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Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man

Proposed Practice and Procedure

Purpose

This paper invites members to consider the proposed practice and procedure to be adopted by the Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man ("the Select Committee").

Background

2. The Legislative Council passed a resolution to appoint the Select Committee on 10 December 2008. The resolution sets out the Terms of Reference of the Select Committee and authorizes the Select Committee to exercise the powers conferred by section 9(1) of the Legislative Council (Power and Privileges) Ordinance (Cap. 382). The Chairman, Deputy Chairman and the 10 members of the Select Committee were appointed by the President on 12 December 2008.

3. The procedures of select committees are regulated by the relevant provisions in the Legislative Council Rules of Procedure and Cap. 382. The practice and procedure proposed in this paper include those not expressly provided for in the Rules of Procedure and Cap. 382.

Principles

4. In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees. Due regard has also been given to the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;

- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's Terms of Reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted with efficiency; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

Practice and procedure

Term of office

5. In accordance with Rule 78(4) and (5) of the Rules of Procedure, the Select Committee shall be dissolved upon reporting to the Council or at the end of a term. If the Select Committee is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

Chairmanship

6. All meetings of the Select Committee are chaired by the Chairman or, in his/her absence, by the Deputy Chairman. In accordance with Rule 79(3) of the Rules of Procedure, in the event of the temporary absence of the Chairman and Deputy Chairman, the Select Committee may elect a chairman to act during such absence.

Quorum

7. Rule 78(3) of the Rules of Procedure provides that the quorum of a select committee shall be one-third of the members excluding the chairman (a fraction of the whole number being disregarded). The quorum of the Select Committee shall therefore be three members excluding the Chairman. The Clerk to the Select Committee will draw to the attention of the Chairman on the absence of a quorum as and when there is such absence.

Voting

8. In accordance with Rule 79(5), 79(6), and 79A(1) of the Rules of Procedure, divisions in the Select Committee shall be taken by the Clerk to the Select Committee who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the Chairman nor any other member

presiding shall vote, unless the votes of the other members are equally divided in which case he/she shall have a casting vote, which shall not be exercised in such a way as to produce a majority vote in favour of the question put.

9. Decisions of the Select Committee shall be decided by a majority of the members present and voting, which is done by a show of hands. Abstentions are not counted for the purpose of determining the result of the vote.

Power to compel evidence

10. The Select Committee may, subject to sections 13 and 14 of Cap. 382, order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

11. The Select Committee may also request any person or body to attend a meeting to give evidence orally, invite any person or body to give evidence in writing or any person or body to produce specified documents to the Select Committee.

12. The privileges and immunities provided in Cap. 382 are available in proceedings before the Select Committee which include hearings and deliberative meetings. Any person not lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Select Committee is not protected by section 14(1) of Cap. 382 relating to privileges of witnesses.

Conduct of meetings

General principles

13. In accordance with Rule 79(1) of the Rules of Procedure, the deliberations of the Select Committee shall be confined to the matter or matters referred to it by the Council.

14. A schedule of meetings for the Select Committee is usually agreed beforehand, but the Chairman has the authority to determine the date and time of meetings. Members will be notified by the Clerk of the time and venue of meetings. Where considered appropriate, the Select Committee may meet outside the Legislative Council Building.

15. In accordance with Rule 79(2) of the Rules of Procedure, meetings of the Select Committee shall be held in public unless the Chairman otherwise orders in accordance with any decision of the Select Committee.

Meetings for the examination of witnesses

16. Examination of witnesses will normally be conducted in public.

Exceptions to open hearings may be made as decided by the Select Committee, based on the individual circumstances of each occasion.

17. During open hearings, members should only ask questions for the purpose of establishing the facts in connection with the inquiry. Members should not make comments or statements during these hearings.

18. Public hearings are generally conducted in the following manners:

- (a) at the beginning of each open hearing, the Chairman reminds the public and the media that dissemination or disclosure of the evidence given at the hearing outside the proceedings is not protected under Cap. 382. The media should obtain legal advice as to their legal responsibilities;
- (b) where it is decided that witnesses should be examined on oath, the Chairman will administer the oath under section 11 of Cap. 382 before the examination starts;
- (c) facts are established by questions and evidence given at hearings. Usually, the Chairman will first make an introduction and then ask the witness an appropriate opening question, giving him/her an opportunity to state his/her case;
- (d) members wishing to ask questions should so indicate by a show of hands, and are called upon to ask questions. The Chairman will ensure, as far as possible, that members have equal opportunities to ask questions and that the hearing is conducted in a structured manner;
- (e) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the Select Committee's inquiry, as set out in its Terms of Reference;
- (f) short follow-up questions may be allowed. Follow-up questions should be questions seeking further answers to the original question or clarifications to the answers given. The Chairman has the discretion to decide whether a question is a follow-up question and whether it should be allowed or otherwise; and
- (g) The privilege in Cap. 382 is available only within the context of the hearings. All members, including non-Select Committee Members should refrain from making comments relating to the hearing outside the proceedings. Evidence given in closed meetings should not be made public by any members.

19. Unless excused under section 13(2) of Cap. 382 or justifiably claiming privilege under section 15, a witness summonsed under section 9 of Cap. 382 must answer all lawful and relevant questions from the Select Committee. If he/she refuses to do so, he/she commits an offence under section 17 of Cap. 382 and is liable to prosecutions. If the witness claims privilege from disclosure of evidence on grounds of public interest immunity, the procedure as set out in the Council's resolution concerning the usage and practice in regard to the determination of claims of public interest privilege in **Appendix I** will be followed.

20. Subject to the Select Committee's decision, witnesses attending before the Select Committee may be allowed to be accompanied by other persons, who may include legal adviser(s), to assist the witnesses concerned. However, such accompanying person(s) may not address the Select Committee.

Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings

21. In accordance with Rule 41(2) of the Rules of Procedure, a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This rule applies to the proceedings of the Select Committee by virtue of Rule 43 of the Rules of Procedure.

22. If there are pending legal proceedings arising from matters which are related to the subject of the Select Committee's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

- (a) the Department of Justice will be asked to keep the Select Committee informed of the development of the criminal proceedings concerned, if any;
- (b) the Chairman would explain to each witness that the function of the Select Committee is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, the Select Committee may determine to hold closed meetings to obtain evidence from a witness;
- (d) where the Select Committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and

observations of the Select Committee and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and

- (e) the report of the Select Committee should not contain any material which might prejudice a pending criminal jury trial.

23. In respect of pending civil proceedings, the following principles also apply:

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;
- (c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and
- (d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the Select Committee in two possible ways -
 - (i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and
 - (ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

Handling of requests for classifying documents as confidential

24. If requests are made by witnesses for classifying certain information or documents as confidential, the Select Committee shall consider carefully the circumstances of each case and the justifications provided.

Handling of information contained in classified documents or obtained at closed hearings

25. In fairness to persons who have provided classified documents for the Select Committee, if information contained in such documents is to be used at a public hearing, the source of the information will only be disclosed if it is necessary to do justice to the witness or to enable him to understand a question.

26. If closed meetings are held to obtain evidence from a witness who is a party to pending legal proceedings, information obtained in these closed hearings should be used with care, and where possible, the identity of the witness who has provided the information should not be disclosed.

27. Where the Select Committee is inclined to refer to information obtained in closed hearings in the Select Committee's report, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be carefully considered by the Select Committee before its report is finalized.

28. Any information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed.

Internal deliberations

29. Subject to Rule 79(2) of the Rules of Procedure, the Select Committee may hold closed meetings to deliberate on procedural matters, progress of its work, the logistical arrangements for hearings, the evidence obtained, the draft report of the Select Committee and any other matters relevant to the Select Committee's work. Members including the Chairman and the Deputy Chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. The Select Committee Chairman or the Deputy Chairman should be the only persons authorized to handle media enquiries.

Handling of documents

30. All documents submitted to the Select Committee are numbered: by document and by page. Each member of the Select Committee will be given a copy of the documents produced to the Select Committee, unless advised otherwise with the consent of the Select Committee.

31. To facilitate members in perusing documents produced by the Select Committee, a room in the Legislative Council Building is reserved for keeping a complete set of documents produced to or compiled by the Select Committee. Only members of the Select Committee and the relevant staff can have access to the room. If the document is voluminous, a full copy is not issued to members of the Select Committee. Instead, members will peruse the documents which are placed inside the room. Members should not remove any paper from the room. Where a document is classified confidential, they should not make photocopy of it, in whole or in part.

Disclosure of interests

32. Rules 83A and 84 of the Rules of Procedure relating to Members' pecuniary

interest shall apply to the proceedings of the Select Committee.

33. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, he/she should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature of interests so declared by individual members.

Participation of Non-Select Committee Members

34. While meetings held in public shall be attended by members of the Select Committee, non-Select Committee Members may also be in attendance at these meetings, but may not speak at the meeting. If a non-Select Committee Member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not the Chairman will ask the questions.

35. Non-Select Committee Members are not allowed to be present at closed meetings of the Select Committee or at hearings held at closed meetings.

Minutes of proceedings of the Select Committee

36. All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of a fee.

37. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each meeting at which witnesses are examined. Relevant parts of the draft transcript are forwarded to the person or body giving evidence for sight and correction, if any, before being incorporated into the minutes of evidence, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The procedures in **Appendix II**, which apply to witnesses, shall also apply to persons or bodies other than the witnesses giving evidence requesting copies of transcripts of evidence. Any person may obtain a copy of the finalized form of transcript for meetings held in public upon the payment of a fee.

38. For hearings held in closed meetings, no transcripts will be provided for any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and correction. The undertaking they are required to sign includes an additional requirement that any part of the draft transcript in question must not be divulged.

39. For meetings not attended by any outside party, the minutes of meetings are normally presented in a condensed form, recording the Select Committee's decisions, follow-up actions required, procedural matters and declarations of

interest made by members. Verbatim record of such meetings may be prepared on the direction of the Select Committee.

Report of the Select Committee

40. The draft report of the Select Committee is considered by the Select Committee at closed meetings. In accordance with Rule 79(9) of the Rules of Procedure, the minutes of proceedings of the Select Committee record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the Select Committee, showing the names of members voting in the division or declining to vote.

41. In order to ensure that the procedure is fair and seen to be fair to people whose interests or reputations may be affected by its proceedings, any party, person or organization against whom adverse comments are intended to be made in the Select Committee's report will be given an opportunity to comment on relevant parts of the draft findings and observations of its report. The comments received will be carefully considered by the Select Committee before its report is finalized.

42. In accordance with Rule 79(10) of the Rules of Procedure, a report of the Select Committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the Chairman of the Select Committee.

Premature publication of evidence

43. In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the Select Committee and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Council. Any member of the Select Committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.

Advice sought

44. Members are invited to endorse the above practice and procedure of the Select Committee.

**Resolution under Legislative Council (Powers and Privileges) Ordinance
passed on 25 May 1994 and amended on 20 November 1996
and further amended on 16 April 1997**

That with effect from 25 May 1994 the usage and practice in regard to the determination of claims of "public interest privilege" made by persons appearing before a committee of the Council shall be as set out in the Schedule annexed to this Resolution.

1. In this Schedule –

"relevant body", (有關方面) in relation to a committee before which a witness is attending to give evidence or to produce any paper, book, record or document, means -

- (a) the chairman and deputy chairman of the committee, where both are present (and references to the delivering of the opinion of the relevant body shall be taken to mean the opinion of the chairman where the chairman and deputy chairman disagree);
- (b) the chairman alone where the deputy chairman is absent;
- (c) the deputy chairman alone where the chairman is absent; or
- (d) where both the chairman and deputy chairman are absent, the member elected to act as chairman during such absence.

"witness" (證人) means –

- (a) a person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before a committee; and
- (b) any public officer designated by the Governor under section 8A(2)(b) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) for the purpose of attending sittings of a committee.

2. If, at a public sitting of a committee, a witness refuses to answer publicly or privately any question that may be put to him, or to produce any paper, book, record or document, and claims privilege on the ground that the giving of the answer or the production of the paper, book, record or document would be contrary to the public interest the following procedure will apply -

- (1) The chairman shall inform the witness that he may explain his reasons in confidence to the relevant body and that the relevant body will then deliver an opinion to the committee without disclosure of

any information or paper, book, record or document claimed by the witness to be privileged from disclosure.

- (2) If the witness agrees to explain his reasons to the relevant body the relevant body shall make arrangements to consider the reasons and deliver its opinion to the committee.
 - (3) If the relevant body delivers its opinion that the claim of privilege by the witness is justified in respect of an answer to a question or the production of any paper, book, record or document the committee shall excuse the answering of such question or the production of such paper, book, record or document.
 - (4) If the relevant body delivers its opinion that the claim of privilege by the witness is not justified in respect of any answer to a question or the production of any paper, book, record or document the committee may order the answering or production thereof.
 - (5) If the witness continues to refuse to answer any question or produce any paper, book, record or document the committee may take such action within its powers as it considers appropriate.
 - (6) If the witness does not agree to explain his reasons to the relevant body under subparagraph (2) the committee may take such action within its powers as it considers appropriate.
3. If, at a public sitting of a committee, a witness refuses to answer in public any question that may be put to him, or to produce in public any paper, book, record or document on the ground of public interest privilege, but requests to answer such question or produce such paper, book, record or document at a private sitting of the committee, the following procedure will apply -

- (1) The committee will deliberate in private whether to agree to the request by the witness.
- (2) The decision of the committee will be taken by formal vote.
- (3) If the committee decides to agree to the request by the witness no answer given by the witness at a private sitting nor any paper, book, record or document produced by him thereat shall be made public unless the committee decides during the private sitting that the request by the witness for confidentiality is not justified. Before reaching such a decision the committee shall give the witness an opportunity to state the grounds upon which he claims public interest privilege in respect of the particular answer or paper, book, record or document.

Provision of Transcripts of Evidence

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man -

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) "witnesses" refers to persons on whom summonses have been served by the Select Committee to order their appearance before it; "prospective witnesses" refers to witnesses whom the Select Committee has decided to summon to appear before it;
- (c) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (d) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.