

A. Introduction

Background

The Audit Commission ("Audit") conducted a review of the work of the Community Relations Department ("CRD") of the Independent Commission Against Corruption ("ICAC")¹ from 2008 to 2012 in providing preventive education and enlisting public support against corruption. According to the ICAC's 2012-2013 Controlling Officer's Report:

- the aim of preventive education is to promote better public understanding of the corruption problem and encourage target groups to take positive action; and
- the aim of enlisting public support is to promote public awareness of the evils of corruption, foster public confidence in and support for the work of the ICAC, and encourage the reporting of corruption offences.

2. The Committee was particularly concerned about the following inadequacies identified in the Director of Audit's Report No. 60 on the ICAC ("the Audit Report"):

- although building management was the area with the most private sector corruption complaints, the number of Owners' Corporations ("OCs") reached by the CRD for providing preventive education had decreased since 2010;
- the numbers of organizations and people reached by the community activities organized by the CRD for enlisting public support decreased significantly from 2008 to 2012; and
- there were inadequacies in the control over official entertainment. The ICAC's Commission Standing Orders ("CSO") on "Entertainment Expenses" (in *Appendix 5*) stipulate that unless the Commissioner of ICAC has approved otherwise, the expenditure per head, inclusive of

1 The ICAC was established in 1974 under the ICAC Ordinance (Cap. 204). The ICAC adopts a three-pronged approach of law enforcement, community education and prevention to combat corruption. Such approach against corruption is reflected in the ICAC statutory duties established through Section 12 of the ICAC Ordinance. For the performance of the ICAC's statutory duties, the Operations Department, the Community Relations Department and the Corruption Prevention Department were established to execute the work.

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food, beverages and tips, is subject to ceilings for official entertainment². In respect of the entertainment expenses incurred by CRD staff in organizing the International Anti-Corruption Public Service Announcement Video Competition and Workshop ("the International Anti-Corruption PSA Video Competition and Workshop"), Audit found the following issues:

- (a) the actual cost of a dinner on 6 December 2011 exceeded the expenditure ceiling per head after including the six bottles of wine bought separately for the dinner and dessert consumed at a separate shop (paragraphs 3.22(a) and 3.23(a) of the Audit Report refer); and
- (b) the cost of a dinner on 8 December 2011, approved by an Assistant Director of the ICAC, was \$1,045 per head. The cost of the dinner was charged to the publicity funds of a project. The dinner was not treated as an entertainment expenditure subject to the requirements of the ICAC's CSO on "Entertainment Expenses" (paragraphs 3.22(b) and 3.23(b) of the Audit Report refer).

3. In 2012-2013, of the ICAC's total estimated expenditure of \$876 million, \$152 million is for the CRD to provide the public with preventive education and enlist public support against corruption.

The Committee's Report

4. The Committee's Report sets out the evidence gathered by the Committee which is relevant to the issues identified in the Audit Report and in the Report of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits (The Redacted Version) ("the IRC Report")³ released on 12 September 2013, and further revealed at the

² According to the ICAC's CSO on "Entertainment Expenses", the ceilings for lunch and dinner are \$350 and \$450 respectively with effect from 1 January 2011.

³ Arising from wide community concerns over media reports on the handling of official entertainment, gifts, and duty visits by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, the Chief Executive ("CE") announced the establishment of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits ("IRC") on 2 May 2013. The IRC was asked to report to the CE within four months.

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public hearings, and the Committee's conclusions and recommendations on those issues. The Report is divided into the following parts:

- Introduction (Part A) (paragraphs 1 to 14);
- Summoning Mr Timothy TONG Hin-ming, former Commissioner, ICAC, to attend before the Committee to give evidence (Part B) (paragraphs 15 to 17);
- Work of the CRD (Part C) (paragraphs 18 to 37);
- Expenditures of the ICAC (Part D):
 - (a) Overview (paragraphs 38 to 54);
 - (b) Official entertainment (paragraphs 55 to 75);
 - (c) Duty visits outside Hong Kong (paragraphs 76 to 119); and
 - (d) Gifts/souvenirs (paragraphs 120 to 139);
- Expenditure control on official entertainment (Part E) (paragraphs 140 to 162);
- Legal basis for the ICAC to assist other States Parties to the United Nations Convention Against Corruption ("UNCAC") in developing and implementing specific measures for the prevention of corruption in accordance with the provisions of paragraph 3 of Article 6 of the UNCAC (Part F) (paragraphs 163 to 168); and
- Conclusions and recommendations (Part G) (paragraphs 169 to 215).

Public hearings

5. The Committee held a total of eight public hearings from May to October 2013, totalling some 26 hours. The Committee initially held five public hearings on 18 and 24 May and 1, 4 and 20 June 2013 to receive evidence on the findings and observations of the Audit Report.

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6. As some of the information contained in the IRC Report appears to be inconsistent with that gathered by the Committee at the aforesaid hearings and/or is related to the areas of study of the Committee, three more public hearings were held by the Committee on 25 and 26 September and 18 October 2013.

7. Apart from inviting Mr Simon PEH Yun-lu, Commissioner, ICAC, to the first public hearing on 18 May 2013 to provide information and explanations, the Committee also invited Mr Timothy TONG Hin-ming, former Commissioner, ICAC, to the hearing as Mr TONG was Commissioner, ICAC⁴ during the period covered by the Audit Report. Invitation letters to Mr PEH and Mr TONG were issued on 14 and 13 May 2013 respectively.

8. In the afternoon of 14 May 2013, the Department of Justice ("DoJ") issued a press release which is summarized as follows. A number of complaints had been lodged with the ICAC against its former Commissioner, Mr Timothy TONG Hin-ming. The DoJ took the view that it was appropriate for the ICAC to conduct a criminal investigation into the complaints. On the materials made available, the DoJ considered that there was sufficient basis to warrant a criminal investigation into allegations of possible offences under the Prevention of Bribery Ordinance (Cap. 201) and the common law offence of "Misconduct in Public Office". The DoJ had not come to any view on the question of whether or not any prosecution should be commenced against any person in this case. Such a decision would be made at the conclusion of the criminal investigation, after all relevant material and information had been gathered. The full text of the press release is in *Appendix 6*.

9. On 16 May 2013, the Committee received a letter from the Commissioner, ICAC requesting that arrangements be made for him and Mr Timothy TONG Hin-ming to appear before the Committee in separate sessions on 18 May 2013 and on any other dates. The reason given by the Commissioner was that as a special investigation team had been set up under his direct supervision to conduct a criminal investigation into alleged offences under the Prevention of Bribery Ordinance and the common law offence of "Misconduct in Public Office" in relation to Mr TONG, for both the subject of investigation and the investigation officer to attend a public hearing in anticipation of questions being asked of them which might impact on the investigation was something which should be avoided as far as possible in order to

4 The tenure of Mr Timothy TONG Hin-ming as Commissioner, ICAC was from 1 July 2007 to 30 June 2012.

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protect the integrity of the investigation and to ensure that the investigation was not prejudiced or undermined in any way. The relevant letter is in *Appendix 7*.

10. Having considered the Commissioner, ICAC's request, arrangement was made for the Commissioner, ICAC and other ICAC staff, and Mr Timothy TONG Hin-ming to appear in separate sessions at the public hearing on 18 May 2013. At subsequent hearings to be held, Mr TONG attended the hearings on 24 May, 1 June, 25 September and 18 October 2013, whilst the Commissioner, ICAC and other ICAC staff attended the hearings on 4 and 20 June and 26 September 2013. The Committee agreed that members would only ask witnesses questions, from the angle of value for money, on issues within the scope of the Audit Report.

11. On 28 October 2013, the Committee received a letter from the Commissioner, ICAC (in *Appendix 8*) requesting to examine the factual parts of the draft final report of the Committee as some of the information quoted across various sessions of the hearings attended by the ICAC may not be fully consistent. The Clerk to the Committee also received a telephone call from Mr Timothy TONG Hin-ming on 8 November 2013 requesting the Committee to provide its draft final report for verification of his evidence given to the Committee prior to the release of the Committee Report. In its letter of 15 November 2013 (in *Appendix 9*), the Committee informed Commissioner, ICAC that after careful consideration of his reason, the Committee decided not to accede to his request. The Clerk to the Committee also informed Mr Timothy TONG Hin-ming of the same on 12 November 2013.

Declaration of interests

12. At the beginning of the Committee's first public hearing held on 18 May 2013:

- **Hon NG Leung-sing** declared that he was the Chairman of the Bank of China (Hong Kong) Trustees Limited, which was one of the organizations to which the ICAC had provided preventive education talks against corruption; and
- **Hon Paul TSE Wai-chun** declared that he and several Members of the Legislative Council ("LegCo") had accepted a dinner invitation extended by the ICAC and hosted by, among others, Mr Timothy TONG Hin-ming during his tenure as Commissioner, ICAC.

Opening statements made at the Committee's first public hearing

13. **Mr Simon PEH Yun-lu, Commissioner, ICAC**, made an opening statement at the Committee's first public hearing held on 18 May 2013, the full text of which is in *Appendix 10*. Specifically, **Commissioner, ICAC** said that:

- the fact that the number of activities launched for OCs, public sector members and young people by the CRD had decreased in recent years did not mean that the ICAC had slackened in its community education efforts. To cope with the changing times and technological advancement, the CRD had been fine-tuning and strengthening its community education strategy to meet the evolving needs of its education targets by, say, deploying more resources to the use of the mass media and new media such as web platforms, and using new indirect training approach, i.e. disseminating anti-corruption messages within the organizations either through their own trainers who had attended the CRD's train-the-trainer ("TTT") sessions, or through training videos and anti-corruption reference packages produced by the CRD;
- instilling positive values amongst young people remained a priority in the CRD's education work. To optimize the results of youth education, the ICAC had shifted from the one-way approach of conducting classroom talks to an activity-based approach in reaching out to young people;
- in view of Hong Kong's closer economic ties with the Mainland as well as increased global concern about preventive education on corruption, the CRD had deployed more resources to organizing cross-boundary and international anti-corruption programmes;
- in relation to the two official dinners hosted for an international seminar and competition referred to in paragraph 3.22 of the Audit Report, the ICAC had no intention to "split the bills" or to circumvent the rules on expenditure limit. Over the years, the CRD had purchased wines in advance with the approval of the ICAC Commissioner for later consumption at official functions as appropriate. The rationale was that considering the ceiling for entertainment expenses under Government guidelines, it was more economical to serve wines purchased in advance than ordering them from the restaurants on the spot. According to the understanding of the working staff, since the wines were purchased with the approval by the Commissioner, the

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expenses would be calculated separately from the lunch or dinner expenses for accounting purposes;

- between 2003-2004 and 2012-2013 financial years, the CRD had arranged 548 official entertainments, amongst them 12 had not included the wine cost in the total entertainment expenses. But only four of them exceeded the expenditure ceiling when the wine cost was counted, with each meal exceeding from \$11 to \$132 per head; and
- the ICAC agreed that due care and strict economy must be exercised in the expenditure of public money. In view of the findings of the Audit Report and as a result of an internal review of relevant guidelines, the ICAC had issued a new circular to spell out more clearly the requirements in the expenditure of official entertainment as follows:
 - (a) exceptional approval needed to be sought from the Commissioner, ICAC should the official entertainment expenses exceed the ceiling, no matter whether the expenses were charged to project or entertainment vote;
 - (b) all expenditure items, including wines, dessert, snacks, etc., served before or after the same event must be included as part of the entertainment expenses. Splitting of bills or charging them to different votes was strictly prohibited; and
 - (c) to ensure checks and balances, Head of Operations would endorse official entertainments hosted by the Commissioner, ICAC; whereas Assistant Director/Administration, ICAC would check compliance of those official entertainments attended by both Commissioner, ICAC and Heads of Department.

14. At the invitation of the Committee, **Mr David SUN Tak-kei, Director of Audit**, explained the scope of the audit review on the work of the CRD at the Committee's first public hearing. The full text of the Director's speech is in *Appendix 11*.

B. Summoning Mr Timothy TONG Hin-ming, former Commissioner, ICAC, to attend before the Committee to give evidence

15. During the public hearing on 18 May 2013, Mr Timothy TONG Hin-ming informed the Committee that as the DoJ had commenced a criminal investigation against him, he considered it inappropriate for him to answer some of the Committee's questions because he was not sure about the effect of such discussions on the investigation. In view of Mr TONG's stance, the Committee decided to exercise its power under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the attendance of Mr TONG before it to give evidence and to produce any paper, book, record or document in his possession or under his control. The Committee further decided that Mr TONG should be examined on oath. A summons was served on Mr TONG on 21 May 2013.

16. Mr Timothy TONG Hin-ming attended the public hearings on 24 May, 1 June, 25 September and 18 October 2013 as summoned and gave evidence under oath.

17. Prior to the holding of the public hearing on the morning of 24 May 2013 at which Mr Timothy TONG Hin-ming was to attend, the Committee received a letter from the Director of Public Prosecutions drawing the Committee's attention to bearing in mind the need to protect the integrity of the investigation being conducted by the ICAC in relation to Mr TONG. The relevant letter is in *Appendix 12*.

C. Work of the CRD

18. At the public hearing held on 4 June 2013, **Ms Julie MU Fee-man, Director of Community Relations, ICAC** made an opening statement on the work of the CRD. Specifically, she said that:

- the work of the CRD could be divided into two parts, namely, providing face-to-face corruption prevention services; and publicizing anti-corruption messages through the mass media⁵;

⁵ An organization chart of the CRD is in *Appendix 13*.

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- on providing face-to-face corruption prevention services, the main work targets included business organizations, government departments, public bodies and youth. As reported in the Controlling Officer's Reports of the ICAC from 2008-2009 to 2012-2013, all the work targets had been achieved and no sign of dropping was shown. Instead growth was found in some areas;
- on publicizing anti-corruption messages through the mass media, the CRD made broad use of the internet to enhance the transparency of the ICAC and disseminate anti-corruption messages to different segments of the community. For instance, visits of the ICAC corporate website and its three thematic websites were 4 263 716 in 2012;
- the overall effectiveness of the work of the CRD was enhanced by integrating the work of "face-to-face" activities and mass media, although the CRD had been experiencing frontline staff stringency since 2007;
- although there were ups and downs on the number of OCs reached, the number of people reached by the CRD increased from 12 700 in 2008 to 38 900 in 2012;
- the CRD adopted multi-faceted channels in providing corruption prevention education to OCs. In particular, three toolkits respectively on maintenance, financial management and daily operation were distributed to all 8 000 plus OCs from 2008 to 2010. Apart from organizing roving exhibitions promoting clean building management, ICAC officers introduced the anti-corruption laws and related corruption prevention measures at workshops/seminars organized by the Home Affairs Department, the Hong Kong Housing Society and the Urban Renewal Authority; and
- substantial resources had been deployed for corruption prevention education on building management for OCs from 2008 to 2010. In 2011, the CRD re-deployed its resources to promote Clean District Council Elections. As OCs generally requested for technical corruption prevention advice on the procedures of building maintenance, the Corruption Prevention Department ("CPD") took over from the CRD by producing CD-Rom, posters and leaflets on corruption prevention measures for OCs. From 2008 to 2012, the CPD conducted 49 talks for 3 100 OC members and provided 179 corruption prevention advice for 150 OCs.

The full text of the Director's opening statement is in *Appendix 14*.

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19. Responding to the enquiry as to whether Audit had been provided with the information set out in paragraph 18 above before finalizing the Audit Report, **Director of Community Relations, ICAC** replied in the positive. She said that whilst the ICAC agreed with the recommendations of Audit, she would like to emphasize the following information:

- apart from providing face-to-face corruption prevention services, another major facet of the CRD's preventive education work was carried out through the mass media in view of the rapid societal changes and the development in information technology ("IT"). Whilst the main criticism of Audit on the CRD's work regarding preventive education was on the drop in the number of OCs reached since 2010, it acknowledged that the number of people reached each year increased from 12 700 in 2008 to 38 900 in 2012;
- the figures shown in Tables 5, 6 and 8 of the Audit Report on the decreases in the numbers of people and organizations reached were brought about by changes in the CRD's strategy on enlisting public support against corruption. Such changes included deploying more resources from district entrenchment activities to the production of publications like toolkits for various trades, as well as tailor-made presentation contents with case studies to meet the need of the CRD's clients; attending regular meetings of district consultative committee meetings and ceremonial functions strictly on the basis of operational need; and changing co-operation format with district organizations as partners to join/sponsor the community activities, for instance, starting from 2010-2011, the CRD began to use the platform of the District Fight Crime Committees to disseminate probity messages, rather than joining hands with them to conduct fight crime activities; and
- in recent years, the CRD had also enhanced its efforts in strengthening the ICAC's relationship with international and Mainland anti-corruption agencies through duty visits, receiving visits and co-organizing projects such as conferences and competitions. For instance, the CRD had since 2008 co-organized thematic conference with Ministry of Supervision ("MoS") and the Commission Against Corruption of Macao for exchange of corruption prevention and education experience. In 2011, as a member of the International Association of Anti-Corruption Authorities ("IAACA"), the ICAC was appointed by the IAACA to host the International Anti-Corruption PSA Video Competition and Workshop in December 2011 in Hong Kong. In addition, the CRD assisted in the execution of large scale regional/international

conferences on global anti-corruption issues organized by the Centre of Anti-Corruption Studies ("CACS") in 2009, 2010 and 2013.

20. **Director of Audit** said that all the relevant information provided by the ICAC to Audit had been included in the Audit Report.

21. On whether the efforts made by the CRD in stepping up regional, international and Mainland liaison work on corruption prevention in recent years were brought about by the need for the ICAC to comply with the UNCAC, **Director of Community Relations, ICAC** replied in the positive.

22. At the request of the Committee, **Commissioner, ICAC** provided papers presented to the ICAC's Citizens Advisory Committee on Community Relations ("CACCR")⁶ for endorsing the new work strategy of the CRD, including repositioning the Mainland liaison work and district work of the CRD (in *Appendix 15*). **Commissioner, ICAC** also provided extract of the minutes of meeting of the CACCR on the discussion of the paper entitled "Mainland Liaison Work of the ICAC - Review and the Way Forward" (CACCR Paper 11/2009) in *Appendix 16*.

23. The Committee enquired about the reason(s) for the deployment of 18 officers, i.e. 12 Commission Against Corruption Officers ("CACOs") and six Assistant Commission Against Corruption Officers ("ACACOs"), in 2010 and 2011 from the CRD regional offices to the Headquarters units. **Director of Community Relations, ICAC** explained that the deployment was made to divert part of the resources for carrying out district entrenchment activities to the Headquarters units responsible for corruption prevention work of the business sector and youth programme areas. An example was that since 2011, the CRD had implemented a programme for small and medium enterprises ("SMEs") in Guangdong, Hong Kong and Macao. The programme included the production of a corruption prevention guide, developing a network of some 70 trade associations to promote anti-corruption messages and a series of conferences/workshops. In respect of youth as a priority target, the major activities included developing a module on personal ethics for

⁶ The terms of reference of the Citizens Advisory Committee on Community Relations are to: (a) advise the Commissioner, ICAC measures to be taken to foster public support in combating corruption and to educate the public against the evils of corruption; (b) receive and call for reports on action taken by the CRD in pursuance of the above; and (c) monitor community response to the ICAC's work and public attitudes towards corruption in general. The ICAC has four advisory committees comprising prominent citizens appointed by the CE to oversee the work of the ICAC. All four advisory committees are chaired by civilian members.

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tertiary students, and the ICAC Ambassador Programme for 11 tertiary education institutions, which created a network for 140 tertiary students to organize activities on campus to put across probity messages to their fellows.

24. In response to the Committee on the manpower support for the CRD's "web" media in anti-corruption work in recent years, **Director of Community Relations, ICAC** advised that the CRD had recruited three IT staff.

25. On the impact of the ICAC's Common Recruitment Scheme on the manpower situation of the CRD⁷, **Director of Community Relations, ICAC** responded that:

- the Common Recruitment Scheme was a new training strategy implemented in 2007-2008 to equip officers with the requisite skills to be deployed to any department within the organization. Decision on implementing the Scheme was made at a strategy review forum attended by the then Commissioner, ICAC and Heads of Department;
- such new officers were first deployed to undergo training in the Operations Department ("OPS") and then in the CRD and the CPD; and
- being the largest department, most of these officers eventually returned to the OPS after undergoing training in the CRD lasting 12 to 18 months. This was not conducive to manpower planning and succession in the CRD.

26. **Commissioner, ICAC** supplemented that after taking up his office, Heads of Department had reflected to him the manpower problems created by the Common Recruitment Scheme. After review, the ICAC decided to shelf the Scheme. Hitherto, each department would recruit staff on its own.

27. On the question of whether the Common Recruitment Scheme had adversely affected the overall work output of the CRD, **Director of Community Relations,**

⁷ As revealed in the information provided by the ICAC in *Appendix 17*, as at 1 April 2013, the established posts and staff in posts of the CRD were 184 and 172 respectively.

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ICAC replied in the negative, albeit CRD staff had to set aside time and efforts from their already tight schedules to train new officers.

Preventive education

28. The Committee noted from Table 3 in paragraph 2.28 of the Audit Report that two of the 10 departments which had the largest number of complaints/reports amongst all bureaux/departments ("B/Ds") between 2007 and 2011, i.e. the Lands Department ("LandsD") and the Correctional Services Department ("CSD"), had the lowest numbers of staff who attended CRD talks on corruption prevention, i.e. 793 out of 3 752 and 1 223 out of 6 669 respectively. Whilst noting that attending such talks was voluntary, the Committee considered that the CRD should more proactively approach these departments concerned to provide preventive education.

29. **Director of Community Relations, ICAC** responded that:

On LandsD

- the CRD visited the LandsD on 8 May 2013 to discuss the training needs. It was agreed that the ICAC would conduct talks for around 1 300 directorate and professional grade staff in 2013-2014 and 2014-2015. LandsD would consider arranging training for the remaining staff of the department, thus completing a five-year training cycle by 2017-2018 for a total of about 4 100 staff. LandsD would also consider uploading ICAC training materials onto their intranet to reinforce staff awareness on the anti-corruption legislation and conflict of interest;

On CSD

- before 2007, the ICAC talks were arranged for serving officers in most CSD institutions annually. However, such an arrangement was considered not cost-effective in view of the remoteness of most of the institutions, and that most training sessions were conducted after shift hours with officers attending in batches. To enhance cost-effectiveness, a TTT approach was adopted. Subsequently in 2008 with the support of the ICAC, the CSD developed the Training Kit on Managing Staff Integrity for use by CSD trainers in staff training. The CRD had so far conducted 20 TTT workshops for 547 trainers;

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- the CSD established the Departmental Ethics Committee ("EC"), headed by the Deputy Commissioner, CSD, to steer the promotion of ethics and integrity in the CSD in 2007. An Assistant Director of CRD was a regular member of the EC; and
- currently, all CSD new recruits receive training conducted by ICAC officers. Training on particular ethical subjects, including managing staff integrity and conflict of interest, had also been arranged for specific target groups upon the CSD's requests. The CRD would propose to review the training arrangements in the coming EC meeting.

30. On providing preventive education talks to politically appointed officials who might not be conversant with government rules and regulations, **Director of Community Relations, ICAC** replied that the CRD had previously given two talks to these officials. The CRD was presently in discussion with the Chief Secretary for Administration's Office about talk arrangement for those politically appointed officials who had never attended the corruption prevention talk.

31. The Committee enquired whether resource constraint was the reason for the CRD not taking a proactive role in providing more preventive corruption talks to target groups.

32. **Director of Community Relations, ICAC** responded that the main reason for the CRD not being able to provide more preventive corruption talks to target groups was due to the difficulty in fixing a date and time with the target groups for holding the talks. Resources were not a factor, as evidenced by the Controlling Officer's Reports that the CRD had achieved its work targets in reaching out to the target groups.

Enlisting public support

33. According to paragraph 3.15 of the Audit Report, the CRD operates seven ICAC Regional Offices at various locations (in Appendix C of the Audit Report) to provide face-to-face preventive education services to the public and reach out to the local communities to enlist support for the ICAC's work. According to the CRD, the Offices also serve as focal points for receiving corruption reports and answering enquiries about corruption. They are either wholly or partly located on ground floors to facilitate walk-in complaints and enquiries.

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34. The Committee noted from Table 12 referred to in paragraph 3.17 of the Audit Report that the number of enquiries about corruption received through Regional Offices had dropped from 3 012 in 2008 to 2 304 in 2012. The number of enquiries received through the New Territories South West and the New Territories North West Offices were particularly low at 176 and 93 respectively in 2012. The Committee also noted that according to paragraph 3.18 of the Audit Report, the Hong Kong West/Islands Office, with part of it located on ground floor of a commercial building which costs higher rent, received only 291 corruption reports or enquiries in 2012 (i.e. on average about one corruption report or enquiry each day). The Committee enquired about the reason(s) for the low numbers of enquiries received and the justifications for maintaining these Offices.

35. **Director of Community Relations, ICAC** responded that:

- the CRD had endeavoured to find out the reason(s) for the small number of people coming to the New Territories South West and the New Territories North West Offices to make enquiries on corruption. The CRD however observed that people who came to these two Offices to make enquiries on corruption were not necessarily people living in the vicinity of the Offices;
- to save costs, part of the Hong Kong West/Islands Office was located on the ground floor of a commercial building in Sheung Wan and part on the 10th floor of a Government building in Central. The main reason for maintaining part of the Hong Kong West/Islands Office on the ground floor of a commercial building was to facilitate walk-in complaints and enquiries;
- in view of the small and decreasing numbers of corruption reports and enquiries received through the Regional Offices, the CRD had taken steps to locate its Regional Offices in government buildings where practicable. The New Territories East Office was a case in point; and
- the CRD would conduct a strategic planning workshop in the fourth quarter of 2013 to develop a five-year strategic plan for the department. A review of the Regional Offices, such as their functions, location and cost-effectiveness, etc, would be one of the discussion items of the workshop.

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36. On the justifications for maintaining the seven Regional Offices, **Director of Community Relations, ICAC** said that receiving corruption reports and enquiries was only part of the functions of Regional Offices. Regional Offices also performed the duties of providing preventive education for various targets; enlisting support of the local community; and serving as Programme Co-ordinator. Further elaboration on the justifications for the ICAC to operate the seven Regional Offices is in *Appendix 18*.

37. At the request of the Committee, **Commissioner, ICAC** provided details of the annual operating costs of each of the seven Regional Offices in *Appendix 19*.

D. Expenditures of the ICAC

Overview

Overall expenditures of the ICAC

38. According to paragraph 1.4 of the Audit Report, the ICAC's expenditure is met from the Government General Revenue Account. The Commissioner, ICAC is the Controlling Officer accountable for the expenditure. As part of the Government's budgetary exercise, the ICAC is required to submit estimates of its annual expenditure for the approval of the LegCo. In 2012-2013, of its total estimated expenditure of \$876 million, \$152 million is for the programmes of preventive education and enlisting public support against corruption, including the costs of 220 ICAC staff responsible for the programmes.

39. As revealed in the information provided by the ICAC (in *Appendix 20*), the annual funding and expenditure of the ICAC increased from \$708.2 million in 2003-2004 by 23.6% to \$875.5 million in 2012-2013 and from \$703.3 million in 2003-2004 by 22.6% to \$861.9 million in 2012-2013 respectively. As regards the CRD, its annual funding and expenditure increased from \$119.8 million in 2003-2004 by 26.6% to \$151.7 million in 2012-2013 and from \$119.9 million in 2003-2004 by 23.7% to \$148.3 million in 2012-2013 respectively (in *Appendix 21*).

40. The Committee noted that despite the aforesaid increases in the annual funding and expenditure of the ICAC and the CRD in the past 10 years, there was a declining trend:

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- in the numbers of people and organizations reached by the CRD, despite the fact that it was stated on the ICAC's website that face-to-face contacts with different segments of the community and the general public was one of the most effective ways to get the anti-corruption messages across; and
- in the numbers of community activities with sponsorship, despite the fact that providing sponsorship to the CRD's activities was an important form of public support and participation,

as revealed in the information provided by the ICAC (in *Appendices 22 to 25*) and in Tables 1, 5, 6, 7 and 8 of the Audit Report. Specifically:

On preventive education

- (a) the number of OCs reached through talks, visits/meetings and seminars/workshops decreased from 1 150 in 2003 by 32.3% to 779 in 2012;

On enlisting public support

- (b) the number of talks, visits and meetings decreased from 1 358 in 2003 by 23.4% to 1 040 in 2012;
- (c) the number of multi-faceted activities (such as roving exhibitions and various types of competitions and games) decreased from 300 in 2003 by 2.7% to 292 in 2012;
- (d) the number of meet-the-public sessions decreased from 69 in 2003 by 52.2% to 33 in 2012; and
- (e) the number of the CRD's community activities with sponsorship decreased from 76 in 2003 by 73.7% to 20 in 2012.

41. The Committee enquired Mr Timothy TONG Hin-ming whether the drop in the overall work output of the CRD in providing the public with preventive education and enlisting public support against corruption was because increased resources were used on official entertainment, gifts, and duty visits outside Hong Kong during his tenure as Commissioner, ICAC, having regard to the following information provided by the ICAC:

Expenditures on official entertainment

- expenditures of the whole ICAC on official entertainment increased from \$163,988 in 2003-2004 by 174.8% to \$450,663 in 2012-2013 (in *Appendix 26*). Breakdown of the expenditures on official entertainment by the three functional departments, i.e. the OPS, the CRD and the CPD, and by Common Services⁸, were only available from 2006-2007⁹. Whilst there was no breakdown of the expenditures on official entertainment by the CRD before 2006-2007, according to the CRD's official entertainment expenses on lunches and dinners charged to the CRD's entertainment vote from 2003-2004 to 2012-2013 (in *Appendix 27*), the total expenditure were \$36,414 in 2003-2004; \$85,875 in 2004-2005; \$105,246 in 2005-2006; \$92,286 in 2006-2007; \$88,186 in 2007-2008; \$84,297 in 2008-2009; \$119,100 in 2009-2010; \$142,453 in 2010-2011; \$76,791 in 2011-2012; and \$71,427 in 2012-2013. These official entertainment expenses of the CRD did not include the lunches and dinners charged to the CRD's publicity vote (in *Appendix 28*)¹⁰;
- under the official entertainment (common services) vote, the expenditures in the seven financial years were \$256,379 in 2006-2007; \$427,534 in 2007-2008; \$247,315 in 2008-2009; \$429,267 in 2009-2010; 430,357 in 2010-2011; \$281,137 in 2011-2012; and \$334,920 in 2012-2013 (in *Appendix 29*). Of this vote, expenditures relating to the activities of the CRD were \$21,070 in 2006-2007; \$78,889 in 2007-2008; \$28,198 in 2008-2009; \$11,880 in 2009-2010; \$55,956 in 2010-2011; \$94,989 in 2011-2012; and \$22,652 in 2012-2013 (in *Appendix 30*);

8 According to the ICAC, the official entertainment (common services) vote is only available from 2006-2007. The expenditure under this Vote covers mainly entertainment activities hosted by the Commissioner, ICAC and other "Commission-wide" events such as receptions for awards ceremonies for staff, receptions or dinners organized for the ICAC training programmes such as the Chief Investigator Command Courses and staff exposure training in the Mainland (in *Appendix 29*).

9 According to the ICAC, as the Government Financial Management Information System ("GFMIS") for keeping payment transactions information was rolled out in December 2007, it will require substantial time and effort to retrieve information prior to that period. Besides, old payment vouchers beyond the seven-year retention period have either been destroyed or bundled for destruction. The breakdown of expenditures on official entertainment and duty visits for 2006-2007 could be obtained because they were used for testing and commissioning the GFMIS before its roll-out. Similar breakdown before 2006-2007 is not available.

10 According to the "Guide for Finance Matters" issued by the Finance Office of Administration Branch ("ADM") in September 2007, entertainment charges are charged to the publicity vote if the entertainment is provided as a component part of a publicity project and the entertainment targets are mainly the targets of that project.

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- there was a significant increase in the numbers of bottles of wine and hard liquor, notably moutai, bought and consumed by the ICAC¹¹ as follows:

By the CRD

- (a) the numbers of bottles of wine bought and consumed by the CRD from 2003-2004 to 2006-2007 was both 72, whereas the numbers of bottles of wine bought and consumed by the CRD from 2007-2008 to 2012-2013 were 321 and 280 respectively (including 18 bottles of wine purchased on behalf of the Administration Branch of the ICAC ("ADM") and consumed at the welcome dinner of the opening ceremony of the CACS);
- (b) the numbers of bottles of hard liquor bought and consumed by the CRD from 2003-2004 to 2006-2007 was both 11, whereas the numbers of bottles of hard liquor bought and consumed by the CRD from 2007-2008 to 2012-2013 were 70 and 68 respectively (including six bottles of moutai purchased on behalf of ADM and consumed at the welcome dinner of the opening ceremony of CACS);

By the ADM

- (c) the numbers of bottles of wine bought and consumed by the ADM from 2007-2008 to 2012-2013 were 545 and 468 respectively; and
- (d) the numbers of bottles of hard liquor bought and consumed by the ADM from 2007-2008 to 2012-2013 were 55 and 46.5 respectively;

Details of the stock of wine and hard liquor kept by the CRD from 2003-2004 to 2012-2013 and by the ADM from 2007-2008 to 2012-2013 are in *Appendices 31 and 32* respectively. Breakdown of the stock of hard liquor kept by the CRD and by the ADM by moutai,

¹¹ According to the ICAC, the OPS and the CPD do not stock wine and/or hard liquor for official entertainment. If the OPS and the CPD should decide to serve wine and/or hard liquor for official entertainment, it is the general practice of these two departments to purchase and bring the wine and/or hard liquor to the venue or order the same on the spot.

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cognac and 水井坊 from 2003-2004 to 2012-2013 are in *Appendices 33 and 34* respectively¹²;

- the amounts spent on wine and hard liquor procured by the CRD and the ADM for use in entertainment functions during the tenure of Mr Timothy TONG Hin-ming are \$102,600 and \$98,000 respectively (in *Appendix 35*);

Expenditures on gifts

- according to the opening statement made by the Commissioner, ICAC at the meeting of the LegCo Panel on Security held on 27 May 2013, the total value of the gifts/souvenirs presented by Mr Timothy TONG Hin-ming during his tenure to government officials of different places was \$282,873, including cookies worth \$56,800, as well as souvenirs worth \$7,500 presented to persons whose duties were related to the official businesses of the ICAC, such as academics and personnel of non-governmental organizations. Apart from the aforesaid, each department of the ICAC also presented gifts/souvenirs, worth some \$433,500, in the name of Mr TONG at official functions of the ICAC. In all, the total value of gifts/souvenirs presented during the tenure of Mr TONG was some \$724,000. The full text of the Commissioner's opening statement is in *Appendix 36*;

Expenditures on duty visits outside Hong Kong

- expenditures of the whole ICAC on duty visits outside Hong Kong increased from \$653,639 in 2003-2004 by 157.3% to \$1,681,910 in 2012-2013 (in Appendix 26). Breakdown of the expenditures on duty visits outside Hong Kong by the three functional departments, i.e. the OPS, the CRD and the CPD, and by Common Services¹³, were however only available from 2006-2007; and

12 According to the ICAC, as the GFMIS for keeping payment transactions information only came into operation in 2007-2008, it will require substantial time and effort to retrieve information prior to that period. Besides, old payment vouchers after the seven-year retention period have either been destroyed or bundled for destruction. However, having consulted the experienced officers concerned, the ICAC believes that there was no wine and hard liquor stock kept in the ICAC prior to 2007-2008.

13 According to the ICAC, the duty visits outside Hong Kong (common services) vote is only available from 2006-2007 to mainly cover trips headed by the Commissioner, ICAC or for trips to promote the work of more than one of the three functional departments of the ICAC.

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- under the duty visits outside Hong Kong (common services) vote (in *Appendix 37*), the expenditures and the numbers of trips led by Mr Timothy TONG Hin-ming were \$430,316 and five trips in 2007-2008; \$716,309 and six trips in 2008-2009; \$822,723 and seven trips in 2009-2010; \$831,808 and nine trips in 2010-2011; \$1,035,341 and six trips in 2011-2012; and \$71,115 and one trip in 2012-2013. Total expenditure was \$3,907,612 for 35 trips¹⁴.

42. **Mr Timothy TONG Hin-ming** responded that:

- he did not agree that the overall work output of the CRD had dropped during his tenure as Commissioner, ICAC;
- the work of the CRD should be viewed in totality. Whilst face-to-face contacts with different segments of the community and the general public was one of the most effective ways to get the anti-corruption messages across, the CRD had in recent years adjusted its work strategy to make greater use of the mass media and web platforms to disseminate probity messages and enlist public support in fighting corruption. To his understanding, the ICAC corporate website and its three thematic websites for youth, teachers, business organizations and professionals respectively had several million visits each year and the viewership of the ICAC drama series was high. Other changes in the work strategy included making more use of an indirect approach to put across anti-corruption messages such as diverting part of the resources previously dedicated to district activities to the production of anti-corruption toolkits to cater to the needs of various trades and target groups, organizing the TTT sessions and stepping up regional, international and mainland liaison through duty visits, receiving visitors and co-organizing projects such as conferences and competitions. The changing work strategy of the CRD was endorsed by the CACCR;
- the fact that certain areas of the work of the CRD had dropped in a particular year should not be taken to mean that the CRD had performed less than satisfactory, as the focus of the work of the CRD was adjusted yearly based on manpower and cost-effectiveness considerations. A case in point was that less resources were deployed in providing

¹⁴ According to the ICAC (in *Appendix 38*), Mr Timothy TONG Hin-ming undertook one duty visit outside Hong Kong which was not charged to any ICAC vote, i.e. a one-day trip to Shenzhen, China on 19 August 2011 to exchange views and experience on anti-corruption work with the Shenzhen Municipal Commission for Discipline Inspection and the Shenzhen Municipal Supervision Department.

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preventive education on building management to OCs due to "seasonal factor";

- rises in official entertainment expenditures were attributable to increased liaison with Mainland and international anti-corruption agencies brought about by the following developments:
 - (a) on 16 February 2006, the UNCAC came into force for China and the Convention became applicable to the Hong Kong Special Administrative Region ("HKSAR") at the same time. The Government of the HKSAR was also informed by the Central People's Government ("CPG") at the same time that the ICAC was designated as the authority to assist other States Parties to the Convention in developing measures for the prevention of corruption¹⁵. Under a declaration filed by the CPG under the UNCAC to the United Nations, the ICAC was designated to be the authority for the HKSAR of the People's Republic of China to assist other States Parties in developing and implementing specific measures pertaining to corruption prevention in accordance with the provisions of paragraph 3 of Article 6 of UNCAC;
 - (b) because of the application of the UNCAC, the Supreme People's Procuratorate of the People's Republic of China ("SPP") established the International Association of Anti-Corruption Authorities in 2006 and the MoS set up the National Bureau of Corruption Prevention in 2007. Therefore, there was a need for the ICAC to strengthen its contact with the SPP and its systems of procuratorates and step up co-operation with the MoS; and
 - (c) coupled with the relocation of the ICAC to its new headquarters building in North Point in December 2007, the number of people visiting the ICAC on their own and upon invitation to learn and share experience about corruption prevention soared, numbering tens of thousands a year;

¹⁵ As advised by the ICAC, the UNCAC became applicable to Hong Kong under Article 153 of the Basic Law. Article 153 provides that "The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements."

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- the stepping up of Mainland and international liaison had already commenced prior to his assumption of the office of ICAC Commissioner on 1 July 2007, as evidenced in the 2006 annual report of the ICAC;
- the provision of wine and/or hard liquor in official lunches/dinner was for hospitality purpose; and
- the increased provision of wine and/or hard liquor in official entertainment was made having regard to the growing trend in drinking wine during meals and the background and standing of the guests and the responsibility of the ICAC to contribute to the anti-corruption cause under the UNCAC. In respect of the latter, visitors from the Mainland and an array of jurisdictions visited the ICAC. They were briefed and invited to observe the work of the ICAC and share experiences in establishing and developing a corruption resistant culture.

43. According to the information provided by the ICAC (in *Appendix 39*), the total expenditure of the ADM increased significantly from \$27,181,000 in 2006-2007 to \$43,648,000 in 2007-2008. As the ADM was under the direct supervision of ICAC Commissioner, the Committee enquired Mr Timothy TONG Hin-ming about the reasons(s) for such a jump in expenditure.

44. **Mr Timothy TONG Hin-ming** responded that he was not in a position to provide a definitive answer in the absence of the breakdown of the total annual expenditure of the ADM. However, **Mr TONG** pointed out that:

- the high operation costs of the new ICAC headquarters building should be one of the main factors for the significant increase in the total expenditure of the ADM from 2006-2007 to 2007-2008;
- should staff cost be one of the contributing factors for the significant increase in the total expenditure of the ADM from 2006-2007 to 2007-2008, the posts concerned should be created long before he took up the office of ICAC Commissioner given the lead time required for the creation of posts under the established procedures;
- in submitting the ICAC's estimates of its annual expenditure to the Financial Services and the Treasury Bureau ("FSTB") for consideration,

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ICAC Commissioner was required to provide justifications for the estimates, including bids for funding new expenditure initiatives;

- allocation of funding within the ICAC was determined by the Commissioner, ICAC in discussion with Heads of Department; and
- the Office of Strategic Research ("OSR") was set up under the ADM to strengthen the capabilities of the ICAC in the areas of policy planning, strategic and administrative management, and to enhance the co-ordination of work amongst the OPS, the CRD and the CPD to achieve maximum efficiency in performance.

OSR

45. At the request of the Committee, **Commissioner, ICAC** stated in his written replies (in *Appendix 40*) that the OSR was set up in August 2007 under the ADM with an annual staff cost of around \$2 million until its eventual disbandment in September 2012. By internal deployment, the OSR was staffed with one CACO (Upper) from the OPS and two CACOs (Middle) from the CRD and the CPD¹⁶.

CACS

46. According to the information provided by the ICAC on the breakdown of the annual total expenditure of the ADM from 2003-2004 to 2012-2013 requested by the Committee (in *Appendix 41*), the Committee noted that one of the factors for the increase in total annual expenditure of the ADM was the setting up of the CACS in December 2008. The annual expenditure of the CACS was \$5,911,781 in 2009-2010; \$5,774,292 in 2010-2011; \$5,206,810 in 2011-2012; and \$5,551,924 in 2012-2013 (in *Appendix 42*). The Committee further noted that although the CACS was formally set up under the ADM in April 2009, it was transferred to the CPD for the period from January 2011 to August 2012. In the light of this, the Committee enquired Mr Timothy TONG Hin-ming whether it was his idea to set up the CACS and the reasons for its transfer to the CPD.

¹⁶ According to the ICAC, after the current Commissioner, ICAC took office in July 2012, he studied the work of the OSR. He found that the responsibilities of the OSR could be taken up by the CACS. As such, after discussing with the Heads of Department, it was unanimously decided that the OSR be disbanded in early September 2012.

47. **Mr Timothy TONG Hin-ming** responded that:

- it was his idea to set up the CACS under the ADM to facilitate and conduct research and analytical studies on issues pertaining to the development of anti-corruption initiatives locally, regionally and internationally; and to co-ordinate research initiatives under the three-pronged anti-corruption strategy of the ICAC; and
- the reason for transferring the CACS to the CPD was to take advantage of CPD's corruption prevention expertise so as to enhance the professionalism of the CACS.

48. At the request of the Committee, **Commissioner, ICAC** provided explanations on why the CACS was transferred from the ADM to the CPD and subsequently transferred back to the ADM in September 2012 (in *Appendix 43*). Extracts of the minutes of meetings on the setting up of the CACS held on 4 August 2008 and 8 September 2008 provided by the ICAC are in *Appendix 44*.

49. According to the information on the headcount of the CACS provided by the ICAC (in *Appendix 45*), two temporary contract term staff, i.e. one Legal Research Officer and one Senior Consultant, were hired by the CACS in 2010-2011. **Mr Timothy TONG Hin-ming** explained that these two temporary staff were hired to lay down better groundwork for the work of the CACS on developing anti-corruption theories and facilitating corruption related researches and analytical studies.

50. Noting that the Senior Consultant was a Mainland scholar, the Committee enquired about the justification for the appointment as the ranking of China was much lower than that of Hong Kong in the Corruption Perceptions Index published by the Transparency International.

51. **Mr Timothy TONG Hin-ming** responded that:

- the fact that China ranked much lower than Hong Kong as the least corrupt place around the world did not necessarily mean that there were no distinguished scholars in the Mainland to qualify for the senior consultant post in the CACS; and

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- Professor YUAN Bo-shun was hired to take up the senior consultant post in the CACS because he was familiar with China policies and laws with international perspectives to provide insights in Mainland's anti-corruption policies and development for effective implementation of anti-corruption initiatives through compliance of the UNCAC.

52. As to how Professor YUAN was selected and hired¹⁷, **Commissioner, ICAC** stated in his reply to the Committee (in *Appendix 46*) that:

- in view of the special requirements of the post concerned, the ICAC commissioned the Association of University Anti-Corruption Research Centres ("the Association") to assist in recruiting an expert instead of following the general practice of hiring through public recruitment. The Association was a joint academic organization with anti-corruption research experts representing anti-corruption research and education centres of over 20 renowned universities in the Mainland; and
- according to the ICAC requirements, the Association identified scholars with expertise in anti-corruption studies from universities on the Mainland. Subsequently, three Mainland scholars renowned for anti-corruption studies were recommended to the ICAC for consideration. Having contacted those three scholars, the ICAC eventually hired Professor YUAN Bo-shun, Associate Dean of the Public Administration Faculty, Hunan University, as Research Consultant for a term of one year.

53. At the request of the Committee, **Commissioner, ICAC** provided information on the types of work that had been carried out/completed by Professor YUAN Bo-shun during his one-year tenure at the CACS (in *Appendix 47*); and the activity summary of the CACS from its inception at 2008-2009 to 2012-2013 (in *Appendix 48*).

Responses from the ICAC at the public hearing

54. **Mrs Jennie AU-YEUNG WONG Mei-fong, Assistant Director of Administration, ICAC** advised that increases in the annual expenditure of the ICAC

¹⁷ As advised by the ICAC, the monthly salary of Professor YUAN Bo-shun was \$70,000. He was also entitled to a 15% gratuity on satisfactory completion of the one-year contract.

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from \$703.3 million in 2003-2004 by 22.6% to \$861.9 million in 2012-2013 was partly attributable to the creation of 105 established posts, i.e. 92 in the OPS, five in the CRD, six in the CPD and two in the ADM. Furthermore, since moving into the new ICAC building in late 2007, the annual electricity charges were some \$15 million on average. Other related increases were attributable to the rising Composite Consumer Price Index which had increased by 22% from 2005 to 2012.

Official entertainment

Procurement of wine and hard liquor

55. The Committee noted that the CRD as well as the ADM began to stock wine and hard liquor since 2007-2008 and that the numbers of bottles of wine, in particular those of hard liquor, bought and consumed by the CRD during the tenure of Mr Timothy TONG Hin-ming were high in comparison with the same during the tenure of other former ICAC Commissioners. An example was the procurement of 18 bottles of wine and six bottles of moutai by the CRD on behalf of the ADM for use at the welcome dinner of the opening ceremony of CACS.

56. Responding to the question as to whether the procurement of wine and hard liquor was made on his order, **Mr Timothy TONG Hin-ming** stated that:

- there were established procedures for the purchase of wine and hard liquor for official entertainment;
- if the purchase of wine or hard liquor should require the approval of ICAC Commissioner, he believed that no such purchase could be made without his approval; and
- although not each and every purchase of wine or hard liquor should require his approval, he was aware of such purchases.

57. At the request of the Committee, **Commissioner, ICAC** stated in his written replies after the hearings that (in *Appendix 49*):

- except 54 bottles of wine (at a total cost of \$5,376) and six bottles of hard liquor (at a total cost of \$5,970) which were charged to the CRD's publicity vote, the stock of wine and hard liquor procured by the CRD and the ADM of the ICAC for consumption at entertainment functions

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during the tenure of Mr Timothy TONG Hin-ming were charged to the official entertainment vote; and

- the stock of wine and hard liquor above was purchased on the instruction of Mr TONG. All the hard liquor consumed was used for official entertainment attended by Mr TONG; and all the wine consumed (with the exception of a few occasions where the presence of Mr TONG was not required) was also used for official entertainment attended by Mr TONG.

Serving of wine and hard liquor at official entertainments

58. On the need of serving wine, in particular moutai, at official entertainments and whether the ICAC had developed a wine drinking culture since his taking up of the office of ICAC Commissioner, **Mr Timothy TONG Hin-ming**, responded that:

- since the ICAC had been designated by the CPG in February 2006 to assist other States Parties to the UNCAC, an increasing number of visitors from overseas and the Mainland paid visits to the ICAC to exchange views and share experience on anti-corruption and an increasing number of large scale conferences on strengthening ICAC's relationship with international and Mainland anti-corruption agencies, such as the International Anti-Corruption PSA Video Competition and Workshop, organized and co-organized by the CRD were held. All these had given rise to more official lunches/dinners at which wine and/or hard liquor were sometimes provided in view of the nature of the occasions and/or the standing of the guests;
- although no wine and hard liquor were stocked by the CRD and the ADM prior to 2007-2008, wine and hard liquor were bought and consumed by the CRD prior to 2007-2008. For instance, 36 bottles of wine were bought and consumed in 2006-2007 and 11 bottles of moutai were consumed in 2004-2005;
- it was questionable whether consuming some 700 and 110 bottles of wine and hard liquor respectively over a period of six years from 2007-2008 to 2012-2013 could be said to be excessive; and
- although he had a habit of drinking alcohol, it did not mean that he liked drinking it on official occasions.

59. The Committee further enquired Mr Timothy TONG Hin-ming:
- whether moutai had been provided at official lunches/dinners hosted by him for guests from places other than the Mainland;
 - whether he had hosted any official lunch/dinner for Mainland officials whose offices were not the ICAC counterparts¹⁸, such as the Liaison Office of the CPG in the HKSAR ("LOCPG") and the United Front Work Department of the Central Committee of the Communist Party of China ("UFWD");
 - whether he had hosted official lunches/dinners in the absence of other ICAC staff; and
 - whether there were occasions whereby government officials had been invited to attend official lunches/dinners of the ICAC held for entertaining guests, say, from outside Hong Kong.

60. **Mr Timothy TONG Hin-ming** replied that:

- moutai had been provided in official lunches/dinners hosted by him for guests from places other than the Mainland;
- he had hosted official lunches/dinners for Mainland officials whose offices were not the ICAC counterparts, such as from the LOCPG and the UFWD;
- he had never hosted official lunches/dinners in the absence of other ICAC staff; and
- there were occasions whereby government officials had been invited to attend official lunches/dinners of the ICAC held for entertaining guests, say, from outside Hong Kong. The official duties of these government guests were related to the official business of the ICAC.

61. On whether he had made use of official entertainment with Mainland officials who were not the counterparts of the ICAC, say, from the LOCPG, to pave his way for becoming a member of the National Committee of the Chinese People's

¹⁸ The Mainland counterparts of the ICAC are the SPP and its system of procuratorates and the MoS.

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Political Consultative Conference ("CPPCC") after he left the office of the Commissioner, ICAC, **Mr Timothy TONG Hin-ming** refuted such allegations and stressed 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 the ICAC and foster co-operation on anti-corruption; and
- 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 the ICAC.

62. **Commissioner, ICAC** stated in his written replies to the Committee (in *Appendix 50*) that:

- the ICAC did not have ready records on official entertainment hosted by the OPS, the CPD and the former ICAC Commissioner before 2007-2008 as the GFMIS for keeping payment transactions information only came into operation in 2007-2008. According to the ICAC's records, the OPS and the CPD had not hosted any lunch/dinner for the officials of the LOCPG from 2007-2008 to 2012-2013;
- the ICAC could not disclose information relating to the official lunch/dinner hosted by Mr Timothy TONG Hin-ming for the LOCPG officials, as such information fell within the scope of investigation in relation to whether Mr TONG had committed the alleged offences under the Prevention of Bribery Ordinance and the common law offence of "Misconduct in Public Office". Since the ICAC had already started to investigate the alleged criminal offences, the disclosure of relevant information might affect the integrity of the investigation or jeopardize or prejudice the fairness and impartiality of the investigation, the ICAC therefore could not disclose the relevant information;
- both the former Commissioner, ICAC, Mrs Fanny LAW and himself in his current capacity as Commissioner, ICAC had not hosted any lunch/dinner for the LOCPG officials; and
- the CRD had hosted a total of 18 lunches/dinners for the LOCPG from 2003-2004 to 2012-2013. These lunches/dinners were hosted mainly for Director General of Supervision Office and Deputy Director General of Economic Affairs Department of the LOCPG for the following purposes:

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- (a) courtesy nature - to bid farewell to working partners and establish contact with newly appointed officials, and consolidate working relationships; and
- (b) operational nature - to discuss and exchange views on particular subject matters such as arrangement of corruption preventive talks/seminars for enterprises funded by the People's Republic of China in Hong Kong; to follow up on the joint thematic seminars with the MoS; to arrange officials of the Ministry of Commerce to speak at the seminars for SMEs; and to discuss the provision of tailor-made corruption prevention services for Hong Kong-funded SMEs with cross boundary businesses.

Guests attending official entertainments

63. The Committee enquired Mr Timothy TONG Hin-ming whether he had taken Dr Helen CHAN Wing-mui and Mr Bill WONG Cho-bau to official meals of the ICAC during his tenure as ICAC Commissioner.

64. **Mr Timothy TONG Hin-ming** responded that:

- he had taken Dr Helen CHAN Wing-mui and Mr Bill WONG Cho-bau to official meals of the ICAC during his tenure as Commissioner, ICAC but the number of such occasions was not high;
- although he could not recall the exact number of occasions Dr CHAN and Mr WONG had attended the official meals of the ICAC, he remembered that Mr WONG had attended a meal paid for by the ICAC to discuss how to film a promotional video for the ICAC. As regards Dr CHAN, he was not certain if there were five occasions; and
- work-related issues could be discussed on those occasions attended by Dr CHAN and Mr WONG, albeit these issues should not be of a confidential nature.

65. On the question as to whether he had reimbursed the ICAC the costs of the official meals attended by his friends in accordance with the ICAC's CSO on "Entertainment Expenses", **Mr Timothy TONG Hin-ming** replied that he

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remembered paying his friends' bill at a restaurant once, instead of making reimbursement to the ICAC subsequently.

66. On the enquiry of the Committee about the numbers of times which Mr Timothy TONG Hin-ming had taken his friends to official lunches/dinners during his tenure and whether Mr Timothy TONG Hin-ming had reimbursed the ICAC for the costs of the lunches/dinners attended by his friends, **Commissioner, ICAC** stated in his reply that:

- the ICAC had set up a special investigation under his direct command to follow up the allegation on whether Mr TONG had misconducted himself during his tenure. Relevant criminal investigation had commenced and the requested information fell within the scope of investigation; and
- to ensure that the investigation would be conducted without interference and might proceed in a fair, just and objective manner, the ICAC was obligated to strictly adhere to the principle of confidentiality and could not disclose relevant information.

67. The Committee noted that official entertainment expenditures of the CRD were charged to the CRD's entertainment vote or the CRD's publicity vote, depending on the nature of the occasions; or were charged to the official entertainment (common services) vote if the official entertainment concerned was hosted by the Commissioner, ICAC. On the desirability of such arrangements for financial monitoring, **Director of Audit** responded that:

- charging official entertainment expenditures of the CRD to the CRD's entertainment vote or the CRD's publicity vote, depending on the nature of the occasions, or charging the same to the official entertainment (common services) vote if the official entertainment concerned was hosted by the Commissioner, ICAC were acceptable;
- according to Audit's understanding, it was the practice of the ICAC to create a file for each publicity project/activity for recording all the expenditures incurred for financial monitoring. Whether there was room for improvement in such approach was a matter for the management of the ICAC to decide; and

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- all expenditures on official entertainment should be subject to the same control. According to the ICAC's CSO on "Entertainment Expenses", unless ICAC Commissioner had approved otherwise, the expenditure per head was subject to a ceiling of \$450 for dinner and \$350 for lunch.

Responses from the ICAC at the public hearings

68. **Commissioner, ICAC** stated that:

- he did not see there was a wine drinking culture since he took up the office of ICAC Commissioner. The use of wine in official lunches/dinners was not frequent and hard liquor was not used in any official lunch/dinner; and
- in view of the recent public concern over the consumption of wine and hard liquor at official entertainment of the ICAC, the ICAC had adopted/would adopt the following measures:
 - (a) the existing stock of wine and hard liquor was kept centrally in the ADM;
 - (b) prior approval from him must be sought before picking up the wine from the ADM for use in official lunches/dinners;
 - (c) future purchase of wine would be subject to his prior approval; and
 - (d) the existing stock of hard liquor would be sent to the Government Logistics Department ("GLD") for auction after the investigation under his direct command to follow up the allegation on whether Mr Timothy TONG Hin-ming had misconducted himself during his tenure had completed.

69. On whether he had entertained officials of the LOCPG since taking up his office as ICAC Commissioner, **Commissioner, ICAC** replied in the negative. He had however attended one meal hosted by the LOCPG.

70. As to whether he had entertained guests for official lunches/dinners by himself, **Commissioner, ICAC** replied that each and every official lunch/dinner he attended was in the company of other ICAC officers.

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71. **Assistant Director of Administration, ICAC** confirmed that both the OPS and the CPD had never stocked wine and/or hard liquor. Although the OPS and the CPD did not stock wine and/or hard liquor, it was the general practice of these two departments to purchase and bring the wine and/or hard liquor or order the same at the venue if it decided to serve wine and/or hard liquor at official lunches/dinners. However, it was rare for the CPD to do so.

72. Regarding the procurement of moutai stocked by the CRD, **Commissioner, ICAC** advised that clerical staff of the CRD were assigned to contact suppliers to obtain quotations and place orders by telephone, fax or email and arrange delivery. The procurements should normally be made during office hours as public funds were incurred.

73. The Committee noted from paragraphs 3.21 to 3.22 of the IRC Report that although Government regulations did not allow expenditure for entertaining Government officers to be charged to public funds, an official lunch hosted by Mr Timothy TONG Hin-ming for Government officers from Radio Television Hong Kong was charged to the official entertainment vote. IRC also found inconsistent practice in that an official lunch hosted by Mr TONG for the Commissioner on Interception of Communications and Surveillance and his staff was charged to the official entertainment vote but another two were paid from the Commissioner, ICAC's accountable entertainment allowance. Responding to the Committee's enquiry as to whether similar incidents had occurred prior to the tenure of Mr Timothy TONG Hin-ming as Commissioner, ICAC, **Commissioner, ICAC** advised that it was not possible to ascertain if there were similar incidents as the payment vouchers beyond the seven-year retention period, i.e. prior to the tenure of Mr TONG, had been destroyed.

74. Noting from paragraph 3.33 of the IRC Report that there were three cases of the ICAC having treated a cocktail reception prior to a meal as a separate event from the meal, the Committee enquired whether this was a general practice of the ICAC.

75. **Ms Sally KWAN Yee-lan, Acting Assistant Director of Administration, ICAC** responded that there was a misunderstanding of the regulation by the Supplies Office of the ADM. As part of the ICAC's follow up of the Audit Report, cocktail reception prior to a meal would be included as part of the expenditure for the meal in future.

Duty visits outside Hong Kong

76. The Committee noted from the information provided by the ICAC (in Appendix 37) that under the duty visits outside Hong Kong (common services) vote from 2007-2008 to 2012-2013, 34 of the 108 duty visits made outside Hong Kong were headed by Mr Timothy TONG Hin-ming. According to the ICAC, Mr TONG also undertook one duty visit outside Hong Kong which was not charged to any ICAC vote, i.e. a one-day trip to Shenzhen, China on 19 August 2011 to exchange views and experience on anti-corruption work with the Shenzhen Municipal Commission for Discipline Inspection and the Shenzhen Municipal Supervision Department. Details of the 35 trips headed by Mr TONG are in *Appendices 38 and 51*. The Committee further noted that the destinations of 20 of these 35 trips were the Mainland. The Committee enquired Mr TONG about the necessity of making so many trips to the Mainland and whether there was a ceiling on the number of trips which the ICAC could undertake in a year.

77. **Mr Timothy TONG Hin-ming** responded that:

- apart from visiting the SPP and the MoS in Beijing annually to consolidate work relationship, other visits to the Mainland headed by him were mainly for attending and speaking at anti-corruption conferences upon invitation to exchange experience in combating corruption, strengthen mutual liaison and discuss the direction and scope of specific co-operation projects; and exchanging views with procuratorates of other parts of the Mainland on probity building and/or exploring opportunities for co-operation; and
- there was no ceiling on the number of duty visits outside Hong Kong which the ICAC could undertake in a year, albeit these trips must be related to the work of the ICAC.

78. On whether the Chief Executive ("CE") was aware of his duty visits outside Hong Kong, **Mr Timothy TONG Hin-ming** responded that:

- prior approval of the CE must be sought for each and every duty visit outside Hong Kong¹⁹;

¹⁹ In accordance with the ICAC's Schedule of Authority, the authority to approve duty visits outside Hong Kong vests with the top management. The Commissioner, ICAC approves duty visits of the three Heads of Department, the two Directors of Operations and all non-Operations officers (except that the Director of Community Relations may approve officers in the Mass Communication Office of the CRD to undertake duty visits outside Hong Kong in relation to the production of publicity and education products).

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- apart from oral reports, written reports on significant items of his duty visits outside Hong Kong were submitted to the CE periodically; and
- work of the ICAC, including the purposes and outcome of conducting duty visits outside Hong Kong, were also reported to the Executive Council and the ICAC's Advisory Committee on Corruption ("ACOC")²⁰ which generally met three times a year.

79. At the request of the Committee, **Commissioner, ICAC** provided copies of the applications to/approvals from the CE for the 35 requests made by Mr Timothy TONG Hin-ming for attending duty visits outside Hong Kong (in *Appendix 52*).

80. The Committee queried whether submitting applications to the CE for seeking approval to attend duty visits outside Hong Kong was merely a formality, as evidenced by the following non-compliances revealed in the IRC Report:

- according to paragraph 5.12(c) of the IRC Report, in four duty visits, procurement orders for air passages of Mr Timothy TONG Hin-ming had been issued before the approval for the duty visits from the CE was obtained;
- according to paragraph 5.13 of the IRC Report, prior to attending the duty visit to Beijing-Chengdu-Leshan (16 to 23 May 2010), Mr Timothy TONG Hin-ming left Hong Kong two days earlier for private reasons. Whilst Mr TONG did not claim subsistence allowance for 14 and 15 May 2010, no approval from the CE to modify the air passage for private reasons has been found; and
- according to paragraph 6.1(l) of the IRC Report, the following two duty visits, i.e. Beijing-Yunnan-Lijiang (11 to 17 January 2009) and Beijing-Chengdu-Leshan (16 to 23 May 2010), involved excessive non-official duty related activities. In Mr Timothy TONG Hin-ming's applications to the CE seeking approval for the aforesaid two duty visits, reference was only made to visiting Yunnan and Sichuan. There was no specific mention that the itineraries would cover Lijiang and Leshan.

²⁰ The ICAC's ACOC is the principal advisory body of the ICAC and oversees all the ICAC's activities. Its membership includes the chairmen of the Operations Review Committee, Corruption Prevention Advisory Committee and Citizens Advisory Committee on Community Relations who serve on the ACOC as ex-officio members.

81. **Mr Timothy TONG Hin-ming** responded that:

- submitting applications to the CE seeking approval for duty visits outside Hong Kong was no mere formality, as the CE must be informed of the purpose of the duty visit, the persons/organizations to meet during the duty visit, where the Commissioner, ICAC could be reached during duty visits, and who should double up the Commissioner's post during the latter's absence;
- he was not aware of the non-compliances referred to in paragraphs 5.12(c) and 5.13 of the IRC Report, until after the release of the IRC Report. Whilst he was not involved in the non-compliances concerning procurement of air passages referred to in paragraph 5.12(c) and 5.13 of the IRC Report, it could not be ruled out that such non-compliances were due to administrative oversights; and
- he had reservation about paragraph 6.1(l) of the IRC Report.

82. After reviewing the 35 duty visits outside Hong Kong attended by Mr Timothy TONG Hin-ming, the Committee sought information/clarification from Mr TONG on the following duty visits:

- Beijing and Yunnan (11 to 17 January 2009);
- Beijing and Chengdu, Sichuan (16 to 23 May 2010);
- Hangzhou (14 to 17 November 2008);
- Beijing and Guangxi Zhuang Autonomous Region (25 to 29 May 2008);
- Salvador, Brazil and London, United Kingdom ("UK") (8 to 14 April 2010); and
- Shenzhen (21 to 23 January 2008).

Beijing and Yunnan (11 to 17 January 2009)

83. The Committee noted that information contained in the applications to the CE for duty visits outside Hong Kong was less than that contained in the details of the 35 trips referred to in paragraph 76 above. For instance, no reference was made

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to the visit to Lijiang in Mr Timothy TONG Hin-ming's application to the CE for the duty visit to Beijing and Yunnan from 11 to 17 January 2009. The Committee further noted from the itinerary of the duty visit to Beijing-Yunnan-Lijiang provided by the ICAC (in *Appendix 53*) that the visit to Lijiang mainly involved visits to scenic spots.

84. The Committee enquired Mr Timothy TONG Hin-ming:

- whether he would first discuss with the receiving party(ies) the details of the duty visits, such as the places to visit and the duration of the visits, prior to submitting his applications to the CE to attend the duty visits; and
- whether he had ever turned down any sightseeing activity(ies) arranged by the receiving party(ies).

85. **Mr Timothy TONG Hin-ming** replied that:

- prior to deciding whether to conduct a duty visit outside Hong Kong, he was consulted by the ICAC staff on the framework of the visit, such as the purpose and the main persons/organizations to meet. Subject to his agreement, the ICAC staff then proceeded to follow up with the receiving party(ies) to work out the detailed itineraries of the duty visits;
- he was mostly concerned about the persons/organizations he would meet during the visits and the topics to be discussed, and had sometimes made suggestions in this regard to the receiving party(ies);
- in respect of his duty visits to the Mainland, they were co-ordinated by the Hong Kong Mainland Liaison Office ("HKMLO") of the CRD²¹ in discussion with the SPP in Beijing;
- it was generally the practice of the SPP to propose that after the trip in Beijing, the ICAC delegation should visit another province(s)/region(s)

21 According to the ICAC, the ICAC's HKMLO, established on 5 February 1997, is responsible for co-ordinating non-investigative Mainland liaison work. Before the handover and back in the 1980s, the HKMLO's work generally was relatively passive in that the HKMLO only organized exchange programmes at the request of Mainland counterparts for the purpose of establishing good relationships. Exchanges concerning general information and anti-graft experience were confined to Guangdong Province and targeted at government organizations and senior officials in the Mainland. The liaison work involved mutual visits between senior officials, staff training, seminars, joint production of anti-corruption publications and so on.

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in the Mainland for the delegation to meet with local procuratorates and supervision authorities to exchange experience and views on anti-corruption work and/or to explore opportunities for co-operation. Generally speaking, there was little room for the ICAC to alter the itineraries put forward by these receiving party(ies). In the case of the visit to Yunnan, the purpose was to assist the Yunnan Provincial People's Procuratorate ("YNPP") to develop a staff training programme. It was the policy of the ICAC to assist its major Mainland counterparts in combating corruption under the Mutual Case Assistance Scheme²²;

- it was difficult to decline sightseeing activity(ies) arranged by the receiving party(ies), especially if these activity(ies) were only made known to him after arrival, albeit he had sometimes tried to decline such activities where possible;
- whilst the visit to Lijiang under the Beijing and Yunnan duty visit 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 the ICAC, and attending a dinner with members of the Lijiang Municipal Committee at which views on anti-corruption experience were exchanged. Nevertheless, he agreed that visiting Jade Dragon Snow Mountain and Shuhe Old Town were not ideal; and
- the duty visit to Beijing-Yunnan-Lijiang was the least well handled of all duty visits attended by him.

86. The Committee enquired Mr Timothy TONG Hin-ming why he did not mention in his application to the CE that his duty visit to Beijing and Yunnan from 11 to 17 January 2009 would cover Lijiang.

²² According to the ICAC, the Mutual Case Assistance Scheme was set up between the Guangdong Provincial People's Procuratorate and the ICAC in 1988, under which anti-graft officers are arranged to meet witnesses in corruption cases across the border. Similar arrangements for provinces other than Guangdong have been co-ordinated by the SPP since March 2000 (in *Appendix 54*).

87. **Mr Timothy TONG Hin-ming** responded that:

- he was not informed of the details of the Yunnan leg, including the visit to Lijiang on 16 January 2009, when he submitted his application to the CE on 5 January 2009; and
- to his understanding, the actual itinerary of the Beijing-Yunnan-Lijiang trip referred to in paragraph 83 above was compiled by the ICAC after the visit.

88. According to the chronological account of arranging the Beijing-Yunnan-Lijiang duty visit provided by the ICAC (in *Appendix 55*), the ICAC was informed of the details of the Yunnan leg in the afternoon of 9 January 2009. Further, as advised by the ICAC in its written reply to the Committee (in *Appendix 56*), after receiving the itinerary concerning the Lijiang leg of the duty visit in the afternoon of 9 January 2009, the ICAC informed its Mainland counterparts to arrange for accommodation in Lijiang and placed procurement for the air passages for the Kunming-Lijiang flight on the same day. The Committee enquired Mr Timothy TONG Hin-ming why he did not submit a revised application to the CE to inform the CE of visit to Lijiang.

89. **Mr Timothy TONG Hin-ming** explained that:

- since the CE had already approved his duty visit to Beijing and Yunnan on 6 January 2009, he did not see the need to submit a revised application to inform the CE of the visit to Lijiang as Lijiang was in the Yunnan Province. Similarly, no reference was made to visiting Guilin and Leshan in his applications to the CE to attend duty visits to Beijing and Guangxi from 25 to 30 May 2008 and to Beijing and Chengdu, Sichuan from 16 to 23 May 2010 respectively as Guilin was in the Guangxi Zhuang Autonomous Region and Leshan was in the Sichuan Province;
- there was no question of him deliberately not informing the CE of the Lijiang trip. It was considered suffice when seeking approval from the CE to attend duty visits outside Hong Kong to inform the CE of the purpose of the duty visit, the persons/organizations to meet during the duty visit, where the Commissioner, ICAC could be reached during duty visits and who should double up the Commissioner's post during the latter's absence. Although he had never attached details of the duty

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visits to the applications to the CE, he did not recall that the CE had ever sought further information concerning his applications. To his understanding, the CE was only concerned about the purpose and effect of the duty visits; and

- whilst he did not see the need to inform the CE should there be any changes to the duty visit plan, revised applications should be submitted to the CE if there were major changes to the duration of the visit and the locations of the duty visits, say, if the visit to Europe entailed visiting additional European countries. However, this had never been done during his tenure as Commissioner, ICAC, as no duty visits attended and led by him involved major revisions.

90. At the request of the Committee, **Commissioner, ICAC** provided a sample application made by a former Commissioner, ICAC to attend duty visit outside Hong Kong (with a draft outline programme) in *Appendix 57*.

91. The Committee enquired Mr Timothy TONG Hin-ming whether the situation whereby he did not have the details of the duty visits when submitting his applications to the CE seeking approval for attending the duty visits was a frequent occurrence. **Mr TONG** replied that such a situation had occasionally occurred and the number of such occurrence was not few and/or unusual.

92. **Mr Timothy TONG Hin-ming** agreed that:

- it would be better if he was certain that his duty visits outside Hong Kong would not include non-business related activities when seeking approval from the CE for attending the duty visits. However, this could not be done for those duty visits which included meeting with procuratorates and/or supervision authorities of another provinces after visiting Beijing, as the HKMLO had to rely on the SPP to work out with the local Mainland authorities on the details of these next parts of the visits, the itineraries of which often reached the ICAC very close to the departure dates of the duty visits. The fact that the ICAC received the itinerary of the visit to Lijiang for the Beijing and Yunnan duty visit (11 to 17 January 2009) in the afternoon of 9 January 2009 was a case in point; and

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- the existing requirement of seeking approval from the Commissioner, ICAC if there were changes to the duty visit plan involving over \$5,000 or 20% of the original commitment warranted a review to ensure prudent use of public money.

Beijing and Chengdu, Sichuan (16 to 23 May 2010)

93. The Committee noted that similar to the duty visit to Beijing and Yunnan (11 to 17 January 2009), no reference was made to the visit to Leshan in Mr Timothy TONG Hin-ming's application to the CE to attend the duty visit to Beijing and Chengdu, Sichuan from 16 to 23 May 2010 and that the visit to Leshan involved mainly sightseeing tours. The itinerary of the duty visit to Beijing-Chengdu-Leshan provided by the ICAC is in *Appendix 58*.

94. **Mr Timothy TONG Hin-ming** responded that:

- he did not mention Leshan in the application to the CE as Leshan was in Chengdu;
- whilst he agreed that the element of non-business related activities at Leshan was very high, it should be pointed out that a visit to Jiuzhagiu Valley proposed by the Mainland side for the Beijing and Chengdu, Sichuan duty visit was removed from the itinerary prior to the visit on his request; and
- he had asked the CRD to explore the feasibility of returning to Hong Kong one day earlier, i.e. on 22 instead of 23 May 2010, after a meeting with senior Sichuan officials was advanced from 22 May 2010 to 21 May 2010. However, this could not be done due to unavailability of air-tickets.

Hangzhou (14 to 17 November 2008)

95. The Committee noted that the duration of the visit to Hangzhou to attend the Xihu Anti-Corruption Forum indicated in the application to the CE (in *Appendix 59*) was one day shorter than that indicated in the itinerary of the visit provided by the ICAC (in *Appendix 60*), i.e. from 14 to 16 November 2008 as opposed to from 14 to 17 November 2008. The Committee queried whether this was a deliberate act to mislead the CE that the duty visit was a three-day one or whether this was a

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testament that the application was merely a formality and as such the information was provided in a less than prudent manner.

96. **Mr Timothy TONG Hin-ming** explained that he put down "14 to 16 November 2008" as he had applied to the CE to take three days vacation leave immediately after attending the Xihu Anti-Corruption Forum²³, and the visit ended on 17 November 2008 which was the day the ICAC delegation arrived Hong Kong.

Beijing and Guangxi Zhuang Autonomous Region (25 to 29 May 2008)

97. Whilst noting that Mr Timothy TONG Hin-ming had decided to shorten his duty visit to Beijing and Guangxi Zhuang Autonomous Region from 25 to 30 May 2008 to from 25 to 29 May 2008 in view of the CE's concern over an important matter being handled by the ICAC, the Committee enquired Mr TONG whether he had considered further shortened the visit by returning to Hong Kong after visiting Beijing. The relevant itinerary is in *Appendix 61*.

98. **Mr Timothy TONG Hin-ming** explained that as he was assured by the Head of Operations that the situation was under control, he did not consider it necessary to curtail the duty visit by cancelling the trips to Nanning and Guilin to call on Guangxi Zhuang Autonomous Region to exchange views on probity building.

Salvador, Brazil and London, UK (8 to 14 April 2010)

99. The Committee noted from Mr Timothy TONG Hin-ming's application to the CE seeking approval for attending the duty visit to Salvador, Brazil and London, UK (8 to 14 April 2010) that one of the persons to meet was from the Institute of Criminology, University of Cambridge. However, such person was not found in the itinerary of the duty visit provided by the ICAC (in *Appendix 62*). The Committee enquired why this was the case.

100. **Mr Timothy TONG Hin-ming** responded that he could not recall whether he had met the person from the Institute of Criminology, University of Cambridge.

²³ The ICAC confirmed that Mr Timothy TONG Hin-ming had taken three days vacation leave from 17 to 19 November 2008 immediately following his duty visit to Hangzhou to attend the first Xihu Anti-Corruption Forum.

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As there was a lunch with UK officials and Hong Kong Economic and Trade Office on 14 April 2010, it was possible that the person had attended the lunch. **Mr TONG** further said that whilst it was the practice for the ICAC to line up meetings for the ICAC delegation with organizations/persons for the duty visit beforehand, it could not be ruled out that the organizations/persons might not be available at the appointed date and time for various reasons.

101. According to paragraph 5.12(a) of the IRC Report, no approval (which could be granted by the Commissioner, ICAC for flights over nine hours) was found for the upgrading of air passages to Business Class by two officers who accompanied Mr Timothy TONG Hin-ming to an IAACA meeting in Brazil in April 2010. The upgraded air passages for the two officers cost \$186,000 in total. The Committee enquired Mr TONG about the reasons for such non-compliance.

102. **Mr Timothy TONG Hin-ming** responded that this should be a procedural negligence, albeit the two officers concerned were entitled to upgrade their air passages to Business Class as the flight from Hong Kong to Brazil exceeded nine hours and approval for upgrading of air passages could be granted by the Commissioner, ICAC.

Shenzhen (21 to 23 January 2008)

103. The Committee noted that Mr Timothy TONG Hin-ming led a delegation of 25 ICAC officers to attend a tripartite seminar co-organized with the MoS and the Commission Against Corruption of Macao in Shenzhen from 21 to 23 January 2008. The total expenditure was \$181,635.44 (in *Appendix 63*). On the question of whether it was necessary to bring so many ICAC officers and whether consideration had been given to arranging two officers to share a hotel room in order to save costs, **Mr Timothy TONG Hin-ming** explained that 25 officers joined the visit because most of the speakers and rapporteur of the seminar were provided by the ICAC. With hindsight, consideration could be given to having an officer to perform both the roles of speaker and rapporteur in a seminar.

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104. On the basis for determining the number of ICAC officers to accompany him on his duty visits outside Hong Kong, **Mr Timothy TONG Hin-ming** advised that:

- it was determined on a need basis, i.e. the presence of the staff must be conducive to the missions of the trip; and
- participation in duty visits would enable staff to learn about anti-graft experience of other jurisdictions from high ranking officials.

Other issues

105. The Committee noted that the Director of Community Relations, ICAC had joined 25 of the 35 trips headed by Mr Timothy TONG Hin-ming, including 17 trips to the Mainland. The Committee enquired about the rationale for the arrangement. **Mr Timothy TONG Hin-ming** explained that in most of these trips, the Director was guest speakers at seminars and had delivered talks on corruption prevention.

106. Noting that three of the 35 duty visits outside Hong Kong made by Mr Timothy TONG Hin-ming covered London, UK, the Committee enquired Mr TONG whether he had visited his son during these trips to London.

107. **Mr Timothy TONG Hin-ming** pointed out that neither did he visit his son who did not reside in London or elsewhere in the UK at the time nor did his son travel to London to meet him during his duty visits to London.

108. On the question as to whether his friends, such as former Assistant Director of Immigration, Dr Helen CHAN Wing-mui and Mr Bill WONG Cho-bau, were with him on some of his duty visits outside Hong Kong, **Mr Timothy TONG Hin-ming** replied in the negative. **Mr TONG** however pointed out that he had in the past taken advantage of his air passage for a duty visit outside Hong Kong to visit a place prior to the start or after the conclusion of that duty visit by taking his vacation leave with the approval of the CE.

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109. As to whether he had accepted airfare and/or hotel accommodation from the receiving party during his tenure as Commissioner, ICAC, **Mr Timothy TONG Hin-ming** said that he could not rule out such a possibility. However, prior approval from the CE must have been sought, before acceptance of such advantages.

Responses from the ICAC at the public hearings

110. The Committee noted from the applications for duty visits outside Hong Kong submitted by Mr Timothy TONG Hin-ming to the CE that some of these applications were submitted shortly before the departure dates concerned and that some essential information, such as persons to meet and places to stay, appeared to be incomplete. The Committee enquired whether the approval from the CE for duty visits outside Hong Kong was merely a formality or a substantive one.

111. **Commissioner, ICAC** responded that the CE's approval was substantive in nature, as no duty visit outside Hong Kong should be undertaken without the prior approval of the CE. He further said that he was not in a position to comment on the completeness of the information provided in the applications submitted by Mr Timothy TONG Hin-ming, as the application forms should have been filled out by Mr TONG's personal assistant.

112. On the number of duty visits outside Hong Kong made since he assumed the office on 1 July 2012, **Commissioner, ICAC** advised that he had taken six such visits which were absolutely necessary in the discharge of his duties and/or prominently conducive to the missions and/or functions of the ICAC. Details of those visits and the applications to/approvals from the CE for the six requests to attend the visits are in *Appendices 64 and 65* respectively.

113. In view of the IRC's views that it was inappropriate that no reference was made to visiting Lijiang and Leshan in Mr Timothy TONG Hin-ming's applications to the CE seeking approval for attending the duty visits to Beijing and Yunnan (11 to 17 January 2009) and Beijing and Chengdu, Sichuan (16 to 23 May 2010) respectively, the Committee asked the Commissioner, ICAC whether he would inform the CE of all specific locations he would visit when seeking approval for duty visits in future.

114. **Commissioner, ICAC** responded that:

- all of his six duty visits outside Hong Kong since his taking up of the office of Commissioner, ICAC only involved visiting one location;
- as the application form seeking approval from the CE for attending duty visit was only one page, he would attach the itinerary of the visit if the visit should involve more than one location;
- he agreed with the IRC's recommendation that the CE should be informed of all specific locations the Commissioner, ICAC would visit when seeking approval for duty visit; and
- although the requirement of seeking approval if there were changes to the duty visit plan involving over \$5,000 or 20% of the original commitment did not cover the Commissioner, ICAC, he considered it necessary to seek the approval of the CE if, say, a new location was added to the original duty visit plan.

115. Noting from paragraph 5.5 of the IRC Report that the two duty visits, i.e. Beijing-Yunnan-Lijiang (11 to 17 January 2009) and Beijing-Chengdu-Leshan (16 to 23 May 2010) were organized by the CRD, the Committee enquired how these duty visits were organized by the CRD.

116. **Director of Community Relations, ICAC** responded as follows:

- the CRD was mainly involved in organizing the Beijing part of the two duty visits;
- in respect of the duty visit to Beijing-Yunnan-Lijiang, Mr Timothy TONG Hin-ming agreed, in late December 2008, to the SPP's proposal for the ICAC delegation to visit Yunnan after visiting Beijing as YNPP had new developments in video interview recording for suspects and close working relationship with the ICAC on mutual assistance in investigation. Mr TONG further agreed that the visit to Yunnan should be for two days. The details of the itinerary to Yunnan (Kunming and Lijiang), worked out by the SPP and the YNPP, were received by the CRD in the afternoon of 9 January 2009, i.e. two days before departure of the duty visit;

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- in respect of the duty visit to Beijing-Chengdu-Leshan, the CRD was informed of the details of the itinerary to Chengdu prepared by the Mainland side in the morning of 14 May 2010, i.e. two days before departure of the duty visit. Visit to Leshan was not included in the itinerary. The reason why the visit to Leshan had taken place on 22 May 2010 was due to the following events:
 - (a) the delegation originally planned to meet senior procuratorate and supervision officials of Sichuan Province on 22 May 2010 to introduce probity building in Hong Kong, especially on anti-corruption work in the construction industry. Not until 13 May 2010 (Thursday) before departure, the ICAC was informed that the meeting was advanced to the evening of 21 May 2010 upon request by some officials at the Provincial level. The ICAC therefore attempted to advance the return flight to Hong Kong to 22 May 2010. Since all the outbound flights to Hong Kong on 22 May 2010 were full, the delegation returned to Hong Kong in the morning of 23 May 2010 as scheduled; and
 - (b) given that the delegation could not return to Hong Kong on 22 May 2010 and upon invitation by the procuratorate and supervision officials in Leshan arising from their unavailability to attend the meeting on 21 May 2010, the delegation then visited Leshan on 22 May 2010. A meeting was also held with the Standing Committee Member, Secretary of Municipal Commission for Discipline Inspection, Vice Secretary of Municipal Commission for Discipline Inspection, Director and officials of Municipal Supervision Department of Leshan City on the day;
- the reason for the ADM to advise the IRC that they did not recall any request to change schedule and had not found any records that such an option had been explored with airlines, as mentioned in paragraph 5.6 of the IRC Report, was that the CRD did not request the ADM to procure the air-tickets; and
- not all ICAC officers of the ICAC delegation on a duty visit participated the visit programme in full, as only those ICAC officers whose official duties were related to the business of a duty visit joined the visit. For instance, she did not join the Yunnan leg and the Director of Corruption Prevention did not join the Beijing part of the duty visit to Beijing-Yunnan-Lijiang.

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117. Responding to the Committee's enquiry as to whether she had alerted Mr Timothy TONG Hin-ming against visiting Lijiang and Leshan in view of the excessive non-business related activities involved, **Director of Community Relations, ICAC** said that:

- she could not remember whether she had seen the details of the Lijiang trip after such details were received by the CRD in the afternoon of 9 January 2009. The fact that Mr TONG agreed to include visiting Lijiang was thus an oversight on her part due to lack of vigilance; and
- in light of the Lijiang experience, she had alerted Mr TONG not to include visiting Jiuzhagiu Valley proposed by the Mainland side for the duty visit to Beijing-Chengdu-Leshan.

118. Noting that the Director of Community Relations, ICAC had only accompanied the incumbent Commissioner, ICAC three times in 2012 and once since 2013 to conduct duty visits to the Mainland, the Committee enquired whether this showed that the high numbers of duty visits to the Mainland led by Mr Timothy TONG Hin-ming during his tenure as Commissioner, ICAC was wrong. **Director of Community Relations, ICAC** responded that whilst the ICAC would continue to conduct duty visits to places other than the Mainland to foster exchanges and explore opportunities for further co-operation, say, by attending anti-corruption conferences, the ICAC had now cut back on visiting Mainland counterparts, with the exception of the SPP and MoS, to share experience in anti-corruption work. Hitherto, the number of Mainland organizations visiting the ICAC to share and exchange views on anti-corruption work had increased.

119. **Commissioner, ICAC** stated that following a review, the ICAC had, on 6 May 2013, issued reminders and further guidelines on duty visits outside Hong Kong. They included:

- granting of approvals only when such visits were absolutely necessary in the discharge of the officers' duties or prominently conducive to the missions and/or functions of the ICAC;
- keeping the number of officers joining the trip to the minimum; and
- confining the duration of the trip as short as possible covering only the part of the programmes/sessions pertaining to the official purposes of that visit.

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Gifts/souvenirs

120. The Committee noted that since 1996, the ICAC had a policy to "limit to the minimum the exchange of gifts on official occasions. Where an exchange of gifts is unavoidable, the exchange should be made from organization to organization"²⁴. Such a policy was subsequently incorporated into paragraph 8 of the ICAC's CSO on "Acceptance of Advantages". The relevant ICAC's CSO are in *Appendix 66*.

121. The Committee further noted that like other Government departments, the ICAC did not have any laid down rules for the presentation of souvenirs to official counterparts or visitors of the ICAC, nor the cost of the souvenirs, except those given in the Government's Stores and Procurement Regulations when procuring souvenirs. Subject officers must seek approval and certification from the line management to confirm the availability of funds for the purchase of souvenirs and claim for reimbursement of the expenses upon verification by the Finance Office. In presenting souvenirs, consideration was given to the nature of the occasion and the status of the recipients²⁵.

122. A list of gifts given out by Mr Timothy TONG Hin-ming to government officials of different places and paid out of public funds during his tenure, provided by the ICAC for a special meeting of the LegCo Finance Committee ("FC") held on 9 April 2013 to examine the 2013-2014 estimates of expenditure of the ICAC, is in *Appendix 67*.

Giving of gifts/souvenirs

123. The Committee enquired Mr Timothy TONG Hin-ming whether the types of gifts/souvenirs to be procured for giving to official counterparts or visitors of the ICAC were solely decided by him or suggested by ICAC staff for his approval.

24 According to the ICAC, the policy on exchange of gifts was first promulgated in the ICAC Staff Circular No. 23/96 "The Giving and Receiving of Gifts on Official Occasions". The Circular was later cancelled after the policy was incorporated into the ICAC's CSO Part 1 Chapter 9 Section 3 on "Acceptance of Advantages".

25 Paragraph 7 of the ICAC paper entitled "Mechanism for approval of duty visits outside Hong Kong and reimbursement of expenditure on official entertainment and souvenirs" for the meeting of the Panel on Security on 27 May 2013 (LC Paper No. CB(2)1148/12-13(01)).

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124. **Mr Timothy TONG Hin-ming** responded that generally speaking, gifts/souvenirs for presentation at an ICAC publicity project or activity were decided by ICAC staff responsible for the project or activity. He would only be involved in the selection of such gifts/souvenirs if the publicity project or activity was a large scale one and/or the standing of the recipients was high.

125. On whether he had presented gifts/souvenirs to the recipients who were not participants of an ICAC publicity project or activity, **Mr Timothy TONG Hin-ming** responded that although not all recipients of gifts/souvenirs were participants of an ICAC publicity project or activity, the official duties of the recipients of ICAC's gifts/souvenirs were all related to the work of the ICAC.

126. The Committee noted from Annex 4 of the IRC Report that some of the "Commission-wide" gifts²⁶, such as two units of beef brisket and fish ball at \$815 each; five tankards at \$1,580 each; one camera at \$1,650; eight digital photo frames ranging from \$590 to \$1,890 each; and three scarves ranging from \$400 to \$2,090 each, appeared to be at variance with the ICAC's policy on exchange of gifts having regard to the personal nature of such gifts and/or their high prices.

127. **Mr Timothy TONG Hin-ming** responded as follows:

- the procurement of many "Commission-wide" gifts were approved by him²⁷;
- the beef brisket and fish balls were given as gifts to a Mainland delegation visiting the ICAC, after a brief internal discussion of which he had attended, to reciprocate the giving of lychee to the ICAC by the Mainland delegation for enjoyment by ICAC staff. He did not know who carried out the procurement of the beef brisket and fish balls, as he was not involved in the procurement;

26 According to the IRC Report, "Commission-wide" gifts refer to gifts attributed to the Former Commissioner ICAC, i.e. Mr Timothy TONG Hin-ming, or "Commission-wide" events.

27 The ICAC replied to the Committee after the hearing on 26 September 2013 that the ICAC could not provide the information on who procured the "Commission-wide" gifts referred to in Annex 4 of the IRC Report, including the rank and post titles of the ICAC staff assigned to procure these gifts, as such information fell within the scope of investigation in relation to whether Mr Timothy TONG Hin-ming had committed the alleged offences under the Prevention of Bribery Ordinance (Cap. 201) and the common law offence of "Misconduct in Public Office" and the disclosure of which might affect the integrity of the investigation or jeopardize the fairness and impartiality of the related investigation.

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- he could not recall the reasons for giving out tankards, camera and scarves as gifts, albeit that, with hindsight, he agreed that giving out scarves as gifts by the ICAC was inappropriate;
- as regards the eight digital photo frames as gifts, they were for guest speakers at ICAC-organized seminars/conferences who did not receive any honorarium; and
- he agreed that certain "Commission-wide" gifts did not adhere to the ICAC's policy that the giving out of gifts by the ICAC should be kept to the minimum and some of them were expensive. However, these gifts were all given out to organizations and in public.

Acceptance of gifts/souvenirs

128. On acceptance of gifts, **Mr Timothy TONG Hin-ming** advised that:

- he had never kept for himself the gifts offered to him in his official capacity of Commissioner, ICAC; and
- the most expensive gift which the ICAC had received was a large traditional screen worth \$100,000 to \$200,000 from the SPP to mark the opening of the ICAC headquarters in North Point in 2007.

129. In view of the high value of the screen, the Committee enquired Mr Timothy TONG Hin-ming:

- whether he had ever considered not accepting the screen or accepting the screen but donating it to the Government or a public museum; and
- whether he had sought the approval of the CE prior to accepting the screen.

130. **Mr Timothy TONG Hin-ming** replied that:

- the decision to accept the screen from the SPP was made after discussion with ICAC senior staff;

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- he believed that the ADM had followed the established procedure to report the acceptance of the screen;
- the screen was displayed in the exhibition room of the ICAC headquarters building for public viewing; and
- CE should have known that the screen was a gift to the ICAC from the SPP. CE was the officiating guest of the opening ceremony of the ICAC headquarters building and had attended a tour of the building after the ceremony.

Responses from the ICAC at the public hearings

131. **Commissioner, ICAC** stated that to tie in with the Government's economy drive, the ICAC had already adopted further guidelines since 6 May 2013 in attending official functions. As a general principle, there were no corsages for functions hosted by the ICAC and all ICAC officers would, as far as practicable, not exchange gifts/souvenirs with representatives of other government or international organizations during meetings. The ICAC would notify the organization concerned in advance of its practice. Where the exchange of gifts/souvenirs was unavoidable, officers would only present one souvenir inscribed with the ICAC logo (e.g. ICAC Building model, ICAC Annual Report or ICAC plaque, etc.) to the organization concerned, and no gifts/souvenirs would be given on a personal basis²⁸.

132. Responding to the Committee's enquiry as to why cookies, referred to in paragraph 41 above under expenditures on gifts, were not included in the list of gifts given out by Mr Timothy TONG Hin-ming to government officials of different places and paid out of public funds during his tenure referred to in paragraph 122 above, **Commissioner, ICAC** explained that:

- the list of gifts presented by Mr TONG to government officials of different places and paid out of public funds was compiled under a tight timeframe, due to the need to meet the deadline set by the FC; and
- in response to the media's comments that the list of gifts did not reflect the full picture, arrangements were immediately made to thoroughly

²⁸ Paragraph 8 of the paper entitled "Mechanism for Approval of Duty Visits Outside Hong Kong and Reimbursement of Expenditure on Official Entertainment and Souvenirs" prepared by the ICAC for the meeting of the Panel on Security of LegCo on 27 May 2013.

check all the relevant receipts and accounting records. As a result, the omissions of the cookies and other gifts presented by Mr TONG to government officials of different places during his tenure came to light.

133. **Director of Community Relations, ICAC** supplemented that:

- there was no question of the ICAC deliberately excluding the cookies from the list of gifts submitted to the FC on 22 April 2013. The reason why the cookies were not included in the list was that she and the Assistant Director of Administration, ICAC, who was responsible for co-ordinating the compilation of the list, came to the understanding that the gifts which the FC had in mind were those which could be retained as a souvenir; and
- the ICAC agreed that the handling of the matter was not ideal and had openly apologized for it.

134. At the public hearing on 26 September 2013, **Commissioner, ICAC** clarified that no attempt had been made by the ICAC to conceal information on expenditures on gifts, amongst others, from LegCo. The total amount of money spent on gifts and souvenirs during the tenure of Mr Timothy TONG Hin-ming, published in the IRC Report, was \$1.3 million because the amount also included the expenditures on gifts incurred by "individual departments of the ICAC". The ICAC did not provide the latter information to LegCo because such information did not comply with the requests from LegCo since April 2013.

135. Responding to the Committee's enquiry as to which units of the ICAC were tasked with the responsibility for procuring such gifts, **Acting Assistant Director of Administration, ICAC** said that which department was responsible for the procurement of "Commission-wide" gifts would depend on who the recipients of the gifts were. For instance, if the recipients of the gifts were the target organizations of OPS, the gifts would be procured by OPS staff. Another example was that if the recipients of the gifts were organizations which the ICAC delegation would meet during duty visits outside Hong Kong, the gifts would be procured by the CRD.

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136. On whether beef brisket and fish balls were procured by the CRD, **Director of Community Relations, ICAC** replied in the negative²⁹. She further said that:

- in her view, it was not appropriate to give beef brisket and fish balls as "Commission-wide" gifts;
- the CRD had all along only given souvenirs inscribed with the ICAC logo as gifts of the CRD to outside organizations;
- as regards procurement of gifts for duty visits led by Commissioner, ICAC, a meeting would be held prior to the visits to discuss the types and the numbers of gifts to give to organizations during the visits. Generally speaking, souvenirs inscribed with the ICAC logo were selected as gifts to give during duty visits. However, depending on the status of the recipient and/or the nature of the occasion, the Hong Kong Skyline model (ranging from \$1,200 to \$2,350 each) was sometimes selected as gifts;
- during his tenure, Mr Timothy TONG Hin-ming had 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. To her understanding, OSR staff was involved in the procurement of such special gifts to be presented by Mr TONG; and
- the CRD was told by Mr TONG on some occasions to procure gifts with price comparable to that of the Hong Kong Skyline model for duty visits, as the Hong Kong Skyline model was given as gifts too frequent. An example was the procurement of a goat-shape ornament referred to in Annex 4 of the IRC Report.

137. As the 1996 stated policy to "limit to the minimum the exchange of gifts on official occasions. Where an exchange of gifts is unavoidable, the exchange should be made from organization to organization" was incorporated into the ICAC's CSO on "Acceptance of Advantages", the Committee enquired why there were still so many non-compliances in the procurement of gifts.

²⁹ The ICAC replied to the Committee after the hearing on 26 September 2013 that the ICAC could not provide the information on who procured the beef brisket and fish balls and who the recipient of these beef brisket and fish balls was, as such information fell within the scope of investigation in relation to whether Mr Timothy TONG Hin-ming had committed the alleged offences under the Prevention of Bribery Ordinance and the common law offence of "Misconduct in Public Office" and the disclosure of which might affect the integrity of the investigation or jeopardize the fairness and impartiality of the related investigation.

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138. **Acting Assistant Director of Administration, ICAC** explained that some ICAC staff might not be aware or fully understood that the ICAC's CSO on "Acceptance of Advantages" also regulated the giving out of gifts.

139. Responding to the Committee's enquiry as to why the ADM approved the reimbursement of expenditures on gifts such as beef brisket and fish balls, **Acting Assistant Director of Administration, ICAC** explained that the Finance Office of the ADM had to approve the claim for reimbursement if prior approval from the proper authority had been obtained and the expenditure had been properly certified by the relevant subject ICAC officer.

E. Expenditure control on official entertainment

140. The ICAC's CSO on "Entertainment Expenses" stipulate the following control on expenditure:

- an officer may be reimbursed expenses incurred for provision of official entertainment which has been approved in advance; and
- unless the Commissioner has approved otherwise, the expenditure per head, inclusive of food, beverages and tips, is subject to a ceiling of \$350 for lunch and \$450 for dinner (revised from 1 January 2011).

Dinners on 6 and 8 December 2011

141. According to paragraph 3.22 of the Audit Report, in examining the expenses for two major community activities, Audit noted the following issues on the entertainment expenses incurred by CRD staff in organizing the International Anti-Corruption PSA Video Competition and Workshop in December 2011:

- ***Dinner on 6 December 2011.*** The Commissioner approved a budget of \$450 per head. The actual cost of the dinner at the restaurant concerned was \$431 per head. However, when including six bottles of wine bought separately for the dinner and dessert at a separate shop (totalling \$92 per head), the actual expenditure was \$523 per head; and
- ***Dinner on 8 December 2011.*** The cost of the dinner, approved by an Assistant Director of the ICAC, was \$1,045 per head.

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The names and official titles of the persons attending the above dinners on 6 and 8 December 2011, provided by the ICAC, are in *Appendices 68 and 69* respectively.

142. According to paragraph 3.23 of the Audit Report, in February 2013, upon enquiry, the CRD provided Audit with the following explanations:

- ***Dinner on 6 December 2011.*** The cost of the dinner at the restaurant concerned was treated as an entertainment expense because only the guests invited by the Commissioner attended the dinner. Twelve bottles of wine were bought for general use in various social programmes in the event. The cost of the wine was charged to publicity funds of the project. Only six bottles were consumed during the dinner and the remaining six bottles were kept for use in future official meals. The dinner and the dessert were two separate functions. During the dinner, some participants showed an interest in Hong Kong's local life and delicacies. As an impromptu social programme, the participants were taken to a dessert shop to try Chinese dessert right after the dinner. The cost of the dessert was treated as a separate entertainment expense; and

- ***Dinner on 8 December 2011.*** The dinner was part of the social programmes for networking among the 110 participants from different places around the world and for the ICAC to extend its hospitality. As the dinner was a component activity of the event (included in the programme brochure), which targeted all conference attendees, the cost of the dinner was charged to publicity funds of the project. The use of publicity funds was approved by an Assistant Director according to the schedule of authority of the ICAC.

143. The Committee enquired Mr Timothy TONG Hin-ming whether, in approving the expenditure of the dinner on 6 December 2011, he was aware of the ICAC's CSO on "Entertainment Expenses" that the costs of all food and beverages, regardless of whether they were ordered at the venues or bought for consumption at the venues, should be included as part of the lunch/dinner expenditure for control purposes.

144. **Mr Timothy TONG Hin-ming** responded that:

- he as well as ICAC officers were not vigilant enough to include wine procured separately for use at an official lunch/dinner as part of the lunch/dinner expenditure. As explained by Commissioner, ICAC, the rationale for the CRD to purchase wine in advance for later consumption at official functions was that it was more economical to serve wine purchased in advance than ordering them from the restaurants on the spot; and
- the Director of Audit had said that there was a grey area in the ICAC's CSO on "Entertainment Expenses" about the requirement to include wine procured separately for use at an official lunch/dinner as part of the lunch/dinner expenditure.

145. At the request of the Committee, **Commissioner, ICAC** stated in his reply (in *Appendix 70*) that from 2003-2004 to 2012-2013, 12 out of 548 meals charged to the CRD's entertainment vote had cost of wine not included in the total cost. Four out of 12 exceeded the ceiling when the cost of wine was included. The amount of excess ranged from \$11 to \$132.

ICAC Form 569

146. According to paragraph 3.7(b) of the IRC Report, ADM advised CRD to mention to Mr Timothy TONG Hin-ming that the expenditure for a dinner to be held on 18 September 2007 and hosted by him would exceed the expenditure ceiling per person if the cost of wine and hard liquor procured separately was included in the expenditure of the dinner. On 18 September 2007, Mr TONG instructed to procure moutai instead of wine. The CRD sought assistance from the OSR to make an urgent purchase. Subsequent to the dinner, the CRD asked Mr TONG to sign on the receipt for procurement of wine and hard liquor as a covering approval to authorize the procurement, but there was no documentation suggesting that the CRD had informed Mr TONG that the total expenditure exceeded the ceiling and no justifications for exceeding the ceiling had been recorded.

147. As revealed in paragraph 3.7 of the IRC Report, during the term of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, generally OPS and ADM did include the cost of wine and hard liquor procured separately when calculating the expenditure for entertainment, whilst CRD did not. The OSR also

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did not include the cost of wine and hard liquor in the majority of the entertainments it organized. The Committee noted from paragraphs 3.8 and 3.9 of the IRC Report that to better comply with the spirit of the Government guidelines on entertainment expenditure per person that the cost of wine and hard liquor procured separately should be included in the calculation of the total expenditure for entertainments, the ICAC Form 569 was introduced in June 2008 for use by ICAC officers in seeking approval for entertainment expenditure. The Form set out explicitly that estimated expenditure included beverage and tips. After the ICAC Form 569 was introduced for half a year, the CRD stopped to use the Form. The Committee asked Mr Timothy TONG Hin-ming whether he was aware of the Form; and if so, why did he allow the CRD not using the Form in seeking approval for entertainment expenditure.

148. **Mr Timothy TONG Hin-ming** replied 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 mandatory.

149. On the question as to whether he knew the purpose of the ICAC Form 569, **Mr Timothy TONG Hin-ming** replied that he did not pay much attention to the Form until the publication of the IRC Report in September 2013. Prior to attending the hearing of the Committee on 25 September 2013, he sought information from the ICAC on the background of introducing the Form. According to the ICAC, although there was consultation amongst the OPS, CRD and CPD at the operational level prior to the introduction of the Form in June 2008, no papers/documents could be found that he was being consulted/informed in the process.

150. Noting that the numbers of bottles of wine and hard liquor procured by the CRD had increased after the CRD stopped to use the ICAC Form 569, the Committee asked Mr Timothy TONG Hin-ming whether he agreed that the reason for the CRD not using the Form was to exclude the costs of wine and hard liquor procured separately in the estimated expenditure of an official meal organized by the CRD.

151. **Mr Timothy TONG Hin-ming** responded that:

- he could not see there was a relationship between the procurement of wine and liquor by the CRD and the cessation of the use of the ICAC Form 569 by the CRD;

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- he could not guess the reasons for the ICAC officers not using the Form; and
- as pointed out in the IRC Report, regardless of whether the Form was used or not, the CRD did not include the cost of wine and hard liquor (which were beverages) procured separately in the expenditure for entertainments based on its understanding that both the meals and wine and hard liquor were separately approved for payments.

152. According to section 11 of the ICAC Ordinance, Commissioner, ICAC may make orders providing for, amongst others, the financial regulation of the ICAC. Noting that in July 2009, the ICAC's CSO Part I Chapter 25 Section 4 "Entertainment Expenses" was amended to set out explicitly that expenditure per person for entertainment should include "food, beverages and tips", the Committee enquired Mr Timothy TONG Hin-ming why he still allowed the cost of wine and hard liquor procured separately excluded from the calculation of expenditure for entertainments.

153. **Mr Timothy TONG Hin-ming** responded that he did not have any impression of the said amendment then, as he was on vacation leave when the amended CSO was promulgated on 10 July 2009³⁰. With hindsight, he admitted that he was not sensitive to the requirements of the ICAC's CSO on "Entertainment Expenses", albeit the making of the CSO was the duty of the Commissioner, ICAC under the ICAC Ordinance.

Responses from the ICAC at the public hearings

154. The Committee asked the CRD why:

- it still did not include the cost of wine and hard liquor procured separately in the expenditure for the dinner on 18 September 2007, despite the advice given by the ADM to the CRD;
- it stopped using the ICAC Form 569 about one and a half years after the Form was introduced³¹; and

30 As advised by the ICAC, Mr Timothy TONG Hin-ming took leave from 6 July to 1 August 2009 (in *Appendix 71*).

31 According to paragraph 3.9 of the IRC Report, CRD stopped to use the ICAC Form 569 after the Form was introduced for about half a year. However, Commissioner, ICAC, confirmed in writing that CRD stopped to use the ICAC Form 569 in December 2009 after the introduction of the Form in June 2008.

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- it continued to exclude the cost of wine and hard liquor procured separately from the expenditure for entertainments, despite the amendments made to the CSO on "Entertainment Expenses" in July 2009 which explicitly set out that expenditure per person for entertainment should include "food, beverages and tips".

155. **Director of Community Relations, ICAC** responded that:

- it was the usual practice of the CRD for not including in the total expenditure the cost of wine and hard liquor procured separately and charged to the CRD's entertainment vote before the tenure of Mr Timothy TONG Hin-ming (in *Appendix 72*);
- it was the understanding of CRD staff that as prior approval had been sought from the Commissioner, ICAC on the procurement of wine and hard liquor for official entertainments, there was no need to include the cost of such wine and hard liquor again in the total expenditure for official entertainments. The CRD had no intention to deliberately exclude the cost of wine and hard liquor;
- the dinner on 18 September 2007 was the only incident in which the ADM had advised the CRD to include the cost of wine and hard liquor procured separately in the total expenditure for official entertainments. As confirmed by the direct supervisor of the subject officer³², the advice of the ADM to include the cost of wine and hard liquor procured separately in the total expenditure had not been brought to his attention, resulting in no change in the practice of the CRD in the calculation of the total expenditure;
- CRD used the ICAC Form 569 for one and a half years from June 2008 to November 2009. Due to limited space on the Form, CRD staff often had to provide additional information such as particulars of guests and detailed arrangements in the form of file minute when submitting the Form to the approving authority, thus resulting in duplication of information or confusion. After considering the opinion of CRD staff, she decided to stop using the Form from December 2009 onwards and allow the use of file minutes for seeking approval for official entertainments;

³² According to the ICAC, the responsible subject officer of CRD who organized the dinner referred to in paragraph 3.7(b) of the IRC Report had left the ICAC.

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- when the amended CSO on "Entertainment Expenses" was promulgated in July 2009, there was no specific mention of the requirement to include the cost of beverages procured separately in the total expenditure for entertainments; and
- as revealed in paragraph 3.24 of the Audit Report, Audit was also concerned that the CSO on "Entertainment Expenses" did not clearly specify that the costs of all food and beverages (e.g. the wine and dessert mentioned in paragraph 3.22(a) of the Audit Report) should be included as part of the lunch/dinner expenditure for control purposes, and recommended ICAC to tighten the control over the expenditure on official entertainment by specifying that the costs of all food and beverages should be included as part of the lunch/dinner expenditure for control purposes.

156. At the request of the Committee, **Commissioner, ICAC** provided a chronology of why the cost of wine and hard liquor was not included in the expenditure for the dinner on 18 September 2007 referred to in paragraph 3.7(b) of the IRC Report (in *Appendix 73*).

157. **Director of Audit** advised that in the course of the value for money audit, Audit was not given any information regarding ICAC Form 569. Neither was Audit notified of the exchange between ADM and CRD concerning the dinner on 18 September 2007.

158. On the question of whether he was aware of the CRD's practice in using file minutes to apply for official entertainments, **Commissioner, ICAC** responded that:

- when he first took up the office of the Commissioner, ICAC, he was not aware of the ICAC Form 569 and had signed on file minutes prepared by ICAC officers for seeking approval for entertainment expenditure. Regardless of whether the Form was used or not, he understood that all food, beverages and tips should be included in the total expenditure for entertainments. Since he assumed the office, the use of wine at official entertainments was not frequent and hard liquor had not been served;

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- in responding to the recommendation of the Audit Report and ensuring prudence and economy in using public funds when incurring official entertainment expenses, the ICAC, on 6 May 2013, promulgated reminders and further guidelines on official entertainment. They included:
 - (a) only inviting guests who were directly related to the context of the official business;
 - (b) confining the number of ICAC officers attending the event to those who were directly related to the context of the official business in question;
 - (c) restricting the number of attending ICAC officers not to exceed the number of guests;
 - (d) prohibiting splitting of entertainment bills or charging them to different votes;
 - (e) all official entertainments hosted by Heads of Department must be approved by the Commissioner, ICAC; and
 - (f) to ensure checks and balances, Head of Operations would endorse official entertainment hosted by the Commissioner, ICAC; whereas Assistant Director of Administration, ICAC would check compliance of those official entertainments attended by both the Commissioner, ICAC and Head of Operations; and
- to strengthen the control over entertainment expenditure, ICAC Form 569 had been further revised and made mandatory for all ICAC officers to seek approval for entertainment expenditure with effect from 2 September 2013.

159. **Commissioner, ICAC** advised that around 37% of the 206 lunches and dinners hosted by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, and charged to the official entertainment vote exceeded the ceilings after all food and beverage cost, including wine and hard liquor procured separately, was counted towards the total entertainment. To address the concern about the Head of Operations endorsing official entertainment hosted by the Commissioner, ICAC, he would raise with the Chairman of the ACOC on submitting information on expenses

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for official entertainment hosted by Commissioner, ICAC to the ACOC on a regular basis for record and monitoring.

160. Responding to the Committee's enquiry as to why Mr Timothy TONG Hin-ming was not involved in the amendment to the CSO on "Entertainment Expenses" in July 2009, **Commissioner, ICAC** advised that by virtue of section 13(1)(d) of the ICAC Ordinance, Commissioner, ICAC might delegate specific ICAC officers designated by him to exercise his power conferred under section 11 of the Ordinance in the making of the CSO (in *Appendix 74*).

161. On the procedure for reimbursement of expenditures for official entertainment, **Assistant Director of Administration, ICAC** advised that staff of the Finance Office of the ADM would check whether the expenditures complied with the ICAC's CSO on "Entertainment Expenses", such as whether prior approval of the relevant authority had been obtained, whether the expenditures were properly certified and whether the amount for reimbursement was correctly calculated.

162. Responding to the enquiry about whether the Finance Office of the ADM was staffed by professional accountant, **Assistant Director of Administration, ICAC** said that similar to other government departments, the Finance Office of the ADM was headed by an officer of the Executive Officer grade. Although the ICAC did not have an internal auditor, the ICAC was subject to financial monitoring by the FSTB and Audit, as well as compliance checks on stores and procurement activities by the GLD under the Stores and Procurement Regulations.

F. Legal basis for the ICAC to assist other States Parties to the UNCAC in developing and implementing specific measures for the prevention of corruption in accordance with the provisions of paragraph 3 of Article 6 of the UNCAC

163. Responding to the Committee's enquiry as to which provision(s) of the ICAC Ordinance empowered the ICAC to fulfil its obligations under the UNCAC as mentioned in paragraph 42 above, **Mr Timothy TONG Hin-ming** said during the public hearing on 24 May 2013 that:

- although the obligation to assist other States Parties to the UNCAC was not specifically written under the ICAC Ordinance, it was within the scope of duties of Commissioner, ICAC to do so under section 12(e) of

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the ICAC Ordinance which provided that it was the duty of the Commissioner, ICAC, on behalf of the CE, to instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices might be eliminated by such person;

- section 12(e) of the ICAC Ordinance was not the entirety in providing the legal basis for the ICAC to fulfil its obligation to assist other States Parties to the UNCAC. Section 5(1) of the ICAC Ordinance provided that the Commissioner, subject to the orders and control of the CE, was responsible for the direction and administration of the ICAC;
- exchanges with Mainland officials, including those who were not the counterparts of the ICAC, had been made by him during his tenure on views and experience on corruption prevention under section 12(e) as well as 12(g) and (h) of the ICAC Ordinance³³; and
- amendments should be made to the ICAC Ordinance if it was unclear how the Ordinance would empower the ICAC to fulfil its obligations to assist other States Parties to the UNCAC as required under a directive from the CPG.

164. At the public hearing on 18 October 2013, **Mr Timothy TONG Hin-ming** agreed that section 12 of the ICAC Ordinance did not spell out that it was the duty of the Commissioner, ICAC to assist the CPG in promoting corruption prevention in the international arena, including attending international conferences or similar activities.

165. The Committee has reservation on the application of section 12(e) of the ICAC Ordinance in the circumstance. The Committee further considered that the "public" in section 12(g) and (h) of the ICAC Ordinance appeared to refer to the public of Hong Kong and therefore the application of the provisions in the circumstance was inappropriate. In this regard, the Committee enquired Commissioner, ICAC whether section 12(e) of the ICAC Ordinance was the legal

33 Section 12(g) of the ICAC Ordinance provides that it shall be the duty of the Commissioner, ICAC, on behalf of the CE, to educate the public against the evils of corruption.

Section 12(h) of the ICAC Ordinance provides that it shall be the duty of the Commissioner, ICAC, on behalf of the CE, to enlist and foster support in combating corruption.

basis for the ICAC to assist other States Parties to the UNCAC in developing and implementing specific measures pertaining to corruption prevention.

166. **Commissioner, ICAC** responded that:

- it was always part of the ICAC's work and strategies to strengthen co-operation with international anti-corruption agencies, which included receiving and providing briefings and training to the delegations from these agencies, participating in international conferences and establishing mutual assistance schemes with different agencies. Such strategies were made necessary since under the current rapid development of globalization, corruption was no longer a regional problem, but an international issue with impacts on all communities and economies. International co-operation was essential to enable the ICAC to effectively fulfil its statutory duties under section 12 of the ICAC Ordinance in preventing and combating corruption;
- upon the UNCAC becoming applicable to the HKSAR in accordance with Article 153 of the Basic Law and the ICAC being designated by the CPG as the authority for the HKSAR to assist other States Parties in developing and implementing specific measures for the prevention of corruption, the ICAC had further enhanced its effort in promoting international co-operation. Fulfilling the obligations under the UNCAC aside, such effort was in line with the ICAC's work strategies as spelt out above. In participating and supporting activities related to the UNCAC, the ICAC would also enhance its international image, benefit from the other jurisdictions' experience in tackling their corruption problems and extend, consolidate or build up networks with other anti-corruption agencies to facilitate different aspect of its work;
- to take part in the UNCAC related activities and provide assistance to other States Parties, which was of mutual benefits to the anti-corruption work of Hong Kong, was part and parcel of the ICAC's strategies in enhancing international co-operation. The effort that the ICAC put into the area was basically a matter of work strategy and not a legal issue. Even from the legal point of view, such a strategy was in fact in line with its statutory duties under section 12 of the ICAC Ordinance, inter alia section 12(e); and

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- no policy paper on complying with the UNCAC had been submitted to the ICAC's ACOC for endorsement, albeit the ACOC was apprised of the work of the ICAC in this regard.

A copy of the Depository Notifications of the United Nations announcing that the CPG has designated the ICAC as the authority for the HKSAR to assist other States Parties in the prevention of corruption in accordance with the UNCAC is in *Appendix 75*.

167. On whether the ICAC had undertaken any review to amend the ICAC Ordinance to implement the obligations under the UNCAC, **Commissioner, ICAC** advised that:

- in addressing Hong Kong's compliance with the UNCAC, a review was conducted by the relevant B/Ds (including the ICAC), through the co-ordination of the Administration, on its application to their respective areas of work;
- relevant Ordinances, including the ICAC Ordinance, were reviewed; and
- save for Articles 31, 44, 46 and 57 of the UNCAC which required legislative amendments for fulfilling the obligations regarding confiscation of proceeds of crime, extradition and mutual legal assistance in criminal matters, all other requirements under the Convention could be fulfilled through existing legislation or administrative measures. Details of the review are set out in Annex A to LC Paper No. CB(2)2465/06-07 prepared for the LegCo Subcommittee on Subsidiary Legislation to Implement the Obligations under the UNCAC in July 2007 (in *Appendix 76*).

168. Regarding the resources implications for the ICAC to take part in UNCAC-related activities and provide assistance to other States Parties in achieving the provisions of UNCAC, **Commissioner, ICAC** said that they were not significant. There was no dedicated office in the ICAC to deal with activities related to the UNCAC. The HKMLO of the CRD co-ordinated such activities as part and parcel of its businesses. Normally about 10% of the HKMLO manpower was involved in the co-ordination of UNCAC-related activities. Details of the expenditures on these activities as against the annual expenditure of the CRD and the ICAC as a whole, and

of the implication on manpower resources each year from 2006-2007 to 2012-2013 are in *Appendix 77*.

G. Conclusions and recommendations

Overall comments

Resources allocation on the work of the Community Relations Department

169. The Committee expresses alarm and strong resentment, and finds it unacceptable that:

- despite an increasing trend in the annual funding of the Independent Commission Against Corruption ("ICAC") as a whole and of the Community Relations Department ("CRD") during the audited period, there was a declining trend in the numbers of organizations and people reached by the CRD for providing preventive education and enlisting public support against corruption; and
- public money which should have been used on providing preventive education and enlisting support locally against corruption was used on activities assisting other States Parties to the United Nations Convention Against Corruption ("UNCAC") in developing and implementing specific measures for the prevention of corruption in accordance with provisions of paragraph 3 of Article 6 of the UNCAC, as evidenced below:
 - (a) expenditures for the ICAC to undertake activities, such as attending international conferences, conducting duty visits outside Hong Kong, and receiving visitors from the Mainland and other jurisdictions to exchange views and foster co-operation on corruption prevention, increased significantly from 2006-2007 to 2011-2012 (i.e. from \$0.24 million to \$4 million in respect of the CRD's total expenditure, and from \$0.77 million to \$5.2 million in respect of the ICAC's total expenditure); and
 - (b) some \$1.3 million was spent on gifts and souvenirs during the tenure of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming.

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170. The Committee has reservation on whether the ICAC Ordinance (Cap. 204), as it is, provides any statutory basis for the ICAC to undertake the activities, mentioned in paragraph 169 above, which had no apparent and ready connection with providing preventive education and enlisting public support locally against corruption, as there is no express provision in the ICAC Ordinance, in particular section 12 on "Duties of the Commissioner", empowering the ICAC for undertaking such activities.

171. The Committee:

- expresses grave concern that the CRD slackened its work in making face-to-face contacts with different segments of the community and the general public to provide preventive education and enlisting public support against corruption, despite the fact that conducting activities by face-to-face approach has been consistently acknowledged by the ICAC as one of the most effective ways to get the anti-corruption messages across; and
- notes that the Commissioner, ICAC has agreed to implement the audit recommendations in paragraphs 2.22, 2.35, 2.45, 2.55 and 3.8 of the Director of Audit's Report ("Audit Report").

Internal administrative controls

172. The Committee considers it inexcusable and condemns the ICAC for failing to put in place adequate checks and balances to ensure that the handling of its (a) official entertainment; (b) duty visits outside Hong Kong; and (c) gifts was carried out in the most appropriate, economical, effective and efficient manner during the tenure of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, as evidenced in the numerous inadequacies and non-compliances identified below:

Official entertainment

Splitting of bills

- although the ICAC Form 569 was introduced by the Administration Branch of the ICAC ("ADM") in June 2008 to facilitate ICAC officers to comply with Government guidelines on official entertainment that the cost of wine and hard liquor procured separately should be included in the expenditure of the meal for expenditure control, subsequent to the

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CRD not including the cost of wine and moutai in the expenditure of a dinner hosted by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, on 18 September 2007:

- (a) the CRD continued the practice of not including the cost of wine and hard liquor procured separately in the expenditure of the meal, despite the facts that the CRD had used the ICAC Form 569 for one and a half years after the Form was introduced in June 2008, and amendments were made to the ICAC's Commission Standing Orders ("CSO") on "Entertainment Expenses" in July 2009 setting out explicitly that expenditure per person for entertainment should include "food, beverages and tips";
- (b) the Office of Strategic Research also did not include the cost of wine and hard liquor in the majority of the entertainments it organized;
- (c) after a dinner hosted by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, on 6 December 2011, the dessert consumed by the participants of the dinner at another restaurant was treated as a separate expenditure item; and
- (d) cocktail reception immediately prior to a meal was sometimes treated as a separate event from the meal;

Control on entertainments charged to the publicity vote

- a dinner organized by the CRD on 8 December 2011 charged to the publicity vote was not treated as an entertainment expense subject to the requirements of the ICAC's CSO on "Entertainment Expenses", despite the fact that Government regulations provide that all official entertainments should be subject to these requirements regardless of which vote the meal is charged to for control purpose;

Guests and ICAC officers at official entertainments

- private guests of Mr Timothy TONG Hin-ming were included in the official functions of the ICAC during Mr TONG's tenure as Commissioner, ICAC, and only on one occasion did Mr TONG pay the cost(s) of the meal for his private guest(s);

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- the number of ICAC officers attending the dinner on 6 December 2011 hosted by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, at 10 was unreasonably high, as the number of guests was 13;

Duty visits outside Hong Kong

- the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, sought approval from the CE for attending duty visits outside Hong Kong, without first confirming with the receiving parties on the detailed itinerary. This had allowed changes to the duty visit plan, including wantonly adding sightseeing activities and visiting more locations, without the knowledge of the CE; and thus relegated the applications for the CE's approval to a mere formality;
- the CRD failed at times to perform its role to advise the Commissioner, ICAC on not undertaking activities which were not related to the business of the ICAC proposed by the receiving parties in the duty visits outside Hong Kong which the CRD organized, as evidenced in the visit to Lijiang during the duty visit to Beijing and Yunnan (11 to 17 January 2009) attended by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming;
- the ADM failed to ensure/advise that proper approval had been/should be obtained, prior to the procurement and upgrading of air passages; and

Presentation of gifts/souvenirs

- some of the "Commission-wide" gifts approved by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, such as beef brisket and fish ball, could not be said to come under the meaning of "Commission-wide" gifts, and some other "Commission-wide" gifts, such as scarves and a camera, were of a personal nature and/or were expensive. This was at variance with the 1996 ICAC policy to "limit to the minimum the exchange of gifts on official occasions. Where an exchange of gifts is unavoidable, the exchange should be made from organization to organization" which was later incorporated into the ICAC's CSO on "Acceptance of Advantages".

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173. The Committee expresses grave dismay and finds it inexcusable that the reasons claimed by the CRD for not including the cost of wine and hard liquor procured separately in the total expenditure of the meal were that the procurement of the wine and hard liquor approved by the Commissioner, ICAC was already charged to the official entertainment vote of the ICAC; and that the amended CSO on "Entertainment Expenses" promulgated in 2009 made no specific mention of the requirement to include the cost of beverages procured separately in the total expenditure for official entertainment.

174. The Committee expresses grave dismay and finds it inexcusable that the CRD had continued the practice of not including the cost of wine and hard liquor procured separately in the total expenditure of the meal, in blatant disregard to the ICAC Form 569 introduced in June 2008; and to the amendment to ICAC's CSO on "Entertainment Expenses" in July 2009 setting out explicitly that the expenditure on official entertainment should include "food, beverages and tips".

175. The Committee expresses grave dismay and finds it inexcusable that the ADM failed to serve as a gatekeeper for proper use of public money, as it had failed to ensure that the requirements of the relevant CSO and government rules and regulations were complied with.

176. The Committee deplores the inadequacies and non-compliances of the ICAC in the handling of official entertainment, duty visits outside Hong Kong and gifts during the tenure of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, and condemns the then ICAC for having:

- tarnished the well known reputation of Hong Kong as a place of probity as well as that of the ICAC as the forerunner in corruption prevention;
- eroded the credibility of the ICAC, and the CRD in particular, in educating the public and enlisting public support against corruption; and
- undermined the effectiveness of the work of the CRD, as public funds which should have been used to provide more organizations and persons with preventive education and enlist greater public support against corruption were spent on lavish official entertainment and gifts and excessive duty visits.

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177. The Committee considers it inexcusable and condemns Mr Timothy TONG Hin-ming for being not sensitive, by his own admission, to the requirements of the ICAC's CSO, which was the duty of the Commissioner, ICAC to make under the ICAC Ordinance, as evidenced by Mr TONG's ignorance/total disregard of the following requirements:

- the cost of wine and hard liquor procured separately should be included in the expenditure of the meal for expenditure control; and
- the giving of gifts should be to organizations as opposed to individuals and should be kept to the minimum, to avoid attracting criticisms of soliciting advantages and giving rise to unnecessary exchanges of gifts.

178. The Committee notes that whilst the CRD had procured 11 bottles of moutai in 2004-2005, the CRD as well as the ADM began to stock increasing number of bottles of moutai during the tenure of Mr Timothy TONG Hin-ming as Commissioner, ICAC.

179. The Committee considers that it is inappropriate for the ICAC, being a law enforcement agency, to serve moutai at official entertainments.

180. The Committee expresses alarm and strong resentment, and finds it unacceptable that moutai was served and consumed at many of the official entertainments hosted or attended by Mr Timothy TONG Hin-ming during his tenure as Commissioner, ICAC. Not only had such serving of moutai increased the costs of the meals, official business of the ICAC, which might be confidential in nature, could be divulged under the influence of alcohol.

181. The Committee considers that official entertainments hosted by Mr Timothy TONG Hin-ming for Mainland officials who were not the counterparts of the ICAC during his tenure as Commissioner, ICAC might give rise to the perception that Mr TONG made use of his official capacity to build his own personal network.

182. The Committee acknowledges that the ICAC:

- has taken steps in May/June 2013 to rectify the inadequacies and non-compliances identified; and
- has implemented all the recommendations in the Report of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits.

183. The Committee wishes to be kept informed of the progress made in implementing the various improvement measures.

184. The Committee considers that the conduct of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, in offering entertainment and gifts and conducting duty visits outside Hong Kong could not be made possible without the assistance and acquiescence of some ICAC officers.

185. The Committee urges the ICAC:

- to introduce more checks and balances to ensure that the wide powers and discretion accorded to the Commissioner, ICAC will not be exercised without restraint, such as applying the requirement that ICAC officers must seek approval if there are changes to the duty visit plan involving over \$5,000 or 20% of the original commitment to the Commissioner, ICAC; and
- to take steps to ensure that no attempts will be made by ICAC officers to circumvent or violate the ICAC's regulatory systems and procedures for handling official entertainment, duty visits outside Hong Kong and gifts to indulge the wishes and whims of their superiors.

186. The Committee recommends that the Government should address the public's high expectation of the appointee to the office of the Commissioner, ICAC and re-visit the existing mechanism and criteria for the selection of the Commissioner, ICAC.

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Recruitment

187. The Committee:

- expresses grave concern that the ICAC commissioned the assistance of an outside organization to hire Professor YUAN Bo-shun as a senior consultant of the Centre of Anti-Corruption Studies ("CACs") for one year at a total expenditure of about \$1 million; and
- urges the ICAC to strictly adhere to its established practice of hiring through public recruitment to ensure transparency and fairness and prudent use of public money.

Specific comments

Work of the CRD

188. The Committee notes that:

- the annual funding of the ICAC increased from \$708.2 million in 2003-2004 by 23.6% to \$875.5 million in 2012-2013; and
- the annual funding of the CRD increased from \$119.8 million in 2003-2004 by 26.6% to \$151.7 million in 2012-2013.

189. The Committee expresses alarm and strong resentment, and finds it unacceptable that despite an increasing trend in the annual funding of the ICAC as a whole and of the CRD in the past 10 years, there was a declining trend in the numbers of organizations and people reached by the CRD for providing preventive education and enlisting public support against corruption as evidenced below:

On preventive education

- whilst building management was the area with the most private sector corruption complaints/reports and the majority of the cases involved the operation and management of Owners' Corporations ("OCs"), the number of OCs reached by the CRD for providing preventive education decreased from 1 150 in 2003 by 32.3% to 779 in 2012;

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- in the five years between 2008 and 2012, the CRD did not conduct talks for 14 bureaux/departments ("B/Ds") and 62 public bodies, some of which were involved in corruption complaints/reports;
- between academic years 2007-2008 and 2011-2012, the CRD did not reach four tertiary institutions to conduct talks and 45 secondary schools to conduct interactive dramas or talks;

On enlisting public support

- the number of talks, visits and meetings decreased from 1 358 in 2003 by 23.4% to 1 040 in 2012;
- the number of multi-faceted activities (such as roving exhibitions and various types of competitions and games) decreased from 300 in 2003 by 2.7% to 292 in 2012;
- the number of meet-the-public sessions decreased from 69 in 2003 by 52.2% to 33 in 2012;
- the number of the CRD's community activities with sponsorship decreased from 76 in 2003 by 73.7% to 20 in 2012; and
- the percentage of corruption reports received through the seven Regional Offices decreased from 27% of total reports received in 2008 to 19% of total in 2012, and the number of corruption reports received through individual Regional Offices in 2012 merely ranged from 47 to 201.

190. The Committee urges the CRD not to, in pursuit of making greater use of the mass media and web platforms to disseminate probity messages, slacken its work on making face-to-face contacts with different segments of the community and the general public to achieve the same, having regard to the fact that conducting activities by face-to-face approach has been consistently acknowledged by the ICAC as one of the most effective ways to get the anti-corruption messages across.

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191. The Committee expresses grave concern that:

- the number of enquiries about corruption received through the seven Regional Offices of the ICAC had dropped from 3 012 in 2008 to 2 304 in 2012;
- the number of enquiries received through the New Territories South West and the New Territories North West Offices were particularly low at 176 and 93 respectively in 2012; and
- the Hong Kong West/Islands Office, with part of it located on ground floor of a commercial building which costs higher rent, received only 291 corruption reports or enquiries in 2012 (i.e. on average about one corruption report or enquiry each day).

192. The Committee notes that Commissioner, ICAC has agreed to implement the audit recommendations in paragraphs 2.22, 2.35, 2.45, 2.55, 3.8 and 3.19 of the Audit Report.

193. The Committee acknowledges that the ICAC has undertaken to review the functions, location and cost-effectiveness of its seven Regional Offices.

Expenditures of the ICAC

Official entertainment

194. The Committee notes that:

- of the whole ICAC, the official entertainment expenses increased from \$163,988 in 2003-2004 by 174.8% to \$450,663 in 2012-2013; and
- of the CRD, the official entertainment expenses on lunches and dinners increased from \$148,824 in 2003-2004 by 197.4% to \$442,577 in 2012-2013 (including official entertainment expenses charged to the CRD's publicity vote).

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195. The Committee expresses alarm and strong resentment, and finds it unacceptable about the significant increases in the purchases of wine and hard liquor, notably moutai, by the CRD and the ADM for use in official entertainments during the tenure of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, as evidenced by the following:

Wine and hard liquor stock of the CRD

- the numbers of bottles of wine bought and consumed by the CRD from 2003-2004 to 2006-2007 was both 72, whereas the numbers of bottles of wine bought and consumed by the CRD from 2007-2008 to 2012-2013 were 321 (including 18 bottles of wine purchased on behalf of the ADM for the welcome dinner of the opening ceremony of the CACS) and 280 respectively;
- the numbers of bottles of hard liquor bought and consumed by the CRD from 2003-2004 to 2006-2007 was both 11, whereas the numbers of bottles of hard liquor bought and consumed by the CRD from 2007-2008 to 2012-2013 were 70 (including six bottles of moutai purchased on behalf of the ADM for the welcome dinner of the opening ceremony of the CACS) and 68 respectively;
- no wine and hard liquor were kept in the CRD prior to 2007-2008;

Wine and hard liquor stock of the ADM

- the numbers of bottles of wine bought and consumed by the ADM from 2007-2008 to 2012-2013 were 545 and 468 respectively;
- the numbers of bottles of hard liquor bought and consumed by the ADM from 2007-2008 to 2012-2013 were 55 and 46.5 respectively;
- no wine and hard liquor were kept in the ADM prior to 2007-2008; and

Expenditure on wine and hard liquor

- the amounts spent on wine and hard liquor procured by the CRD and the ADM for use in entertainment functions during the tenure of Mr Timothy TONG Hin-ming were \$102,600 and \$98,000 respectively.

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196. The Committee expresses alarm and strong resentment, and finds it unacceptable that during the tenure of Mr Timothy TONG Hin-ming as Commissioner, ICAC:

- except 54 bottles of wine (at a total cost of \$5,376) and six bottles of hard liquor (at a total cost of \$5,970) which were charged to the CRD's publicity vote, the stock of wine and hard liquor procured by the CRD and the ADM of the ICAC for consumption at entertainment functions were charged to the official entertainment vote; and
- the stock of wine and hard liquor above was purchased on the instruction of Mr TONG. All the hard liquor consumed was used for official entertainment attended by Mr TONG; and all the wine consumed (with the exception of a few occasions where the presence of Mr TONG was not required) was also used for official entertainment attended by Mr TONG.

197. The Committee considers that wine and in particular hard liquor, such as moutai, should be served in official entertainments only where absolutely necessary for protocol reason, as the entertainments are funded by public money and certain aspects of the work of the ICAC are highly sensitive and confidential in nature.

198. The Committee acknowledges the following measures taken by the ICAC to control the purchase of wine and hard liquor for use in official lunches/dinners:

- the existing stock of wine and hard liquor is kept centrally in the ADM;
- prior approval from the Commissioner, ICAC must be sought before picking up the wine from the ADM for use in official lunches/dinners;
- future purchase of wine would be subject to the prior approval of the Commissioner, ICAC; and
- the existing stock of hard liquor would be sent to the Government Logistics Department for auction after the investigation under the direct command of Commissioner, ICAC to follow up the allegation on whether Mr Timothy TONG Hin-ming had misconducted himself during his tenure has completed.

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199. The Committee considers it inexcusable and condemns the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, for bringing private guests to official functions of the ICAC, and for paying the costs of his private guest(s) only on one occasion.

200. The Committee acknowledges the following measures taken by the ICAC to tighten official entertainment expenditure:

- all official entertainments hosted by Heads of Department must be approved by the Commissioner, ICAC;
- only inviting guests who are directly related to the context of the official business;
- confining the number of ICAC officers attending the event to those who are directly related to the context of the official business in question; and
- restricting the number of attending ICAC officers not to exceed the number of guests.

Duty visits outside Hong Kong

201. The Committee expresses alarm and strong resentment, and finds it unacceptable that during the tenure of Mr Timothy TONG Hin-ming:

- there were significant increases in the expenditures on duty visits outside Hong Kong in the past 10 years from \$653,639 in 2003-2004 by 157.3% to \$1,681,910 in 2012-2013, including 35 trips amounting to \$3,907,612 headed by Mr Timothy TONG Hin-ming during his tenure as Commissioner, ICAC;
- approval from the CE for attending duty visits outside Hong Kong was sought by Mr Timothy TONG Hin-ming, without first confirming with the receiving parties on the detailed itinerary;
- non-official elements were included in the two duty visits outside Hong Kong headed by Mr Timothy TONG Hin-ming, i.e. the duty visit to Beijing-Yunnan-Lijiang (11 to 17 January 2009) and the duty visit to Beijing-Chengdu-Leshan (16 to 23 May 2010);

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- the required approval from the CE for Mr Timothy TONG Hin-ming to modify the air passage for private reasons was not found in the duty visit of Beijing-Chengdu-Leshan (16 to 23 May 2010);
- in four duty visits outside Hong Kong, procurement orders for air passages of Mr Timothy TONG Hin-ming had been issued before the approval for the duty visits from the CE was obtained;
- the number of ICAC staff joining some of the visits was high. For instance, 25 ICAC officers attended a tripartite seminar co-organized with the Ministry of Supervision and the Commission Against Corruption of Macao in Shenzhen from 21 to 23 January 2008; and
- no approval was found for the upgrading of air passages to Business Class by two ICAC officers who accompanied Mr Timothy TONG Hin-ming to a conference in Brazil in April 2010. The upgraded air passages for the two officers cost \$186,000 in total.

202. The Committee acknowledges the following measures taken by the ICAC to tighten duty visits outside Hong Kong expenditure:

- granting of approvals only when such visits are absolutely necessary in the discharge of the officers' duties or prominently conducive to the missions and/or functions of the ICAC;
- keeping the number of officers joining the trip to the minimum; and
- confining the duration of the trip as short as possible covering only the part of the programmes/sessions pertaining to the official purposes of that visit.

203. The Committee considers that the requirement of seeking approval if there are changes to the duty visit plan involving over \$5,000 or 20% of the original commitment should cover the Commissioner, ICAC.

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Presentation of gifts/souvenirs

204. The Committee notes that since 1996, the ICAC had a policy to "limit to the minimum the exchange of gifts on official occasions. Where an exchange of gifts is unavoidable, the exchange should be made from organization to organization", which was later incorporated into the ICAC's CSO on "Acceptance of Advantages".

205. The Committee considers it inexcusable and condemns the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, for failing to strictly adhere to the long established policy of giving official gifts, contained in the ICAC's CSO on "Acceptance of Advantages", in that some of the "Commission-wide" gifts approved by Mr TONG, such as two units of beef brisket and fish ball at \$815 each; one camera at \$1,650; and three scarves ranging from \$400 to \$2,090, were of a personal nature and/or were expensive.

206. The Committee acknowledges that the ICAC has tightened its guidelines on presentation of gifts/souvenirs in that where the exchange of gifts/souvenirs is unavoidable, staff would only present one souvenir inscribed with the ICAC logo (e.g. ICAC Building model, ICAC Annual Report or ICAC plaque, etc.) to the organization concerned, and no gifts/souvenirs would be given on a personal basis.

Expenditure control on official entertainment

207. The Committee considers it inexcusable and condemns the ICAC for failing to ensure that there was no splitting of bills for and/or excessive spending on official entertainment during the tenure of the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, as evidenced by the following:

- the CRD did not include the cost of wine and hard liquor procured separately in the expenditure for official entertainment, despite (a) the introduction of the ICAC Form 569 in June 2008 setting out explicitly that estimated expenditure for official entertainment should include beverages and tips; and (b) the amendment made to the ICAC's CSO on "Entertainment Expenses" in July 2009 setting out explicitly that expenditure per person for official entertainment should include "food, beverages and tips";
- around 37% of the 206 official lunches and dinners hosted by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, and charged to the

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official entertainment vote exceeded the Government guidelines' ceilings on expenditure per person after all food and beverage cost was included;

- after a dinner hosted by the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, on 6 December 2011, the dessert consumed by the participants of the dinner at another restaurant was treated as a separate expenditure item;
- a dinner organized by the CRD on 8 December 2011 charged to the publicity vote was not subject to the requirements of the ICAC's CSO on "Entertainment Expenses", despite the fact that Government regulations provide that all official entertainments should be subject to these requirements regardless of which vote the meal is charged to for expenditure control; and
- there were occasions whereby cocktail reception immediately prior to a meal was treated as a separate event from the meal.

208. The Committee considers it inexcusable and condemns the former Commissioner, ICAC, Mr Timothy TONG Hin-ming, who was empowered under the ICAC Ordinance to make orders for the financial regulation of the ICAC, for being not sensitive, by his own admission, to the requirements of the ICAC's CSO on "Entertainment Expenses" explicitly setting out that expenditure per person for entertainment should include "food, beverages and tips".

209. The Committee urges that, whilst charging official entertainment expenditures of the CRD to the CRD's entertainment vote, the CRD's publicity vote or the official entertainment (common services) vote, depending on the nature of the occasions, are acceptable under the relevant Government regulations and administrative rules as applied generally to public officers, consideration should be given to charging such expenditures to a single vote for better monitoring purposes.

210. The Committee notes that the Commissioner, ICAC has agreed to implement the audit recommendations in paragraph 3.25 of the Audit Report.

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211. The Committee acknowledges the following measures undertaken by the ICAC to tighten control over official entertainment expenditure:

- exceptional approval needed to be sought from the Commissioner, ICAC should the official entertainment expenses exceed the ceiling, no matter whether the expenses are charged to project or entertainment vote;
- all expenditure items, including wines, dessert, snacks, etc., served before or after the same event must be included as part of the entertainment expenses. Splitting of bills or charging them to different votes is strictly prohibited;
- clearly specifying in the ICAC's CSO on "Entertainment Expenses" that the costs of all food and beverages should be included as part of the lunch/dinner expenditure for control purposes;
- to ensure checks and balances, Head of Operations would endorse official entertainments hosted by the Commissioner, ICAC; whereas the Assistant Director of Administration would check compliance of those attended by both the Commissioner, ICAC and Head of Operations;
- the Commissioner, ICAC has undertaken to report regularly to the Advisory Committee on Corruption the details of official entertainments that exceed the ceilings on expenditure per person; and
- the ICAC Form 569 has been made mandatory for all ICAC staff with effect from 2 September 2013 with a view to strengthening the control over entertainment expenditure.

Strategic planning and performance measurement

212. The Committee expresses grave concern that:

- the CRD has not prepared a formal strategic plan for preventive education and enlisting public support against corruption; and
- of the four performance targets set for preventive education, two had all along been lower than the actual performance, rendering them meaningless.

213. The Committee notes that the Commissioner, ICAC has agreed to implement the audit recommendations in paragraphs 4.4 and 4.11 of the Audit Report.

Follow-up action

214. The Committee notes that the ICAC has implemented all the recommendations in the Report of the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits, and will report the progress of implementation to the Advisory Committee on Corruption.

215. The Committee wishes to be kept informed of the progress made in implementing the improvement measures.