

(Translation prepared by the
Legislative Council Secretariat)

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16 March 2011

Urgent By Fax: 2391 6882

Hon James TO Kun-sun
G/F, No. 11
Wing Kwong Street
Hung Hom, Kowloon

Dear Mr TO

Council meeting of 16 March 2011

**Application for moving a motion
for the adjournment of the Council**

Today (16 March 2011), I received two separate applications from you. The first application seeks my permission for you to move at today's Council meeting the following motion for the adjournment of the Council ("adjournment motion") under Rule 16(2) of the Rules of Procedure:

"That this Council do now adjourn for the purpose of debating the following issue: the refusal of Philippine government officials and rescue crew involved in the Manila hostage incident to come to Hong Kong to testify in the Coroner's Court."

The second application seeks my permission for you to move an adjournment motion under Rule 16(4) of the Rules of Procedure, and the issue raised therein is the same as that raised in your first application. This is your second request for moving an adjournment motion with exactly the same contents, following your request made last Wednesday (9 March 2011) which sought my permission for you to move an adjournment motion under Rule 16(2) at that day's Council meeting. What I need to deal with today are one request under Rule 16(2) and one request under Rule 16(4).

Like all Hong Kong people, I was grieved and shocked by the tragic encounter of the Hong Kong tourists in Manila. Like all Members of this Council, I hope that the relevant authorities would investigate into the incident, get to the truth, and account for what had happened for the deceased and injured and their family members. Nevertheless, as the President of the Legislative Council, I must apply the same yardstick and consider in accordance with the Rules of Procedure when being requested by Members to make a ruling on an issue.

Request made under Rule 16(2) of the Rules of Procedure

An adjournment motion moved under Rule 16(2) of the Rules of Procedure seeks to enable Members to discuss a motion which is not formulated in express terms and without any stance. The pre-condition of whether such an adjournment motion should be permitted is that the issue raised in the motion must be of urgent public importance.

As I stated in my reply to you dated 9 March 2011 regarding your request made last Wednesday for debating the aforesaid adjournment motion on the same day, “if witnesses from overseas refuse to testify in Hong Kong and the Coroner’s Court hands down its findings without a full grasp of the relevant facts, the confidence of Hong Kong people in the findings will be affected”. As such, the issue you raised for discussion in the adjournment motion is of public importance. This point is affirmed.

Another factor I must consider is whether the issue for discussion is so urgent that if the relevant adjournment motion cannot be moved at the specified Council meeting, there will be irreversible consequences.

In the fourth paragraph of your first letter to me today, you pointed out that “if witnesses from overseas refuse to testify in Hong Kong, the Coroner’s Court will definitely close the inquest and hand down its findings in a short period of time. On the basis of points of law, I am not aware of any similar cases in the past where the Coroner’s Court had decided to wait for a long time or adjourn the cases *sine die* without closing them when witnesses from overseas did not come to testify in Hong Kong. Moreover, the inquest held for the aforesaid case is originally scheduled for 25 days. The inquest has now reached the 22nd day and the part on testimonies by local witnesses has come to a close. Therefore, my conclusion that ‘the inquest held for the case is drawing to a close’ is not a speculation. Rather, it is a reasonable inference based on points of law and facts.”.

You said that your inference (i.e. “the inquest held for the case is drawing to a close”) is based on points of law and facts. I have therefore consulted the Counsel to the Legislature. He pointed out that under section 27 of the Coroners Ordinance (Cap. 504 of the Laws of Hong Kong), the purpose of an inquest into the death of a person shall be to inquire into the cause of and the circumstances connected with the death. Therefore, the proceedings and evidence at the inquest shall be directed to ascertaining the matters specified in the Ordinance, including the identity of the person and how, when and where the person came by his death. He also pointed out that while the inquest is originally scheduled for 25 days, there is no provision in the Coroners Ordinance which requires the Coroner’s Court to complete an inquest and hand down its findings before the expiry of the period scheduled for the inquest. As a matter of fact, if necessary, the Coroner may adjourn the inquest by exercising the power vested in him under the Ordinance.

I am therefore of the view that up to this moment, there is no sufficient legal justification to support your conclusion that “the Coroner’s Court will definitely close the case and hand down its findings in a short period of time.” I still remain unconvinced that the Coroner’s Court must close the inquest in a short period of time. I am of the view that if the Coroner’s Court cannot find out the truth before the expiry of the period scheduled for the inquest, it has the power to take appropriate actions (including adjourning the inquest) to discharge its statutory functions under the Ordinance and continue with the inquest.

Based on the above considerations, I am not satisfied that your request meets the requirements under Rule 16(2) of the Rules of Procedure.

Request made under Rule 16(4) of the Rules of Procedure

Under Rule 16(4) of the Rules of Procedure, at the conclusion of all the business on the Agenda of the Council, a Member may move that this Council do now adjourn, for the purpose of raising any issue concerning public interest, with a view to eliciting a reply from a designated public officer. As Hong Kong people are very concerned about the refusal of Philippine witnesses involved in the Manila hostage incident to come to Hong Kong to testify and such issue concerns the confidence of Hong Kong people in the findings, I consider that the issue raised by you does concern public interest.

Rule 16(5) of the Rules of Procedure provides that a Member who wishes to move a motion of this kind shall give notice of the issue in writing to the Clerk not less than seven clear days before the date of the relevant Council meeting, but the President may in his discretion dispense

with such notice. In your letter to me this afternoon, you requested me to dispense with the required notice to enable you to move at today's meeting an adjournment motion under Rule 16(4) of the Rules of Procedure. Having carefully considered the grounds you put forward in your letter, I decided to grant permission to your request.

Yours sincerely

(Jasper TSANG Yok-sing)
President
Legislative Council

c.c. All other Legislative Council Members