

立法會
Legislative Council

LC Paper No. CB(4)999/12-13
(These minutes have been
cleared with the Chairman)

Ref: CB4/SC/12

**Select Committee to Inquire into Matters Relating to
Mr Timothy TONG's Duty Visits, Entertainment, and
Bestowing and Receipt of Gifts during his Tenure as
Commissioner of the Independent Commission Against Corruption**

**Minutes of the meeting held on
Tuesday, 16 July 2013, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon IP Kwok-him, GBS, JP (Chairman)
Hon Cyd HO Sau-lan (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Hak-kan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Kenneth LEUNG
Hon Dennis KWOK
Ir Dr Hon LO Wai-kwok, BBS, MH, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen
- Clerk in attendance** : Ms Anita SIT
Chief Council Secretary (4)1
- Staff in attendance** : Ms Percy MA
Assistant Secretary General 4

Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Wendy JAN
Senior Council Secretary (4)2

Ms Angela CHU
Council Secretary (4)1

Ms Carmen HO
Senior Legislative Assistant (4)2

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The Select Committee deliberated (Index of proceedings attached at **Appendix**).

I. Confirmation of the terms of reference of the Select Committee

(LC Paper No. -- Paper on the terms of reference of the
CB(4)892/12-13(01) Select Committee prepared by the
 Legislative Council Secretariat)

2. The Chairman invited members to confirm the terms of reference ("TOR") of the Select Committee as set out in paragraph 4 of the above paper. In response to the enquiry of the Deputy Chairman and Mr Paul TSE on the addition of a preamble at the beginning of the TOR, the Clerk advised that the purpose of the preamble was to make clear that the TOR of the Select Committee was to reflect the substance of the petition jointly presented by Hon Dennis KWOK and Hon Cyd HO at the Council meeting of 8 May 2013 ("the Petition") and referred to the Select Committee under Rule 20(6) of the Rules of Procedure ("RoP"). The Chairman added that such presentation of the TOR would also differentiate this Select Committee from the other select committees formed since the First Legislative Council. While this Select Committee was formed pursuant to the referral by the Council of the Petition under Rule 20(6) of RoP, the previous select committees were formed by resolution of the Council and were authorized under the relevant resolutions to exercise summoning power under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

3. Members endorsed the TOR of the Select Committee.

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II. Proposed practice and procedure

(LC Paper No. -- Paper on proposed practice and procedure
CB(4)892/12-13(02) prepared by the Legislative Council
Secretariat)

4. At the invitation of the Chairman, Assistant Legal Adviser 1 ("ALA1") advised that the proposed practice and procedure of the Select Committee was modeled on the practice and procedure adopted by the previous select committees, with necessary modifications made taking into account that the Select Committee was established by petition and was not authorized by the Council to exercise the powers under section 9(1) of Cap. 382. He highlighted paragraphs 16(b)(i) and 16(b)(ii) of the Appendix to the above paper, and pointed out that the witnesses invited, instead of ordered, to attend meetings of the Select Committee to give evidence were not protected under Cap. 382, and any person, who before the Select Committee intentionally gave a false answer to any question material to the subject of inquiry during the course of any examination or presented to the Select Committee any false, untrue, fabricated or falsified document with intent to deceive the Select Committee, committed an offence.

5. Noting that the Independent Commission Against Corruption ("ICAC") was conducting a criminal investigation against Mr Timothy TONG, Mr Dennis KWOK suggested and members agreed that the Department of Justice ("DoJ") should be notified of the Select Committee's inquiry.

(Post meeting note: A letter was sent to DoJ on 19 July 2013, and DoJ replied on 6 September 2013 advising that DoJ will keep the Select Committee informed if, as a result of ICAC's investigation, legal proceedings are instituted on any matters related to the subject of the Select Committee's inquiry.)

6. Regarding the Select Committee's inquiry into how ICAC provided information to the Finance Committee ("FC") in respect of Mr Timothy TONG's duty visits and bestowing of gifts, Mr Paul TSE pointed out that the officers of ICAC who provided the information to FC might be subject to criminal liability under section 18 of Cap. 382, and it was highly possible that the same officers would be invited by the Select Committee to give evidence or to produce documents before the Select Committee. Unless the officers were ordered to attend before the Select Committee by summons, such evidence or documents might be admissible as evidence in criminal proceedings. In such circumstances, he enquired whether the Select

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Committee would consider seeking authorization, by way of resolution of the Council, to exercise the powers under section 9(1) of Cap. 382, to summon the relevant officers, so that the latter would be protected by the privilege under section 14(1) of Cap.382.

7. The Deputy Chairman and Mr James TO opined that if the officers concerned had not given false answers or information before FC with intent to deceive FC, they would not require the privilege under section 14(1) of Cap. 382. On the other hand, if the officers concerned had intentionally given false answers or information before FC, there was no good reason to afford them such privileges when they gave evidence before the Select Committee.

8. The Chairman was of the view that the privilege provided under Cap. 382 to witnesses ordered to give evidence by summons was that any statement or admission made by the witnesses during the relevant inquiry would not be admissible as evidence in any legal proceedings. However, if they had intentionally given false answers or information before the Council or its committee, they would still be subject to criminal liability. The Chairman also expressed reservation as to whether the public officers of ICAC who provided the information to FC in respect of Mr Timothy TONG's duty visits and bestowing of gifts might be subject to criminal liability under section 18 of Cap. 382.

9. Mr Paul TSE said that in order to ensure fairness, it was important for public officers to understand and recognize their legal rights and protection before attending the hearings of the Select Committee. ALA1 advised that witnesses should seek legal advice regarding their legal rights and protection, if necessary.

10. The Deputy Chairman referred to the discussion of the House Committee meeting on 24 May 2013 regarding a letter from the Director of Public Prosecutions to the Chairman of the Public Accounts Committee ("PAC"). She recalled that the discussion touched on the issues raised by Mr Paul TSE. She requested the Clerk to circulate the relevant extract from the minutes of the House Committee meeting for members' reference.

(Post meeting note: Relevant extract from the minutes of the meetings of the House Committee on 24 and 31 May 2013 was issued to members on 19 July 2013 vide LC Paper No. CB(4)910/12-13.)

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11. Members endorsed the proposed practice and procedure for the Select Committee.

III. Proposed major areas of study

(LC Paper No. CB(4)892/12-13(03) -- Paper on proposed major areas of study prepared by the Legislative Council Secretariat

LC Paper No. FS29/12-13 -- A summary of press reports on events relating to the handling of official entertainment, gifts and duty visits by Mr Timothy TONG, former Commissioner of the Independent Commission Against Corruption (from 1 April 2013 to 10 July 2013) prepared by the Research Office of the Legislative Council Secretariat)

12. The Chairman said that the proposed major areas of study of the Select Committee were drawn up based on the TOR of the Select Committee.

13. Mr Dennis KWOK proposed and members agreed to send a letter to ICAC requesting them to retain and protect all records that might be relevant to the subjects of the Select Committee's inquiry.

(Post meeting note: The letter was sent to ICAC on 19 July 2013.)

14. Noting that PAC had asked ICAC and relevant government departments to provide information for its consideration of Chapter 7 of the Director of Audit's Report No. 60 ("the Audit Report") on "Preventive education and enlisting public support against corruption", Mr Kenneth LEUNG suggested that the Select Committee request PAC to transfer all the relevant documents it had considered to the Select Committee in order to expedite the work of the Select Committee.

15. Assistant Secretary General 4 ("ASG4") said that the current plan of PAC was to table its report on Chapter 7 of the Audit Report in Council in October 2013. Relevant documents considered by PAC would be attached as appendices to the report, and members of the Select Committee could refer to the relevant documents when the report was published. ALA1

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advised that the transfer of documents provided to PAC by ICAC or other government departments on a confidential basis to the Select Committee would involve legal issues. He suggested that the Select Committee might consider requesting ICAC to provide the Select Committee with documents or information that they had submitted to PAC in relation to PAC's consideration of the Audit Report. ASG4 added that subject to members' agreement to the proposed major areas of study of the Select Committee set out in LC Paper No. CB(4)892/12-13(03), letters would be sent to ICAC and relevant government departments within July 2013 to request for provision of relevant information.

16. Mr Kenneth LEUNG suggested that the Select Committee be provided with a list of the documents that ICAC had provided to PAC.

17. Referring to Part II of the proposed major areas of study, Mr Tony TSE and Ir Dr LO Wai-kwok expressed concern whether the Select Committee would be able to ascertain the authenticity and comprehensiveness of the information provided by ICAC to FC. The Chairman advised that the Select Committee could establish the relevant facts by asking ICAC to provide further information and by obtaining evidence from witnesses.

18. Members endorsed the proposed major areas of study of the Select Committee as set out in LC Paper No. CB(4)892/12-13(03), and agreed that the Select Committee would write to ICAC and relevant government departments to request for provision of relevant information.

(Post meeting note: Letters were sent to ICAC and the Civil Service Bureau on 25 July 2013 to request for the provision of relevant information.)

IV. Proposed work plan

(LC Paper No. -- Paper on proposed work plan prepared by
CB(4)892/12-13(04) the Legislative Council Secretariat)

19. At the invitation of the Chairman, the Clerk briefed members on the proposed work plan as set out in LC Paper No. CB(4)892/12-13(04). She said that under the proposed work plan, the work of the Select Committee would be divided into three main stages, and the Select Committee would complete its work by May 2014. Members endorsed the proposed work plan.

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20. The Chairman said that depending on the release of the reports of PAC as well as the Independent Review Committee on ICAC's Regulatory Systems and Procedures for handling Official Entertainment, Gifts and Duty Visits, the Select Committee would decide if further information was required.

V. Any other business

21. Members agreed on the indexing system of papers for the Select Committee, the note on which was tabled at the meeting.

(Post meeting note: The note on the indexing system for Select Committee papers [SC(4)(TI) Paper No.: L2] was issued to members on 19 July 2013 vide LC Paper No. CB(4)910/12-13.)

Next meeting

22. Members noted that the next meeting of the Select Committee was tentatively scheduled for Thursday, 3 October 2013, at 10:45 am.

23. There being no other business, the meeting ended at 5:40 pm.

Council Business Division 4
Legislative Council Secretariat
27 September 2013

**Proceedings of the first meeting of the Select Committee to Inquire into
Matters Relating to Mr Timothy TONG's Duty Visits, Entertainment, and
Bestowing and Receipt of Gifts during his Tenure as
Commissioner of the Independent Commission Against Corruption
on Tuesday, 16 July 2013, at 4:30 pm
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject	Action Required
I. <u>Confirmation of the terms of reference of the Select Committee</u> [LC Paper No. CB(4)892/12-13(01)]			
000000 - 001330	Chairman Clerk Deputy Chairman Mr Paul TSE Assistant Legal Adviser 1	(a) Brief introduction by the Clerk (b) The Select Committee's decision that a preamble be added to the beginning of its terms of reference ("TOR") in order to make it clear that its TOR was to reflect the substance of the petition jointly presented by Hon Dennis KWOK and Hon Cyd HO at the Council meeting of 8 May 2013 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure.	
II. <u>Proposed practice and procedure</u> [LC Paper No. CB(4)892/12-13(02)]			
001331 - 004208	Chairman Assistant Legal Adviser 1 Mr Dennis KWOK Mr Paul TSE Deputy Chairman Mr James TO	(a) Introduction by ALA1 (b) The Select Committee's decision that the Department of Justice ("DoJ") be informed of the Select Committee's inquiry, and that DoJ be requested to keep the Select Committee informed of the development, if as a result of the ICAC's investigation, legal proceedings were instituted on any matters related to the subject of the inquiry (c) Discussion on whether the Select Committee should seek authorization, by way of resolution of the Council, to exercise the powers under section 9(1) of Cap.382 to summon witnesses on the part of inquiry on the provision of the information by the Independent Commission Against Corruption ("ICAC") to the Finance Committee, so that the witnesses would be protected under Cap. 382 (d) Discussion on the application of section 18 of Cap. 382 to designated public officers, i.e.	

Time marker	Speaker	Subject	Action Required
		persons specified in section 8A(2)(b) of Cap. 382	
<p>III. <u>Proposed major areas of study</u> [LC Paper No. CB(4)892/12-13(03)] [LC Paper No. FS29/12-13]</p>			
004209 - 010105	Chairman Mr Dennis KWOK Deputy Chairman Mr Kenneth LEUNG Assistant Secretary General 4 Assistant Legal Adviser 1 Mr Tony TSE Ir Dr LO Wai-kwok Mr Paul TSE	(a) Discussion on whether the Select Committee should request Public Accounts Committee ("PAC") to transfer the documents submitted by ICAC to PAC in relation to Chapter 7 of the Director of Audit's Report No. 60 on "Preventive education and enlisting public support against corruption" (b) The Select Commission's decision that - (i) ICAC be requested to retain and protect all records that might be relevant to the subjects of the Select Committee's inquiry; and (ii) ICAC and relevant government departments be requested to provide information relevant to the major areas of study of the Select Committee.	
<p>IV. <u>Proposed work plan</u> [LC Paper No. CB(4)892/12-13(04)]</p>			
010106 - 010515	Chairman Clerk Ir Dr LO Wai-kwok	(a) Introduction by the Clerk (b) Endorsement of the Select Committee of the proposed work plan	
<p>V. <u>Any other business</u></p>			
010516 - 010821	Chairman Clerk	(a) Introduction by the Clerk on the proposed indexing system for Select Committee papers (b) Endorsement of the Select Committee of the proposed indexing system (c) Next meeting	