

Chapter 1 Introduction and Background

Purpose of the Report

1.1 The Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai (“the Investigation Committee”) is the first investigation committee established in accordance with the procedure laid down in the Rules of Procedure (“RoP”) for the implementation of Article 79(7) of the Basic Law (“BL 79(7)”). BL 79(7) provides that the President of the Legislative Council (“LegCo”) of the Hong Kong Special Administrative Region shall declare that a member of the Council (“Member”) is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members present.

1.2 At the Council meeting of 9 December 2009, Hon Miriam LAU moved a motion to censure Hon KAM Nai-wai under Rule 49B(1A) of RoP (“the censure motion”). The wording of the censure motion, which is in **Appendix 1.1**, is reproduced as follows:

“That this Council, in accordance with Article 79(7) of the Basic Law, censures Hon KAM Nai-wai for misbehaviour (details as particularized in the Schedule to this motion).

Schedule

Details of misbehaviours of Hon KAM Nai-wai are set out below:

(a) Hon KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity

There were media reports on 4 October 2009 that Hon KAM Nai-wai dismissed his female assistant because of his unsuccessful advances to her. The female assistant was employed with public funds to assist him in performing his duties as a Legislative Council Member. At his press conference held on the same day, Mr KAM:

- (i) denied that he had made advances to his female assistant and did not disclose that he had expressed affection¹ towards her; and
- (ii) denied that he had dismissed his female assistant because of his unsuccessful advances, and pointed out that the employment contract with his female assistant was terminated by giving one-month payment in lieu of notice which was in accordance with the employment contract, but did not mention that he had expressed affection towards her.

¹ In this Report, the expression “有好感” is translated as “having good feelings”. Mr KAM told the Investigation Committee that he did not subscribe to the rendition of “表示好感” into “expressed affection” in the English text of the Schedule to the censure motion on the basis that it carried the meaning of “adoration”, which he had not meant to convey when he said the expression to Ms Kimmie WONG on 15 June 2009.

However, after the media subsequently reported that he had actually made advances to his female assistant, Mr KAM admitted on 6 October 2009 on a radio programme that he had expressed affection towards his female assistant when he was alone with her on one occasion in mid-June 2009.

(b) Hon KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her

In mid-June 2009, Hon KAM Nai-wai expressed affection towards his female assistant. Subsequently, he noticed some signs of his female assistant rejecting him. Between early September and mid-September 2009, Mr KAM invited his female assistant to dine out and was also refused by her. Subsequently on 24 September 2009, he terminated the employment contract with his female assistant with immediate effect without reason assigned, although her overall work performance was judged by him to be good.”

1.3 In accordance with Rule 49B(2A) of RoP, the debate on the censure motion has been adjourned and the matter stated in the motion has been referred to the Investigation Committee. Under Rule 73A(2) of RoP, the Investigation Committee is responsible for establishing the facts stated in the motion and giving its views on whether or not the facts as established constitute grounds for the proposed censure.

1.4 It was the first time a censure motion was moved by Members under Rule 49B(1A) of RoP, and it was also the first time an investigation committee was established under Rule 49B(2A) of RoP by LegCo. Without any precedents to follow, the Investigation Committee formulated a set of practice and procedure on the basis of the framework of procedural provisions of RoP before it began its substantive work. During the process, the Investigation Committee made reference to some generally applicable principles of natural justice as well as the procedures adopted by other committees of LegCo in conducting investigations; in addition, the views expressed by Mr KAM (the Member under investigation) personally and through his lawyers were also taken into consideration. The Investigation Committee stated clearly at the time of promulgating the Practice and Procedure that while the relevant practices and procedures had been made as exhaustive as possible, they might be amended by way of addition or variation where necessary in the light of experience or change in circumstances as the Investigation Committee progressed with its work.

1.5 In order to enable the Council and the public to better understand the procedure of the Investigation Committee, this Report sets out with explanations the principles that the Investigation Committee has followed in determining its Practice and Procedure, and how it has dealt with the procedural issues which are not covered by the Practice and Procedure.

1.6 This Report also provides the relevant background against which Hon Miriam LAU moved the motion to censure Hon KAM Nai-wai, the manner in which the investigation was conducted to establish the facts stated in the censure motion, the details of the Investigation Committee's

obtaining evidence which is relevant to such facts, an analysis of the available evidence for the purpose of establishing such facts and the views given by the Investigation Committee on whether or not the facts as established constitute grounds for the proposed censure, so as to enable the public to better understand the work of the Investigation Committee and how it has discharged its functions conferred by RoP.

1.7 The Investigation Committee hereby presents this Report to the Council under Rule 73A(12) of RoP.

Background of the Procedure

Mechanism for implementing BL 79(7)

1.8 In 1999, to cater for the characteristics of censure motions in BL 79(7), the First LegCo introduced, on top of the procedural provisions applicable to ordinary motions, some specially-made provisions to RoP to establish a mechanism for processing censure motions. The mechanism is summarized as follows:

- (a) a Member who will move the censure motion in a Council meeting shall give notice of the censure motion no less than 12 clear days before the day on which the motion is moved, and the notice shall be signed by the Member and three other Members (Rules 29(1) and 30(1A));
- (b) upon the moving of the censure motion in a Council meeting, unless the Council orders otherwise, the matter stated in the motion shall be referred to an investigation committee (Rule 49B(1A) and (2A));

- (c) once Members are appointed to it by the President, the investigation committee shall proceed to establish the facts stated in the censure motion and upon completion of the investigation, report to the Council with its findings and views on whether or not the facts as established constitute grounds for the censure (Rule 73A);
- (d) after the Report of the investigation committee has been laid on the Table of the Council, the debate on the censure motion will be resumed at the earliest Council meeting thereafter, and the motion shall be voted on (Rules 40(6A)); and
- (e) if the censure motion is passed with a two-thirds majority vote of the Members present, the President shall declare forthwith that the Member who is the subject of the censure motion is no longer qualified for the office (Rules 49B(3) and (4)).

A full text of the relevant rules is in **Appendix 1.2**. A flow chart illustrating the mechanism for the disqualification of a Member from the office under BL 79(7) is in **Appendix 1.3**.

Functions and responsibilities of an investigation committee

1.9 Under Rule 73A of RoP, an investigation committee consists of seven Members, comprising a chairman, a deputy chairman and five other members who shall be appointed by the President in accordance with an election procedure determined by the House Committee. The mover of

the censure motion, the three other Members jointly signing the notice of the motion and the Member who is the subject of the motion may not be appointed to the investigation committee. Just as other non-standing committees, an investigation committee may, in the performance of its duties, be specially authorized by resolution of the Council to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (“LCPPPO”) to order attendance of witnesses to give evidence or to produce papers, books, records or documents.

1.10 Upon completion of its work, an investigation committee is required to submit a report to the Council. The investigation committee’s report serves as a reference for all Members during the debate on the censure motion. As to whether the Member under investigation should be censured, and thus disqualified from the office, it is a question for the Council to decide.

Background of the moving of the censure motion against Mr KAM

Views of the public received by Duty Roster Members

1.11 On 4 October 2009, a local newspaper reported that a female assistant in the Legislative Council Member’s Office of Hon KAM Nai-wai had lodged a complaint with the senior office bearers of the Democratic Party, the party to which Mr KAM belonged, that Mr KAM had dismissed her unreasonably after his advances had been rejected by her.

1.12 A large number of media reports and articles relating to the incident emerged on the following days and, in the week that followed,

letters, emails and phone calls from members of the public expressing views on the matter were received by the Complaints Division of LegCo Secretariat. These views were generally on the need for an inquiry to investigate whether the allegation of sexual harassment was founded, whether there had been improper use of public money in the course of the dismissal, including whether the dismissal was reasonable, and whether the matter had a negative impact on the integrity of the Member. In accordance with the general practice under the Redress System, these views of the public about the conduct of Mr KAM were forwarded to the Duty Roster Members² (“DRMs”) for that week for them to consider whether and how follow-up actions should be taken. The DRMs concerned held a meeting on 8 October 2009³ to discuss whether and how the matter should be followed up.

1.13 The DRMs considered that the reports in the press should be followed up as they involved serious ethical issues of LegCo Members and, if substantiated, they might have an impact on the reputation of LegCo as a whole. As the Committee on Members’ Interests (“CMI”) issued from time to time guidelines on matters of ethics in relation to the conduct of LegCo Members in their capacity as such and had handled certain complaints about the conduct of Members, the DRMs considered it

² The Council operates a Duty Roster Members System under its Redress System to receive and handle complaints from members of the public who are aggrieved by Government actions or policies. In groups of six, Members take turns to be on duty each week to oversee the system, meet with deputations and members of the public who wish to lodge complaints, and peruse the public views raised with the Complaints Division.

³ The DRMs for the week were: Hon Fred LI, Hon Mrs Sophie LEUNG, Hon LAU Kong-wah, Dr Hon Joseph LEE, Hon CHEUNG Kwok-che and Hon Mrs Regina IP. All, except Mrs LEUNG who was out of town, attended the meeting. Hon Mrs Regina IP was elected as the convenor of that meeting.

appropriate to refer the matter to CMI for follow-up actions. However, CMI is not empowered to investigate complaints about the conduct of Members other than those in relation to the registration or declaration of Members' interests, claims for reimbursement of operating expenses or applications for advance of operating funds. The DRMs therefore decided to propose to the House Committee that CMI be specially authorized by resolution of the Council to inquire into the incident, and to submit a report to the Council.

Deliberations of the House Committee

1.14 The above proposals of the DRMs were discussed at the meeting of the House Committee on 9 October 2009. Most Members at the meeting considered that the matter should be followed up, whereas some Members objected to the special authorization of CMI by resolution of the Council to conduct the inquiry. Dr Hon Margaret NG also drew Members' attention to the fact that the RoP had already provided for a mechanism to implement BL 79(7) for the purpose of dealing with allegations of misbehaviours of Members. In her view, invoking the mechanism which was already in place would ensure that the matter could be handled fairly.

1.15 After deliberations, Hon LEUNG Yiu-chung proposed and Members present unanimously agreed⁴ that the matter be followed up by invoking the mechanism in RoP for implementing BL 79(7). Dr Hon Margaret NG proposed that a subcommittee be formed under the House

⁴ A total of 37 Members voted in favour of the proposal. No member voted against it.

Committee to consider and recommend on the wording of the censure motion and particulars of the alleged misbehaviour to be set out in the Schedule to the motion. She further proposed that the censure motion be moved by the Chairman of the House Committee so as to stress the neutrality of the motion, and uphold the dignity of the Council and show that the motion was not moved for any political purpose. These two proposals were agreed to by the House Committee.

1.16 On 16 October 2009, LegCo Secretariat provided the House Committee with further information on the procedure for processing a censure motion. Members' attention was drawn to the fact that when the mechanism for implementing BL 79(7) was devised, it was not envisaged that a censure motion would be moved by a Member in the capacity of the Chairman of the House Committee, nor that the responsibility of drafting particulars of the misbehaviour alleged of a Member in the censure motion would be passed to a committee of LegCo. According to the current mechanism under RoP, the mover of the censure motion and the three other Members jointly signing the notice of the motion are responsible for listing the particulars of misbehaviour in the Schedule to the motion and, due to their role in this regard, they are not eligible for appointment to the investigation committee.

1.17 After deliberations, the House Committee agreed at its meeting on 16 October 2009 that the subcommittee formed at the preceding meeting should consider matters other than the drafting of the censure motion and those Members who would sign the notice of the motion would not be members of the subcommittee. The drafting of the wording of the censure motion should be left to the mover of the motion and the three

other Members to decide. Hon Miriam LAU, in the circumstances, would move the motion in her personal capacity as a Member and not as the Chairman of the House Committee.

1.18 The subcommittee was renamed⁵ as “Subcommittee on Preparatory Work in relation to the Establishment of an Investigation Committee under Rule 49B(2A) (Disqualification of Member from Office) of the Rules of Procedure” (“the Subcommittee”). The membership of the Subcommittee was also re-opened in view of the change in its terms of reference.

1.19 The verbatim transcripts of the House Committee meetings on 9 and 16 October 2009 are in **Appendices 1.4** and **1.5** respectively.

Work of the Subcommittee

1.20 The Subcommittee⁶, chaired by Hon Mrs Sophie LEUNG, held one meeting and reported on its work to the House Committee on 6 November 2009. The Subcommittee proposed a procedure for the election of Members for appointment to the Investigation Committee. It proposed that in deciding the procedure for nominating Members for election to the Investigation Committee, reference should be made to the practices adopted by the Public Accounts Committee, CMI, the Committee on Rules of Procedure and select committees. With regard to the

⁵ The original name of the Subcommittee was “Subcommittee on Preparatory Work for the Moving of a Motion Under Rule 49B(1A) (Disqualification of Member from Office) of the Rules of Procedure on Hon KAM Nai-wai”.

⁶ The other members of the subcommittee were Dr Hon Margaret NG, Hon LAU Kong-wah and Dr Hon Priscilla LEUNG.

nomination notice period and seconding arrangements, the Subcommittee proposed that the practice of The Legislative Council Commission should be adopted. The election procedure (**Appendix 1.6**) was subsequently endorsed by the House Committee at its meeting on 11 December 2009.

Moving of the censure motion by Hon Miriam LAU

1.21 On 24 November 2009, Hon Miriam LAU gave notice to move a censure motion under Rule 49B(1A) of RoP at the Council meeting of 9 December 2009. Dr Hon Joseph LEE, Hon IP Kwok-him and Hon Mrs Regina IP jointly signed the notice of the censure motion. On the same day, the President directed that the censure motion be printed, in the terms in which it was handed in, on the Agenda of the Council meeting of 9 December 2009.

1.22 At the Council meeting of 9 December 2009, upon the moving of the censure motion by Hon Miriam LAU, Hon Paul TSE moved without notice, under Rule 49B(2A) of RoP, the following motion (“non-referral motion”):

“That no further action shall be taken on the censure motion moved by Hon Miriam LAU.”

1.23 Twenty-one Members spoke in the ensuing debate on the non-referral motion, which was then voted on and negatived⁷ as a result.

⁷ The voting result was that among the Members returned by functional constituencies, 28 were present, four were in favour of the motion, 15 against it and nine abstained; and among the Members returned by geographical constituencies, 28 were present, 10 were in favour of the motion, seven against it, 10 abstained and the President did not cast any vote.

In accordance with Rule 49B(2A) of RoP, the debate on Hon Miriam LAU's motion then stood adjourned and the matter stated in the motion was referred to an investigation committee.

Formation and membership of the Investigation Committee

1.24 At its meeting on 8 January 2010, the House Committee elected, pursuant to the election procedure previously agreed by it, seven Members for appointment to the Investigation Committee. Four nominations were received by the deadline of 4 January 2010 and three more nominations were made on the spot at the House Committee meeting, thus making a total of seven nominations. As the number of nominations was equal to the number of places, all the nominated Members were elected as candidates for recommendation to the President of LegCo. The elected Members then elected among themselves the Chairman and Deputy Chairman of the Investigation Committee.

1.25 Pursuant to Rule 73A(1) of RoP, the President appointed the Chairman, Deputy Chairman and members of the Investigation Committee on 8 January 2010. The membership of the Investigation Committee is as follows:

Hon Mrs Sophie LEUNG, GBS, JP (Chairman)

Hon CHAN Kin-por, JP (Deputy Chairman)

Hon LAU Kong-wah, JP

Hon Vincent FANG, SBS, JP

Dr Hon LAM Tai-fai, BBS, JP

Dr Hon Priscilla LEUNG, JP

Dr Hon PAN Pey-chyou

1.26 Regarding the formation of the Investigation Committee, the Investigation Committee is of the view that, since the current composition reflects the wishes of Members as well as the decisions of individual political parties and groupings on whether they should have members taking part in the investigation, their aspirations and decisions should be respected as such. It is the duty of the Investigation Committee, regardless of its composition, to conduct its investigation in accordance with RoP and in a fair, impartial and reasonable manner.

Practice and Procedure of the Investigation Committee

1.27 At its first meeting held on 18 January 2010, the Investigation Committee immediately started deliberations on its practice and procedure and the principles it should follow. In the course of its deliberations, the Investigation Committee made reference to a Progress Report, tabled at the meeting of the First LegCo on 28 April 1999 by the former Committee on Rules of Procedure, which set out the deliberations of that Committee on the mechanism currently provided in Rule 73A of RoP (the relevant part of the Report is reproduced in **Appendix 1.7**). The Investigation Committee also made reference to the practices and procedures of select committees and other committees of the Council as well as the experience of other legislatures in the investigation of alleged misbehaviours of their members. The Investigation Committee also took into account the major procedural issues and concerns raised by Members at the debate on the non-referral motion at the Council meeting of 9 December 2009 as well as the views expressed by the solicitors for Mr KAM in their letter dated 21 January 2010 to the Investigation Committee (**Appendix 1.8**). Mr KAM also expressed his views on the procedural aspect to the Investigation

Committee at hearings⁸. Views collected and heard by the Investigation Committee are summarized as follows:

- (a) the investigation must be conducted in a fair and impartial manner, and that the investigation procedure must be clear and stringent and comply with procedural justice;
- (b) the Investigation Committee must first establish whether or not there is a prima facie case before deciding whether it should proceed further to meet witnesses;
- (c) the Investigation Committee should be fair and impartial when deciding on the persons to be invited to be witnesses;
- (d) in view of the serious impact of the allegation on the Member concerned, the Investigation Committee should adopt a stringent standard of proof for establishing the facts, though not necessarily the standard adopted for criminal investigations;
- (e) the Members under investigation should have the right to attend and observe the entire proceedings of hearings and be accompanied or represented by lawyers and has the opportunity to respond to the tentative findings of the Investigation Committee before the completion of the investigation;

⁸ For easy reference, meetings of the Investigation Committee at which the Member under investigation or a witness or witnesses appear are referred to as “hearings” in this Report. In RoP, the term “hearings” is not used, and thus hearings are not distinguished from other meetings of the Investigation Committee.

- (f) the investigation should be free from political, party or personal influences; and
- (g) the Member under investigation may appoint solicitors and/or barristers to act for him during hearings, have access to all materials held by the Investigation Committee as well as subpoena and cross-examine witnesses, and be informed of the procedures promptly.

1.28 On 10 February 2010, the Investigation Committee adopted its Practice and Procedure (**Appendix 1.9**), which was forthwith published on the website of LegCo for the information of other Members and the public. A copy of the Practice and Procedure has been provided to the Member under investigation and all witnesses to enable them to understand how the Investigation Committee operates and what their rights and obligations are.

Guiding principles for determining the Investigation Committee's procedures

1.29 The Investigation Committee notes that in view of the ad hoc nature of the membership of an investigation committee, the former Committee on Rules of Procedure considered it necessary to stipulate in RoP the manner in which the investigation committee is formed and the way it conducts its business. In this connection, important ground rules governing the way the investigation committee conducts its investigation such as the quorum, chairmanship, and mode of meetings have been prescribed in Rule 73A of RoP. However, these rules are meant to provide

merely a framework, upon which detailed practice and procedure are to be determined, subject to RoP, by the investigation committee itself pursuant to Rule 73A(13) of RoP. The Investigation Committee considers that in drawing up its practice and procedure, there is a need to ensure that the investigation process is fair and also seen to be fair, especially to those parties whose interests or reputation may be affected by the investigation process.

1.30 Having regard to the practice and procedure adopted by the select committees of the Council and the experience of overseas legislatures, the Investigation Committee decided to adhere to the following guiding principles in determining its practice and procedure:

- (a) the Investigation Committee should be fair, and seen to be fair, to the Member under investigation, to the Members making the allegations, and to the other parties involved in the investigation, and it should observe the principle of following due process in its investigation;
- (b) the Investigation Committee should adopt a fair and impartial attitude and act independently in obtaining, examining and analysing evidence and information and it should not have any regard to political, party or personal considerations;
- (c) the Investigation Committee is accountable not only to the Council but also to the public. Subject to Rule 73A(4) of RoP which provides that all meetings are to be held in private (except in circumstances specified in Rule 73A(5)), the

Investigation Committee should be as transparent as possible in its operation; and

- (d) the Investigation Committee should work in a conscientious and efficient manner as public resources are involved.

1.31 The Investigation Committee is conscious of the serious nature of an investigation conducted under Rule 73A of RoP and considers it important to observe the principle of following due process in seeking to establish the facts stated in the censure motion.

Legal representation

1.32 The Investigation Committee notes that Rule 73A of RoP is silent on whether the Member under investigation has the right to legal representation. It has therefore made reference to the usual practice in select committees and CMI, as well as the practices in overseas legislatures. In select committees and CMI, both witnesses and the Member under complaint may be accompanied by persons who may include legal adviser(s), but such persons are not allowed to address the committee. In the case of CMI, the number of accompanying persons is limited to three.

1.33 In overseas legislatures, the practices in legal representation vary. While the counsel for a Member under investigation is permitted to address the committee concerned in both the House of Commons in Canada and the House of Representatives in the United States, his counterpart is not allowed to do so in the House of Commons of the United Kingdom and the House of Representatives of Australia, but the Member under investigation may be accompanied by and confer with counsel.

1.34 As there is no judicial precedent which is directly applicable, the Investigation Committee has drawn reference from principles referred to in cases concerning the right to legal representation in disciplinary proceedings in Hong Kong. According to a case on disciplinary proceedings against a police officer⁹, the Court of Final Appeal held that at common law, there is no absolute right to legal representation at a disciplinary hearing, and that it is a matter to be dealt with in the relevant disciplinary tribunal's discretion in accordance with the principle of fairness.

1.35 On the basis of the above considerations, the Investigation Committee has decided that the Member under investigation should be permitted to be accompanied by up to three persons including a legal adviser, with whom the Member may, with the permission of the Chairman, consult or confer during the proceedings¹⁰. However, the Member is required to respond personally, and not through the accompanying persons, to questions raised by the Investigation Committee. The same should apply to witnesses appearing before the Investigation Committee to give evidence.

Cross-examination of witnesses

1.36 On the issue of cross-examination of witnesses by the Member under investigation or by his counsel, the Investigation Committee

⁹ *Lam Siu Po v Commissioner of Police* (2009) 12 HKCFAR 237.

¹⁰ Each time when he attended a hearing, Mr KAM was accompanied by a legal adviser who was a practising barrister and by a friend. At the hearing on 14 July 2010, the Investigation Committee gave permission, under paragraph 14 of the Practice and Procedure, for Mr KAM to withdraw briefly for seeking the advice of the legal adviser accompanying him.

considers that while there are arguments in support of the claim that cross-examination could be a fairer practice for the Member under investigation, it may be inappropriate for the Member or his counsel to conduct cross-examination, especially when the witnesses are members of the public who may feel intimidated when being cross-examined and therefore will be less forthcoming in providing the Investigation Committee with information useful to the investigation.

1.37 The Investigation Committee notes that cross-examination is not a common practice in similar parliamentary bodies in overseas jurisdictions, and other committees of LegCo (such as the Public Accounts Committee, CMI and select committees) to allow witnesses or their counsel to conduct cross-examination even though these committees often conduct inquiries into and form views on the actions of individuals whose interests or reputation may be affected by the proceedings of these committees.

1.38 The Investigation Committee also notes that in the House of Representatives of Australia, hearings of the relevant committee are usually conducted in public, and the Member under complaint must be present during the hearing of evidence against him, and when proceedings are held in private, he may be excluded, subject to the discretion of the committee. In the House of Commons of Canada, the hearings are held in private, but the Member under complaint is given a reasonable opportunity to be present throughout the inquiry of the complaint against him.

1.39 The proceedings of the Investigation Committee should be regarded as investigatory and not adversarial in nature. Accordingly, the Investigation Committee considers it inappropriate to adopt the normal

court procedures under which a party may cross-examine witnesses called by another party. However, in view of the seriousness of the allegations in the censure motion against Mr KAM and the potential consequences of the censure motion, the Investigation Committee agrees that the following procedural arrangements should be made to ensure that the Member under investigation has the opportunity to examine and respond to the evidence given to the Investigation Committee by witnesses:

- (a) the Member under investigation will be informed of the witnesses whom the Investigation Committee has decided to call;
- (b) the written statement and relevant information submitted by the Member under investigation may be forwarded to the relevant witnesses for them to respond, and such responses may be passed to the Member for him to respond;
- (c) the Investigation Committee may forward the written statement and relevant information submitted by a witness to the Member under investigation for him to respond; and
- (d) the Member under investigation may be provided with a copy of the verbatim transcripts of the hearings containing the evidence of a witness, unless the transcripts are in respect of hearings held in private and the Member's request for a copy of them has been rejected by the Investigation Committee on sufficient reason.

1.40 As regards whether the Member under investigation is allowed to call witnesses, the Investigation Committee considers that, for the sake

of fairness, the Member under investigation may propose for its consideration witnesses who may help his or her case, in addition to those called by the committee. The Investigation Committee also considers that the Member under investigation should be informed of the witnesses whom the Investigation Committee has decided to call. During the hearings, Mr KAM was informed for four times of the names of witnesses whom the Investigation Committee had decided to call as well as the latest developments.

Whether meetings are to be held in private or public

1.41 The RoP has built in a mechanism for determining whether meetings of an investigation committee are to be held in private or public, essential features of which are:

- (a) all hearings for obtaining evidence from witnesses must be held in private unless the Member under investigation elects for public hearings and makes such an election before the first hearing. Such an election, once made, applies to all hearings throughout the entire investigation. Only the Member under investigation may make an election for public hearings, and no member of an investigation committee or any witness may make such an election (Rule 73A(4) and (5)(a));
- (b) even if the Member under investigation has elected for public hearings, an investigation committee may decide on sufficient

reason, upon a request made by a member of the committee or an application made by a witness, to hold any hearing or any part thereof in private (Rule 73A(5)(b)); and

- (c) meetings of an investigation committee other than hearings, i.e. meetings held to discuss procedural matters, progress of its work, logistical arrangements for hearings, the evidence obtained, the Report of the investigation committee and any other matters relevant to or arising from the investigation committee's work, shall be held in private (Rule 73A(4)).

1.42 The Investigation Committee is aware that some witnesses may be concerned about reporting by the media and may be reluctant to provide evidence in public. The Investigation Committee notes that the current Rule 73A(5) of RoP has already provided it with the flexibility to hold a hearing (or a part thereof) in private upon an application made by a witness.

Whether it should be ascertained if there was a prima facie case before an investigation is conducted

1.43 The Investigation Committee has also examined the proposal of ascertaining if there was a prima facie case before proceeding to invite witnesses to give evidence. The Investigation Committee notes that the former Committee on Rules of Procedure has considered this matter. In its progress report (see Appendix 1.7) published on 28 April 1999, the former Committee provided the rationale:

“2.60 The Committee is aware that in other jurisdictions as well as local professional bodies, preliminary investigation is usually conducted to establish whether there is a prima facie case before undertaking a full investigation. As the process of and the publicity attracted by preliminary investigations are no different from that of a full investigation, the Committee considers that once the motion is referred to an investigation committee, full investigation should be undertaken immediately.”

1.44 For practical purposes, the Investigation Committee has decided to take the following steps before inviting witnesses to give evidence:

- (a) to first invite the Members initiating the censure motion (i.e. the mover of the motion and the three Members who jointly signed the notice of the motion) to provide in writing information in support of the misbehaviour as particularized in the Schedule to the censure motion and any information which may assist the Investigation Committee in carrying out its work;
- (b) to invite the Member under investigation to respond in writing to such information and provide any information which may assist in its work;
- (c) to instruct the Clerk to the Investigation Committee to gather information relevant to the censure motion; and

- (d) on the basis of such information and responses, to determine whether it is necessary to conduct hearings for witnesses to give evidence for the purpose of establishing the facts stated in the censure motion.

Summoning of witnesses

1.45 The Investigation Committee has considered the circumstances under which it will be necessary to seek the Council's special authorization to exercise the powers conferred by section 9(1) of LCPPO to order attendance of witnesses before the Investigation Committee to give evidence or to produce documents. The Investigation Committee notes that a witness who is lawfully ordered to attend before the Investigation Committee to give evidence or to produce documents is entitled, in respect of such evidence or documents, to the same right or privilege as before a court of law by virtue of section 14 of LCPPO. The Investigation Committee understands that the exercise of the powers under section 9(1) of LCPPO will facilitate the work of the Investigation Committee but it is also mindful that such powers should be sought only when it is necessary to do so. The Investigation Committee considers it more appropriate to first invite those persons who are considered to be able to assist in its investigation to be witnesses, and should any of these persons decline to give evidence, it would then consider whether the information believed to be held by such person is so essential to the completeness of the investigation that it has to order his attendance by summons, having regard to factors including the views of the person concerned, whether the relevant hearings will be held in private or public, and whether sufficient protection is accorded to the person concerned.

1.46 The Investigation Committee has also decided that witnesses should be invited to choose to be examined under oath pursuant to section 11 of LCPPO¹¹. The Investigation Committee notes that it is the practice of select committees to examine witnesses under oath. The Investigation Committee considers that if a witness is willing to give evidence under oath, this will be a relevant factor which it may take into account when assessing the credibility of the witness and the weight to be accorded to the evidence given by the witness.

Engagement of outside counsel

1.47 The Investigation Committee has also examined whether outside counsel should be engaged to ensure impartiality of its work. Members of the Investigation Committee notes that outside counsel was engaged in the past on a case-by-case basis to give advice on the handling of judicial review applications against Members or other contentious legal matters. In the case of select committees, the general practice is that independent legal advice is provided by legal advisers of LegCo Secretariat. Yet, there have been occasions on which outside counsel was engaged by select committees to give them legal advice on contentious legal issues, even though this had not been provided for in their Practice and Procedure. Members also note that where the Parliamentary Commissioner for Standards in the House of Commons of the United Kingdom appoints an Investigatory Panel to investigate the most difficult complaints against

¹¹ Under section 11(1) of LCPPO, the Council or a committee may require that any facts, matters and things relating to the subject of inquiry before the Council or such committee be verified or otherwise ascertained by the oral examination of witnesses, and may cause any such witnesses to be examined upon oath.

Members, he may appoint counsel to assist the panel¹², but so far the Commissioner has not appointed any Investigatory Panel.

1.48 Members of the Investigation Committee considers that the legal adviser to the Investigation Committee is Legal Adviser of the LegCo Secretariat himself who, together with the legal team led by him, will provide independent and impartial legal advice to the Investigation Committee to ensure that its work is carried out in a fair and impartial manner. The Investigation Committee has therefore decided that the practice of select committees in this regard may be followed, and to seek advice from outside bodies (including legal experts) as and when such a need arises.

Confidentiality requirements

1.49 The Investigation Committee attaches great importance to the need to ensure the confidentiality of its proceedings, which it considers to be extremely crucial to the integrity and credibility of its investigation and for the protection of the interests and privacy of the parties concerned in the course of conducting the investigation. To prevent unauthorized disclosure of information on its proceedings, the Investigation Committee has taken measures in relation to the following matters right from the start of its investigation:

- (a) classifying evidence obtained in hearings held in private, written statements, other documents and related correspondence as well as information relating to the internal

¹² Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (2011), page 88.

deliberations of the Investigation Committee as confidential information;

- (b) limiting the circumstances under which confidential information may be used;
- (c) allowing witnesses to apply for not including confidential information in the Report of the Investigation Committee;
- (d) prohibiting communications between Members and members of the Investigation Committee regarding any matter relating to the work of the Investigation Committee;
- (e) prohibiting unauthorized communications with the media or response to media enquiries on matters relating to the work of the Investigation Committee; and
- (f) requiring all parties concerned to sign a confidentiality undertaking.

1.50 The Investigation Committee notes that after the investigation had started, there have been several occasions where there were press articles which purported to report on the work of the Investigation Committee. The Investigation Committee expresses grave dismay at the occurrence of such incidents, and takes a very serious view of them. Shortly after the publication of an article on 24 April 2010, the Investigation Committee held a special meeting to discuss the matter and all members were reminded of the confidentiality requirements provided in Rule 81 of RoP, the Practice and Procedure of the Investigation Committee

as well as the confidentiality undertaking that each of them had signed. Despite the provision in paragraph 29 of the Practice and Procedure that the Chairman or the Deputy Chairman might, with the consent of the Investigation Committee, respond in general terms to enquiries from the media on the progress of the investigation, the Investigation Committee agreed that the Chairman and Deputy Chairman would no longer respond to enquiries on the progress of the investigation. Separately, the Clerk to the Investigation Committee also adopted additional measures¹³ to prevent the unauthorized disclosure of confidential information on the work of the Investigation Committee.

1.51 Following the publication of the press articles on 4 and 18 November 2010, the Investigation Committee held a special meeting to discuss the matter and members were again reminded of the confidentiality requirements of the Investigation Committee and the damage that might be done to parties concerned as well as to the investigation. Members were also reminded that individual Members may be subject to personal liabilities for disclosing confidential information on the work of the Investigation Committee. The Clerk to the Investigation Committee, in her capacity as the Secretary General of LegCo Secretariat, personally

¹³ The Clerk to the Investigation Committee, in her capacity as the Secretary General of LegCo Secretariat, personally briefed those staff members of the Secretariat servicing the Investigation Committee and those of PCCW Limited who provided technical support services to meetings of the Investigation Committee held in LegCo Building on the confidentiality requirements of the Investigation Committee. In addition, each of these staff members of the Secretariat and PCCW Limited had signed a confidentiality acknowledgement and confidentiality undertaking respectively. To minimize the number of persons having access to confidential information of the Investigation Committee, PCCW Limited has designated three technicians who have a long service with the company to service meetings of the committee.

interviewed those staff members of the Secretariat servicing the Investigation Committee and those of PCCW Limited; and such staff members confirmed that they had not produced, disclosed or confirmed the contents of any document or deliberations that had been handled or taken place at the closed meetings or hearings held by the Investigation Committee to any person who did not have lawful authority for receiving such contents.

Preparation of the Report of the Investigation Committee

1.52 In order to ensure that the drafting of the Report is free from any influence by political, party or personal factors, the Investigation Committee has decided that detailed records are to be kept on the deliberations of the Investigation Committee when it discusses the draft Report paragraph by paragraph and the records of its deliberations should be attached to the Report to be tabled in the Council.

1.53 The Investigation Committee has also decided that the draft Report, with the exception of the parts on the background facts, the conclusion and the recommendations, will be forwarded to the Member under investigation for comment. As for other relevant witnesses, each of them will be provided with the parts of the Report that contain evidence provided by them for comment, so as to ensure the accuracy of the facts stated in the Report. Such comments will be taken into account by the Investigation Committee in finalizing its Report and will be recorded in the Investigation Committee's Report to the Council.

1.54 According to paragraph 27 of the Practice and Procedure, the minutes of evidence, which form part of the Report to be submitted to the

Council upon completion of investigation under Rule 73A(12) of RoP, shall contain all evidence taken by the Investigation Committee at hearings. However, the Investigation Committee may, upon a request made by a witness, decide to exclude confidential information from the Report on grounds that such exclusion is necessary to protect privacy without jeopardizing the public interest in knowing the material facts on which the Investigation Committee has based its views. Mr KAM had requested the Investigation Committee not to include the following in its Report: written statements submitted by witnesses, verbatim transcripts that contain evidence provided by witnesses as well as copies of emails between Ms Kimmie WONG (the female assistant dismissed by Mr KAM) and him produced to the Investigation Committee by him. The justifications he held for making the request are as follows:

- (a) such documents contain information not supported by facts, and hence they should not be disclosed to the public;
- (b) if the allegation of misbehaviour in the censure motion is not substantiated, the relevant information should not be disclosed to the public; and
- (c) the publication of such documents may lead to public discussion on matters unrelated to the censure motion, thereby subjecting Ms Kimmie WONG to enormous pressure and anxiety which is contrary to her aspiration – that the incident be brought to a full stop and she could enjoy greater room for making a new start in her life.

1.55 The Investigation Committee considers that its primary duty is to conduct the investigation and report on its findings in a fair and impartial manner, and in discharging that duty it is accountable to the public. To that end, the Report should set out all the material facts on which the Investigation Committee has based its views. Also, it is in the public interest that Members who are not members of the Investigation Committee and members of the public can form their own judgments based on the relevant documents and oral evidence which the Investigation Committee has considered. The Investigation Committee should exclude relevant information from the Report only if such exclusion is necessary to protect privacy¹⁴. The inclusion of the testimony of witnesses in the Report should not be interpreted as the Investigation Committee's acceptance of their truthfulness. Besides, Mr KAM has been given many opportunities to respond to the witnesses' testimony both in writing and at hearings. As regards the concern that the Report will lead to public discussions and such discussions might impact on Ms Kimmie WONG, the Investigation Committee considers that Ms Kimmie WONG, who is not a witness, has not given the Investigation Committee any views on the preparation of the Report, nor has she asked for any material to be excluded from the Report. Therefore, the Investigation Committee decided not to accede to the request of Hon KAM Nai-wai for excluding from the Report the documents mentioned in the preceding paragraph.

Accountability to the public

1.56 The Investigation Committee understands that the Council has conferred on it very important responsibilities. It has endeavoured, on the

¹⁴ Personal data such as Hong Kong Identity Card numbers and email addresses in the documents appended to this Report have been obliterated.

one hand, to carry out its investigation in a thorough, fair and impartial manner, and to work according to the procedure that has been laid down, and on the other hand, to work as expeditiously and efficiently as possible.

1.57 Further, to enhance transparency of its work, the minutes of evidence in the form of verbatim transcripts are included in this Report, and this Report is made public on the same day it is tabled in the Council and uploaded onto LegCo website for public perusal.

Standard of proof and assessment of evidence

1.58 The Investigation Committee notes the views expressed by Members in the debate on the non-referral motion in relation to the standard of proof which should be applied in this investigation. These views include:

- (a) the Investigation Committee must adopt a stringent standard of proof, although it might not be necessary to adopt the standard of proof in criminal proceedings;
- (b) the more serious the consequences of legal proceedings, the higher the standard of proof that should be adopted;
- (c) as the Investigation Committee is not a court, it would not be appropriate to apply the standards of proof adopted by the courts in determining whether the allegations were substantiated;
- (d) the investigation should not rely on media reports; and

- (e) the Investigation Committee should not accept hearsay evidence, as this will deprive members and the Member under investigation of the rights to put questions to the witnesses.

1.59 The Investigation Committee notes that RoP do not prescribe what standard of proof an investigation committee should adopt, how an investigation committee should go about obtaining evidence for establishing the facts stated in the censure motion, or how the evidence obtained should be assessed and weighed. The Investigation Committee also notes that in criminal proceedings, the standard of proof applied by the courts is “proof beyond reasonable doubt”, while in civil proceedings, the standard of proof is “proof on a balance of probabilities”. The Investigation Committee understands that as it is not a court of law, such standards of proof and the normal rules of evidence need not apply. However, given that the Investigation Committee is tasked by the Council to investigate very serious allegations against a Member which could lead to the Member under investigation being disqualified from the office, and having regard to the standard of proof adopted in disciplinary proceedings in Hong Kong¹⁵, it has decided to adopt the following standard of proof: the more serious the allegation, the more compelling the evidence is required to establish the allegation.

1.60 Although the Investigation Committee is not regulated by those rules which are applied by the courts under the law of evidence, the Investigation Committee will take into consideration the following factors when assessing the quality and evaluating the weight of the evidence it has obtained:

¹⁵ Refer to *A Solicitor v The Law Society of Hong Kong (2008)* 11 HKCFAR 117, CFA, at 167.

- (a) *relevance of the evidence*: the Investigation Committee will only consider those items of evidence relevant to its investigation, i.e. evidence which bears on the facts stated in the censure motion which are required to be established. Irrelevant and immaterial evidence provided by the witnesses will not be considered;
- (b) *directness of evidence*: the Investigation Committee will consider whether the evidence it has received is first-hand evidence or evidence from secondary sources and will give proper weight to the evidence having regard to its nature. In assessing the directness of evidence, the Investigation Committee will consider whether the evidence given by a witness is based on his direct participation or being an eye-witness, or based on accounts given by other persons. If the Investigation Committee is satisfied that a piece of evidence is relevant and reliable, it will be taken into consideration even if it is not first-hand. The Investigation Committee will not rely on any information referred to in media reports or articles as evidence for the purpose of establishing any facts stated in the censure motion, but it may refer to such reports or articles as background reference materials; and
- (c) *reliability of evidence*: the more reliable an item of evidence, the greater significance the Investigation Committee will attach to it. As such, witnesses have been requested to appear before the Investigation Committee at its hearings to be

examined on oath under section 11 of LCPPO so that members of the Investigation Committee could observe the witnesses' demeanour while giving evidence. In examining the reliability of evidence, the Investigation Committee will consider whether the witness has an in-depth, comprehensive and balanced understanding of the matter.

Hearings and evidence

1.61 After making its Practice and Procedure, the Investigation Committee conducted a total of 54 meetings, including 11 hearings and 43 internal deliberations. When the Investigation Committee started its investigation procedure, it first invited Hon Miriam LAU, the mover of the censure motion, and the three other Members who jointly signed the notice of the motion to provide in writing information in support of the misbehaviour alleged of Mr KAM as particularized in the Schedule to the censure motion and then invited Mr KAM, the Member under investigation, to respond in writing. The Investigation Committee also instructed the Clerk to the Investigation Committee to gather information relevant to the censure motion, including the verbatim transcripts of the relevant media interviews, relevant media reports alluded to in the Schedule to the censure motion and materials relating to the employment and dismissal of Ms Kimmie WONG, personal assistant to Mr KAM, and to provide Mr KAM with a full set of the documents for his reference.

1.62 On the basis of the information and responses received, the Investigation Committee decided that it was necessary to conduct hearings

for the purpose of establishing the facts stated in the censure motion. To that end, the Investigation Committee initially invited the following persons to attend its hearing to give evidence:

- (1) Mr KAM, the Member under investigation;
- (2) Hon Albert HO (Chairman of the Democratic Party);
- (3) Hon Emily LAU (Deputy Chairman of the Democratic Party);
- (4) Ms Kimmie WONG (the assistant dismissed by Mr KAM);
- (5) Ms Anita LUI (another former assistant of Mr KAM who worked in the same office as Ms Kimmie WONG); and
- (6) Ms Mandy TAM (Ms TAM employed Ms Kimmie WONG when she was a Member).

1.63 Mr KAM agreed to appear before the Investigation Committee to give evidence. As Mr KAM did not make an election for hearings to be held in public, all meetings (including hearings) of the Investigation Committee were held in private pursuant to Rule 73A(4) of RoP. Mr KAM provided a total of four written statements (IC Paper Nos. K5(C), K6(C), K9(C) and K16(C)) to the Investigation Committee and attended a total of six hearings at which he was examined under oath by the Investigation Committee. The Investigation Committee also acceded to the request of Mr KAM to attend a hearing to make his summing-up submissions after the Investigation Committee had completed the taking of evidence from all witnesses, notwithstanding the fact that the Practice and Procedure has not provided for such an arrangement.

1.64 Hon Albert HO, Hon Emily LAU and Ms Anita LUI agreed to be witnesses. Mr HO and Ms LAU provided written statements to the Investigation Committee (IC Paper Nos. WA11(C), WA18(C), WE8(C) and WE17(C) respectively) and were examined under oath by the Investigation Committee. Ms LUI only agreed to provide evidence in writing. Ms LUI provided two written statements (IC Paper Nos. WL12(C) and WL15(C)) in response to written questions raised by the Investigation Committee, and she subsequently appeared at a hearing before the Investigation Committee to formally confirm and produce the two written statements under oath.

1.65 As regards Ms Mandy TAM, the Clerk to the Investigation Committee received a confidentiality undertaking signed by her on 25 April 2010, signifying her consent to be a witness of the investigation and to be bound by the confidentiality requirements. The written statement submitted by Mr KAM (IC Paper No. K5(C)) was then forwarded to Ms TAM, as a witness, on 3 May 2010 pursuant to paragraph 15 of the Practice and Procedure. In the telephone conversation with and an email sent to an assistant to the Clerk to the Investigation Committee on 10 May 2010, Ms TAM stated that she would be a witness only if Ms Kimmie WONG agreed to be a witness. In view of the new condition imposed by Ms TAM, the Clerk arranged for the retrieval of Mr KAM's written statement from Ms TAM on the following day. The Investigation Committee decided at its meeting on 13 May 2010 that Ms TAM would not be regarded as a witness before Ms WONG gave consent to be a witness. The Clerk to the Investigation Committee wrote to Mr KAM on 14 May 2010 to inform him of the above situation.

1.66 According to a letter from Hon Miriam LAU to all LegCo Members, Ms Kimmie WONG had informed Hon Miriam LAU, the mover of the censure motion, through her lawyer on 17 November 2009 that “due to immense pressure and strain caused by this matter, she has decided to disengage from further involvement in any investigation”. The Investigation Committee nevertheless extended an invitation to Ms WONG, but Ms WONG informed the Clerk to the Investigation Committee through an email dated 28 April 2010 that she needed more time to consider if she would be a witness. The Clerk to the Investigation Committee wrote to Mr KAM on 29 April 2010, informing him of the above situation. As Ms WONG all along did not give any reply, the Investigation Committee instructed the Chairman to make enquiries with Ms WONG in person. The Chairman then had a telephone conversation with Ms WONG on 24 November 2010. In that telephone conversation, Ms WONG said a number of times that she felt pressure each time the incident was brought up, and she hoped to forget the incident as quickly as possible and keep a low profile. She informed the Chairman that she did not wish to be involved in the investigation and therefore she also was not willing to be a witness. The Investigation Committee recognizes that its work may be made more difficult as a result of her not being a witness, but the Investigation Committee respects Ms WONG’s wish and considers that resorting to the coercive power under section 9(1) of LCPPO to compel Ms WONG to attend hearings as a witness is not a desirable approach under the circumstances of this case. The Clerk to the Investigation Committee subsequently wrote to Mr KAM again, informing him that Ms WONG had finally decided not to be a witness and that the Investigation Committee had maintained its decision of not regarding Ms TAM as a witness.

1.67 Mr KAM did not formally propose any witness for the Investigation Committee to consider calling. Nevertheless, Mr KAM said at the hearing held on 13 January 2011 that as there were other Members of the Democratic Party who attended the party caucus meeting held on 2 October 2009, the Investigation Committee should not rely solely on the evidence obtained from Hon Albert HO and Hon Emily LAU in making the relevant observations (please refer to paragraph 2.113 of Chapter 2 for details). The Investigation Committee therefore decided to invite all other Members of the Democratic Party who had attended that caucus meeting, including Hon CHEUNG Man-kwong, Hon Andrew CHENG, Hon LEE Wing-tat, Hon Fred LI, Hon WONG Sing-chi and Hon James TO, to give evidence as witnesses. They provided written statements to the Investigation Committee (IC Paper Nos. WC19(C), WN20(C), WT21(C), WF22(C), WS23(C) and WJ24(C) respectively) and were examined under oath by the Investigation Committee.

1.68 Pursuant to paragraph 19 of the Practice and Procedure, the relevant parts of the draft verbatim transcripts of the proceedings of the hearings containing the evidence of a witness or Mr KAM, the Member under investigation, were forwarded to the witness or Mr KAM for sight and correction. One copy each of the written statements and documents submitted by witnesses and the finalized verbatim transcripts of hearings attended by them were forwarded to Mr KAM for reference and he was allowed to retain such documents until such future dates as might be specified by the Investigation Committee. Having regard to the relevant procedure and the usual practice adopted by other similar committees, the Investigation Committee has decided not to accede to the request of Mr KAM to be provided with an additional copy of the verbatim transcripts

for use by his legal adviser, so as to ensure the confidentiality of the proceedings of its hearings.

1.69 For the purpose of establishing the facts stated in the censure motion, the Investigation Committee has primarily relied on direct, first-hand evidence, such as copies of email messages¹⁶ between Mr KAM and Ms Kimmie WONG, verbatim records of the press conference and radio interview attended by Mr KAM, the oral and written evidence given under oath by Mr KAM, Hon Albert HO, Hon Emily LAU and other Members of the Democratic Party, as well as information such as employment contracts and other contemporaneous records relating to the employment of Ms WONG and Ms Anita LUI collated by the Clerk to the Investigation Committee. Evidence from secondary sources is used for the purpose of establishing the facts stated in the censure motion only when the Investigation Committee is satisfied that it is reliable.

1.70 Copies of two written statements produced by Ms Anita LUI as well as the verbatim transcripts of the hearing at which Ms LUI formally produced these statements under oath have been provided, in accordance with paragraphs 16 and 20 of the Practice and Procedure, to Mr KAM for him to respond. Mr KAM did not give any written response to specific contents of the statements but contended at the hearing on 21 October 2010

¹⁶ With a view to facilitating its work, the Investigation Committee requested Hon KAM Nai-wai to provide all the emails between him and Ms WONG between 1 April and 30 September 2009, but he refused on the ground that such emails could not comprehensively reflect Ms WONG's work performance. The Investigation Committee decided not to seek the Council's special authorization to exercise the powers conferred by section 9(1) of LCPPO to order Mr KAM to produce copies of such emails. Please refer to paragraph 2.26 of Chapter 2 for details.

that certain contents in Ms LUI's statements were hearsay only. He further contended through his solicitors in a letter dated 11 January 2011 to the Investigation Committee that as Ms LUI had told the Investigation Committee at the hearing she would not answer any question regarding the statements, the Investigation Committee should not consider the evidence given by Ms LUI (**Appendix 1.10**). The Investigation Committee does not accept this view since Mr KAM has been given ample opportunity to respond to and comment on Ms LUI's testimony both in writing and at hearings. Having regard to Mr KAM's comments and the factors set out in paragraph 1.60, the Investigation Committee has taken into account, and given appropriate weight to, the answers to questions provided by Ms Anita LUI in her written statements insofar as they relevantly, directly and reliably represent her observations of events with which the Investigation Committee is concerned.

1.71 As Ms Kimmie WONG has declined to be a witness and the Investigation Committee has decided not to request the Council to authorize the Investigation Committee to exercise the power under section 9(1) of LCPPO to order her to appear before the committee, Ms WONG has not directly provided evidence to the Investigation Committee. Yet, the Investigation Committee notes that Ms WONG issued an open statement through her solicitors to all LegCo Members on 3 December 2009 to assist Members in making their decision in respect of the censure motion. The Investigation Committee considers that Ms WONG's open statement should be regarded as background information to which the Investigation Committee may refer. The Investigation Committee has therefore made reference to the open statement in taking evidence from Mr KAM and witnesses. In making reference to Ms WONG's statement,

the Investigation Committee has considered the factors set out in paragraph 1.60. Mr KAM has stressed to the Investigation Committee that as the statement was not made by Ms WONG under oath and both the Investigation Committee and Mr KAM did not have an opportunity to put questions to Ms WONG on the statement, the statement had no evidential value and the Investigation Committee should not consider it. The Investigation Committee does not agree with Mr KAM's contention.

The Report

1.72 Paragraph 22 of the Practice and Procedure provides that those parts of the Investigation Committee's Report which set out the evidence, on the basis of which the Investigation Committee has established the facts stated in the censure motion, will be forwarded to the Member under investigation and the witnesses concerned for comment. In accordance with this provision, the relevant parts of draft Chapter 2 of this Report were forwarded to the witnesses concerned for comment, and Hon James TO and Hon WONG Sing-chi submitted comments (**Appendices 1.11** and **1.12** respectively) to the Investigation Committee. As for Mr KAM, the Investigation Committee notes that the reputation of Mr KAM may be affected by its findings and observations contained in the Report and hence has decided that, in line with the normal practices of select committees, those parts in the draft Report containing findings and observations, together with those parts which set out the evidence, be forwarded to Mr KAM to give him an opportunity to respond. Accordingly, the Investigation Committee forwarded on 2 June 2011 the relevant parts of draft Chapters 2 to 4 of this Report to Mr KAM for him to comment by 13 June 2011.

1.73 Mr KAM requested the Investigation Committee to allow him to attend a further hearing so as to make comments on the draft Report orally. Although the Practice and Procedure did not provide for such an arrangement and no committee of LegCo had adopted such an arrangement, the Investigation Committee was of the view that consideration could be given to acceding to Mr KAM's request provided that he would agree to submit written comments in advance to enable members to have a better understanding of the points to be made orally by him, and also answer oral questions from members. Mr KAM however considered that he had the right to choose the way by which he made comments on the draft Report. He also refused to submit written comments in advance, nor answer oral questions. As no consensus could be reached by both parties through communication in writing (the letters are set out in **Appendix 1.13**) over five months (June to November 2011), the Investigation Committee considered that its work should not be procrastinated further, and therefore decided that Mr KAM should submit his written comments in written form pursuant to the Practice and Procedure and the normal practice of LegCo committees. Mr KAM eventually submitted his written comments (**Appendix 1.14**) on 5 December 2011. In finalizing the Report, the Investigation Committee had carefully considered the written comments of Mr KAM on the draft Report and, in the light of those comments, made appropriate changes to the Report.

1.74 The Report of the Investigation Committee was considered and finalized at its meetings on 22 and 29 February 2012 and the minutes of the proceedings are in **Appendix 1.15**.

1.75 This Report consists of the main report, written statements and relevant documents considered, and minutes of evidence in the form of verbatim transcripts in the original language used at the hearings. To minimize the use of paper, the verbatim transcripts are available only on CD-ROM. This LegCo website (address: www.legco.gov.hk) also provides access to this Report for perusal.

1.76 The main body of the Report comprises five chapters. Chapter 2 of this Report gives an account of the relationship between Mr KAM and Ms Kimmie WONG since she commenced employment as Mr KAM's personal assistant on 15 December 2008, an account of Ms WONG's complaint to Hon Emily LAU about her dismissal by Mr KAM on 24 September 2009 and events that led to Mr KAM's payment of cash compensation in the amount of \$150,000 to Ms WONG, and subsequent developments after the case was first reported by the local media on 4 October 2009. To fulfil the Investigation Committee's responsibility under Rule 73A(2) of RoP for establishing the facts stated in the censure motion and giving its views on whether or not the facts as established constitute grounds for the censure, Chapter 3 of the Report provides an analysis on "the facts to be established" as set out in the Schedule to the censure motion and the results of the analysis, whereas Chapter 4 of the Report sets out the views of the Investigation Committee, while deliberating on the allegations contained in the Schedule to the censure motion, on whether the facts as established in Chapter 3 constitute grounds for the proposed censure. Chapter 5 sets out the other observations and views of the Investigation Committee.

