

立法會
Legislative Council

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Tel : 3919 3300

Date : 20 February 2020

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

**Request for special leave of the Council
to give evidence of Council proceedings**

The Department of Justice (“DoJ”) has submitted a request in **Appendix 1** for special leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (**Appendix 2**) and Rule 90 of the Rules of Procedure (“RoP”) (**Appendix 3**) for six officers of and persons employed by the Council to give evidence in the criminal proceedings in the following cases (“the Request”) which have been scheduled to be heard on 24 February 2020:

- (i) *HKSAR v NG Ka-yi* (Case No. ESS 33914/2019);
- (ii) *HKSAR v CHENG Ka-long* (Case No. ESS 33915/2019);
and
- (iii) *HKSAR v HO Sau-yee* (Case No. ESS 33916/2019 and ESCC 2312/2019).

2. As the novel coronavirus outbreak remains severe in Hong Kong, the President decided on 14 February 2020 that the regular Council meeting of 19 February 2020 would not be held. The other Council meeting held on the same day only dealt with tabling of subsidiary legislation and urgent questions on measures for tackling the outbreak. As the next Council meeting will not be held until 26 February, the Request is unable to be considered by the Council before the trial of the above cases scheduled for 24 February.

3. Under section 7(2) of Cap. 382, during a recess or adjournment of the Council, the special leave referred to in section 7(1) thereof (as reflected in RoP 90(1)) may be given by the President. RoP 90(4) also provides that where the leave of the Council referred to in RoP 90(1) is sought during any recess or adjournment or dissolution of the Council, such leave may be given by the President. There is a precedent that the President granted special leave in February 2018 during adjournment of the Council.

4. In view of the above considerations in paragraphs 2 and 3, the President has ordered that the leave be given to DoJ in respect of the Request under section 7(2) of Cap. 382 and RoP 90(4).

5. As directed by the President, the reply (English version only) to the Request in **Appendix 4** has been issued to DoJ.

(Dora WAI)
for Clerk to the Legislative Council

Encls.

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香港中環下亞厘畢道18號
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DEPARTMENT OF JUSTICE
Prosecutions Division
11th Floor, West Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong
Fax: 852-2536 8030

本司檔號 Our Ref.: ESCC 2312/2019 & ESS 33914-33916/2019

來函檔號 Your Ref.:

電話號碼 Tel.No.: 3902 8103

11th February 2020

Mr. Kenneth CHEN
Clerk to the Legislative Council
The Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Urgent

By Fax (2845-2444) and By Post

Dear Mr. CHEN,

Re: Application for Special Leave of the Legislative Council for officers of and persons employed by the Council to give evidence in respect of proceedings concerning the 3rd Bill Committee's meeting on the National Anthem Bill on 16th March 2019 in the criminal proceedings of:

HKSAR v NG Ka-yi (ESS 33914/2019)

HKSAR v CHENG Ka-long (ESS 33915/2019)

HKSAR v HO Sau-ye (ESS 33916/2019 & ESCC 2312/2019)

This is an application for special leave of the Legislative Council ("LegCo") under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap.382) and rule 90 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Instrument No.A501) for the following officers of and persons employed by the LegCo to give evidence in the criminal proceedings instituted against NG Ka-yi ("NG"), CHENG Ka-long ("CHENG") and HO Sau-ye ("HO") in respect of the proceedings held before the 3rd Bill Committee's meeting on the National Anthem Bill on 16th March 2019 ("the Meeting"):-

	Name	Role	Remarks
1.	Mr. HUI Yiu-tak 許耀德	Security Assistant (I) of the LegCo	Witnessed the events that happened during the Meeting

2.	Mr. YU Yiu-kwan 余耀坤	Security Assistant (II) of the LegCo	- Witnessed the events that happened during the Meeting
3.	Mr. KWAN Wai-keung 關偉強	Security Assistant (II) of the LegCo	- Witnessed the events that happened during the Meeting
4.	Ms. LAM Wai-ling 林惠玲	Senior Security Assistant of the LegCo	- Witnessed the events that happened during the Meeting - Producing the exhibits (including a microphone, a mini-speaker and a banner) seized after the event
5.	Ms. PANG Lok-yin 彭樂然	Security Assistant (I) of the LegCo	- Witnessed the events that happened during the Meeting
6.	Mr. LAM Tsz-fung 林子峰	Senior Information Technology of the LegCo	- Producing a video disc containing the LegCo CCTV and Webcast footage of the Meeting

The reasons for the application as follows. Each of CHENG, NG and HO (collectively known as "the Defendants") is summonsed for the offence of 'contravening an administrative instruction issued under s.8(3) of the Legislative Council (Powers and Privileges) Ordinance, Cap.382' (ESS33914-33916/2019) and HO is further charged with one count of 'common assault, contrary to Common Law and punishable under s.40 of the Offences against the Person Ordinance, Cap.212' (ESCC 2312/2019). All the cases will be heard together.

It is alleged that during the Meeting which was held at Conference Room 1 of the Legislative Council Complex, the Defendants who were allowed to make a speech in the Meeting, dashed towards the side where the Chairman of the Bill Committee and the government officials were seated, causing a chaotic situation. At that time, CHENG held a mini-speaker which was playing the National Anthem and chanted slogans via the microphone of the said speaker. NG threw a banner on to the table of Mr. Patrick NIP Tak-kuen, JP, Secretary for Constitutional and Mainland Affairs. HO chanted slogans and held up a placard and a banner in front of the officials. When the abovementioned Mr. HUI Yiu-tak, Security Assistant (I) of the LegCo was trying to intercept HO, HO pushed Mr. HUI's shoulder, causing him to lose his balance and fall onto the ground (the subject matter of the 'common assault' offence).

The evidence of the above-named witnesses will be necessary in the trial of the Defendants, and may involve events which had happened in the Conference Room 1 while the Meeting was held.

CHENG, NG and HO indicated their not guilty plea to the above offences at the hearing on 2nd December 2019. The trial is now fixed to be heard on 24th February 2020 with 3 days reserved. In view of the forthcoming trial date, your urgent attention to this matter is very much appreciated.

Please do not hesitate to contact me at 3902 8103 / [REDACTED] if I can be of further assistance.

Yours sincerely,



(Derek Wong)

Senior Public Prosecutor

c.c. DIP YUEN ka-fai, Franky, OC of District Crime Squad 2 CDIST
By Fax (2521 9377) Only

第 382 章 立法會 (權力及特權) 條例

7. 未經許可不得就立法會或任何
委員會的會議程序作證

(1) 如未經立法會特別許可，任何議員或立法會人員，以及受僱在立法會或任何委員會會議席上錄取會議紀要或保存證據紀錄的人，不得就上述會議紀要或證據紀錄的內容、或就提交立法會或任何委員會的文件內容(視屬何情況而定)、或就立法會或任何委員會所進行的會議程序或訊問(視屬何情況而定)，在其他地方作證。

(2) 在立法會休會或押後會議期間，第(1)款所提述的特別許可，可由主席給予；如主席因不在香港或喪失履行職務能力以致不能行事者，則可按照議事規則給予。

(由 2000 年第 71 號第 3 條修訂)

CAP. 382 *Legislative Council (Powers and Privileges)*

7. Evidence of proceedings in the Council or any
committee not to be given without leave

(1) No member or officer of the Council, and no person employed to take minutes or keep any record of evidence before the Council or a committee, shall give evidence elsewhere in respect of the contents of such minutes or record of evidence, or of the contents of any document laid before the Council or committee, as the case may be, or in respect of any proceedings or examination held before the Council or committee, as the case may be, without the special leave of the Council.

(2) During a recess or adjournment of the Council, the special leave referred to in subsection (1) may be given by the President or, if the President is unable to act owing to his absence from Hong Kong or incapacity, in accordance with the Rules of Procedure. (*Amended 71 of 2000 s. 3*)

90. 就立法會會議程序提供證據一事取得許可的程序

(1) 為取得根據《立法會(權力及特權)條例》(第382章)第7條所需的立法會許可，以就會議紀要、作證紀錄或提交立法會、委員會或小組委員會會議席上省覽的任何文件的內容，或就立法會、委員會或小組委員會的任何會議或審查程序，在立法會以外的地方提供證據，要求該許可的人須向立法會秘書書面陳述其請求及說明其理由，並須提供立法會秘書在個別情況下按立法會主席的指示所進一步要求的資料。(2017年第14號法律公告)

(2) 許可的請求須列入立法會主席所指定會議的議程內；除非立法會藉任何議員在該次會議動議的一項可無經預告的議案，決定拒絕給予許可，否則立法會須當作已命令給予許可。

(3) 立法會秘書須以書面將立法會的決定通知該要求許可的人。

(4) 凡有人在立法會休假、休會待續或解散期間，向立法會要求取得第(1)款所述的許可，可由立法會主席給予，如立法會主席不能執行主席職務，則可由主持立法會會議的議員給予許可。

90. Procedure for Obtaining Leave to Give Evidence of Council Proceedings

(1) For the purpose of obtaining the leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) in order that evidence may be given elsewhere in respect of the contents of minutes, records of evidence or any document laid before the Council or a committee or subcommittee, or in respect of any proceedings or examination held before the Council or a committee or subcommittee, the person seeking such leave shall submit to the Clerk a written statement of the request and the reasons therefor and such further information as the Clerk, on the direction of the President, may require in any particular case.

(2) The request for leave shall be placed on the Agenda for such meeting as the President may appoint and, unless on a motion which may be moved without notice at that meeting by any Member the Council determines that such leave shall be refused, the Council shall be deemed to have ordered that such leave be granted.

(3) The Clerk shall give written notice of the decision of the Council to the person by whom the request for leave is made.

(4) Where the leave of the Council referred to in subrule (1) is sought during any recess or adjournment or dissolution of the Council such leave may be given by the President or, if the President is unable to act, by the Member presiding.



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

附錄 4
Appendix 4
(只備英文本
English version only)



立法會

LEGISLATIVE COUNCIL

來函檔號 YOUR REF : ESCC 2312/2019 and ESS 33914-33916/2019
本函檔號 OUR REF : CB(3)/P/2/OL
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20 February 2020

By email

Mr Derek WONG
Senior Public Prosecutor
Prosecutions Division
Department of Justice
11/Floor, West Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong

Dear WONG,

**Application for special leave of the Legislative Council
for six officers of and persons employed by the Council
to give evidence in the criminal proceedings of:**

**HKSAR v NG Ka-yi (ESS 33914/2019)
HKSAR v CHENG Ka-long (ESS 33915/2019)
HKSAR v HO Sau-ye (ESS 33916/2019 & ESCC 2312/2019)**

I refer to your letter of 11 February 2020 regarding the captioned application. This is to advise you that under section 7(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and in accordance with Rule 90(4) of the Rules of Procedure of the Legislative Council, the special leave you requested has been given by the President of the Legislative Council.

Yours sincerely,

(Dora WAI)
for Clerk to the Legislative Council