committed the common law offence of misconduct in public office.

5.15 In order to find out more about the dinner hosted by ICAC for Consuls General in Hong Kong at ICAC Staff Mess on 8 September 2011, the Select Committee repeatedly asked Mr TONG at its hearing on 1 March 2014 about what had transpired at the dinner, including whether the OCMFA had deployed five chefs to cater for the dinner at the ICAC Staff Mess; whether ICAC had paid any fees to the five chefs concerned; whether beer drinking contests and karaoke singing sessions were arranged on that occasion; and whether any ICAC staff had raised objection to the arrangements for the dinner etc.

5.16 In response, Mr TONG said that the dinner hosted for the Consuls General in Hong Kong at ICAC Staff Mess was a large-scale event involving the highest representatives of dozens of countries stationed in Hong Kong as well as the OCMFA, and that the event was conducted under the sun and there was nothing to hide. He also believed that detailed records were kept of everything about the event. But he pointed out that as ICAC had already indicated to the Select Committee that it would not provide the relevant information in its possession on the grounds that this event fell within the scope of ICAC's investigation against him, under this circumstance, he did not consider that he was in the position to give any details of the event.

5.17 As to the reasons for ICAC hosting official lunches/dinners for various Consuls General in Hong Kong, Mr TONG said that although the Consuls General were neither responsible for enforcement of law nor investigation of cases, they represented the countries with which ICAC had established collaboration. Hence, it was important for ICAC to maintain liaison with the Consuls General in Hong Kong.

5.18 In this regard, Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, informed the Select Committee that in the course of investigation, it was often necessary for ICAC to seek assistance from relevant law enforcement agencies overseas in gathering evidence, interviewing witnesses and obtaining information where transnational or cross-border crimes were involved. Hence, there was a need for ICAC to maintain good relationships with law enforcement agencies overseas in work-related contexts, and the Consuls General and consulate staff were representatives of those countries in Hong Kong. On this basis, ICAC has maintained regular contacts with various Consuls General in Hong Kong by holding annual meetings with them.

5.19 At its hearing, the Select Committee enquired whether Mr TONG played a leading role in making decisions on the content, scope and mode of major events of ICAC during his tenure as the Commissioner of ICAC. In response, Mr TONG said that for major events organized by ICAC, a programme outline must be submitted to the Commissioner's Weekly Meeting for discussion which would be led by him. As for the details of the events, the ICAC officers responsible for

organizing the activities would inform him of the relevant arrangements. If he had no objection, the events would be taken forward accordingly.

5.20 The Select Committee also enquired whether Mr TONG had given approval for organizing beer drinking contests or karaoke activities for the official functions of ICAC during his tenure as the Commissioner of ICAC. Mr TONG responded that for events which required his approval, he would take into account the nature of the particular event and whether such activities, if included, would have merits on the event. He would grant approval if he considered that the relevant arrangements would have such merits.

5.21 The Select Committee asked Ms Julie MU Fee-man, Director of Community Relations of ICAC, at its hearing what recommendations she had made to Mr TONG on the activities for the dinner hosted by ICAC for the Consuls General in Hong Kong on 8 September 2011. Ms MU responded that she was not in a position to comment on the incident since ICAC's criminal investigation against Mr TONG, which covered an extensive scope, was under way and some ICAC officers might have to serve as witnesses in future. Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, shared the view that it was not appropriate for Ms MU to reply to the question as this might prejudice ICAC's criminal investigation against Mr TONG.

5.22 As the media report indicated that the dinner for the Consuls General in Hong Kong was held in the ICAC Staff Mess, the Select Committee requested ICAC at its hearing to provide information

regarding the management committee tasked to oversee the operation of ICAC Staff Mess. ICAC advised in its reply (**Appendix 26**) that the ICAC Staff Mess caterer comes under the supervision and monitoring of the ICAC Staff Club through its General Committee. In accordance with the ICAC Staff Club Constitution, the General Committee is responsible for, inter alia, the selection of Mess contractor and negotiation with the said contractor regarding the terms of contracts, and the monitoring and supervision of the operation of the Mess through the Mess Monitor who is assisted by other General Committee members.

5.23 The Select Committee also requested ICAC at its hearing to provide the records relating to ICAC functions held at the ICAC Staff Mess for which chefs from other institutions were engaged to provide catering services before Mr TONG took the office of the Commissioner of ICAC. ICAC said in its reply (**Appendix 27**) that it did not have such records.

Entertainments with Mainland officials

5.24 The Select Committee notes that Mr TONG was questioned by PAC whether he had made use of official entertainments with Mainland officials who were not the counterparts of ICAC³⁷, say, from the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region ("LOCPG"), to pave his way for becoming a member of the National Committee of the Chinese People's Political

³⁷ The Mainland counterparts of ICAC are the Supreme People's Procuratorate of the People's Republic of China and its system of procuratorates and the Ministry of Supervision.

Consultative Conference ("CPPCC") after he left the office of the Commissioner of ICAC. Mr TONG refuted such allegations and stressed to PAC that the purpose of hosting official lunches/dinners for officials from the Mainland as well as from other places was to promote the work of ICAC and foster co-operation on anti-corruption. The idea of becoming a Hong Kong CPPCC member had never crossed his mind, until he was approached for the post some six months after he left the office of ICAC³⁸.

5.25 In this connection, the Select Committee asked Mr TONG whether he had participated in any entertainment activities with CPPCC members or persons associated with them. Mr TONG responded that during his visits to the Mainland, persons in the capacity of CPPCC members were amongst the subjects of his visits or entertainments. Yet, he did not meet them because of their capacity as CPPCC members. He also said that during his visits to the Mainland, he had never discussed with the persons whom he entertained or visited about the arrangement for his post-retirement public service, nor had he discussed with them any arrangement for him to serve as a CPPCC member.

5.26 The Select Committee also asked whether Mr TONG knew if these people in their capacity of CPPCC members had the power to recommend other persons to serve as CPPCC members when he entertained them. Mr TONG responded that the idea of becoming a Hong Kong CPPCC member or seeking recommendations for such membership from incumbent CPPCC members had never crossed his

³⁸ Please refer to paragraph 61 of the PAC Report.

mind at that time, nor had he thought about whether these people had the power to make recommendations for CPPCC membership.

5.27 Regarding his relationship with Mr LU Xinhua, the then Commissioner of OCMFA, Mr TONG told the Select Committee in his evidence that working relationship had laid the foundation for the fundamental relationship between OCMFA and ICAC as well as that between the two heads. He and Mr LU had work acquaintances and friends in common. They got in contact and met each other at social functions hosted by these people.

Information that ICAC has refused to provide to PAC and the Select Committee

5.28 The Select Committee has requested ICAC to provide the details of all the official entertainment activities hosted by Mr TONG during his tenure as the Commissioner of ICAC as well as his role and involvement in the arrangements for these activities. However, ICAC has refused to provide the information to the Select Committee on the grounds that such information fell within the scope of ICAC's criminal investigation against Mr TONG.

5.29 The Select Committee further notes that, ICAC had declined on the same grounds to disclose to PAC the information relating to the official lunches/dinners hosted by Mr TONG for LOCPG officials and also the information on the number of times which Mr TONG had taken

his friends to official lunches/dinners and whether he had reimbursed ICAC for the costs of the lunches/dinners attended by his friends³⁹.

Findings

Level of official entertainment expenditure

5.30 According to the IRC Report, of the 240 official meals hosted by Mr Timothy TONG Hin-ming during his tenure, 85 (about 35%) of them exceeded the expenditure ceilings, after the cost of food and alcoholic drinks procured separately were included. The Select Committee has no knowledge of the extent of and reasons for the overspending because it has not been able to obtain detailed information relating to Mr TONG's entertainments, including the expenditure per person for each meal. Nevertheless, the Select Committee notes from paragraph 6.1(h) of the IRC Report that some of the lunches and dinners hosted by Mr TONG were very expensive.

5.31 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. The Select Committee is also of the view that Mr TONG had not properly fulfilled his responsibilities as a controlling

³⁹ Please refer to paragraphs 62 and 63 of the PAC Report.

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.

5.32 The Select Committee notes that in order to enhance checks and balances, ICAC has amended its CSO (**Appendix 28**) to provide that the Head of the Operations Department will endorse official entertainments hosted by the Commissioner of ICAC; whereas the Assistant Director of Administration will check compliance of those attended by both the Commissioner of ICAC and Head of the Operations Department. Mr Simon PEH Yun-lu, the incumbent Commissioner of ICAC, advised at the hearing of the Select Committee that all entertainments which exceeded the expenditure ceilings must be reported to ACOC. ACOC has accepted this mechanism as part of the standing mechanism.

Expenditure control on official entertainments

5.33 Regarding the exclusion of expenses on alcoholic drinks procured separately from the expenditure for entertainment by CRD and the Office of Strategic Research, the Select Committee considers that the crux of the problem does not lie in whether alcoholic drinks should be procured separately or in what form the application should be submitted (i.e. by file minute or ICAC Form 569) but in whether all accountable expenditure items have been included in the estimates of expenditure on the entertainment activities concerned and set out in the applications for submission with a view to exercising effective control on expenditure.

5.34 As a controlling officer designated under the Public Finance Ordinance, Mr TONG should be well aware of the significance and spirit behind the imposition of ceilings on official entertainments, that is, to exercise effective control on expenditure and avoid lavish spending. In approving the estimates of expenditure on official entertainments, 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. In this regard, the Select Committee finds that Mr TONG had not properly fulfilled his responsibilities as a controlling officer.

5.35 The Select Committee notes in this regard that ICAC has amended its CSO (**Appendix 28**) to provide that all expenditure items served before or after the same event including cocktail and dessert etc. must be included as part of the overall entertainment expenditure. ICAC's CSO also requires that a common form should be used to ensure that entertainments charged to both the publicity votes and entertainment votes are captured for better monitoring purposes. The Select Committee supports the above improvements to ICAC's CSO.

Serving of hard liquor

5.36 The Select Committee considers that it is public expectation that the Commissioner and staff of ICAC, an anti-corruption body in Hong Kong, should strictly adhere to the principle of confidentiality in respect of the cases being processed by ICAC and any information related to them. The serving of hard liquor at ICAC's official entertainment

functions, even if it is consumed in a sensible and moderate manner, will arouse public concern as to whether official confidential information may be divulged, under the influence of alcohol, by those ICAC officers attending the official entertainments, thus undermining public confidence in ICAC. Therefore, the Select Committee does not agree with Mr TONG's argument that the monthly consumption of about two bottles of hard liquor and 12 bottles of wine at official entertainment functions during his tenure was sensible and moderate and would not affect one's work. The Select Committee considers that Mr TONG's serving of hard liquor at official entertainment functions during his tenure is inappropriate⁴⁰.

5.37 The Select Committee notes the improvement made by ICAC by amending its CSO (**Appendix 28**) to provide that serving hard liquor at official entertainment functions is not permitted. The Select Committee supports the above improvement to ICAC's CSO.

Dinner hosted for the Consuls General in Hong Kong on 8 September 2011

5.38 Regarding the dinner hosted by ICAC for the Consuls General in Hong Kong on 8 September 2011, ICAC has refused to provide the relevant information on the grounds that such information fell within the scope of its criminal investigation against Mr TONG. Mr TONG also said at the hearing on 1 March 2014 that he was not in the position to

⁴⁰ Members voted on Mr Dennis KWOK's proposal to add "，並予以譴責" to the end of this sentence. The proposal was negatived (please refer to paragraph 50 of the Minutes of Proceedings of the meeting held in the morning of 23 June 2014 in this Report).

explain the details of the event in the light of the circumstances. In this regard, the Select Committee has not been able to obtain relevant evidence to prove the truthfulness of the media report on the event, nor has it been able to ascertain at its hearings the role and involvement of Mr TONG in making decisions on the content, scope and mode of the event⁴¹.

5.39 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 ICAC^{42 43}.

Entertainments with Mainland officials

5.40 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 parties, the Select Committee is concerned whether Mr TONG had thoroughly considered that unduly close contacts between

⁴¹ 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).

⁴² 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).

⁴³ 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).

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 officials⁴⁴. Yet, the Select Committee has not been able to obtain any relevant evidence in this respect.

⁴⁴ Members voted on Mr Dennis KWOK's proposal to add the phrase "，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 on 23 June 2014 in this Report).

**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 2013⁴⁵, 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;

⁴⁵ 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 high⁴⁶, 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

⁴⁶ 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 public⁴⁷.

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 Report⁴⁸.

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.

⁴⁷ Please refer to paragraph 127 of the PAC Report.

⁴⁸ 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 reciprocity⁴⁹. 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

⁴⁹ 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)⁵⁰. 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

⁵⁰ 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.

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 officer⁵¹ 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

⁵¹ 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. 4/2007⁵² ("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

⁵² 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 then⁵³.

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

⁵³ 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 leave⁵⁴. 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

⁵⁴ 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 Club⁵⁵. 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.

⁵⁵ 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.

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 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 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.