



立法會秘書處

LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :  
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27 November 2014

Clerk to the Hon Mr Justice AU  
High Court  
38 Queensway  
Hong Kong  
(Attn.: Mr TAM Chi-fai, Alan)

Dear Mr TAM

**HCAL78 of 2014**

I refer to the application for leave to apply for judicial review filed by the Applicant, Hon WONG Yuk-man in the above proceedings in which the then Chairman of the Finance Committee and the Finance Committee of the Legislative Council are named as the putative first and second Respondents respectively. The Legislative Council Secretariat (LegCo Secretariat) has received your letter dated 25 November 2014 by fax on the same day setting out the directions of the Honourable Mr Justice AU including the setting down of the application for hearing on 22 December 2014. His Lordship has subsequently directed that the hearing date be vacated.

In the above application, the Applicant seeks a declaration in respect of the power of the Chairman of the Finance Committee (FC) and an order to overturn FC's decision to approve the Government's funding proposal in respect of "Advance site formation and engineering infrastructure works at Kwu Tung North new development area and Fanling north new development area" (FCR(2014-15)2) on 27 June 2014.

With regard to the legal capacity of FC to sue or to be sued, I have been advised by Legal Adviser to the Legislative Council (Legal Adviser) and would like to draw His Lordship's attention to the Decision on Costs of the Honourable Madam Justice Chu in *Glory Success Transportation Limited v Secretary for Justice*, HCAL93/2006 dated 31 March 2008. In that case, the applicant sought leave to join the Legislative Council (LegCo) as a respondent in an application for leave to apply for judicial review and the application was

dismissed with costs. In coming to this decision, Madam Justice Chu considered that it was not proper to join LegCo, being an unincorporated body, as a respondent (paragraph 12 of the Decision). While the Secretary General of the LegCo Secretariat is the chief executive of the LegCo Secretariat and Clerk to LegCo under section 15 of The Legislative Council Commission Ordinance (Cap. 443), the learned judge noted that there is nothing in Cap. 443 to indicate that the Secretary General can represent LegCo to accept service of process (paragraph 17 of the Decision).

Legal Adviser has advised me that the principles enunciated in the *Glory Success* case should be extended to FC in that FC, being a committee of LegCo comprising all Members except the President, is a constituent part of the Legislature which does not have the legal capacity to sue or to be sued in that name.

His Lordship may wish to note that the above principles in the *Glory Success* case on the legal capacity of LegCo have been adopted by the Court of Appeal in its judgment in CACV378/2008 鄭燕芳對立法會 dated 14 January 2013.

His Lordship may also wish know that under Rule 71(1) of the Rules of Procedure of LegCo<sup>1</sup>, made under Article 75 of the Basic Law, the members of FC are all the Members of LegCo other than the President of LegCo. As such, the Applicant as well as the putative first respondent are themselves members of FC.

In the light of the above, His Lordship may wish to give further directions in the conduct of the proceedings.

I should be most grateful if you would bring this letter to His Lordship's attention. Please be informed also that a copy of this letter will be sent to the Applicant for his information. Please contact Ms Anita SIT of this Secretariat at 3919 3010 if you have any question.

Yours sincerely



(Kenneth CHEN)  
Secretary General

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<sup>1</sup> Rule 71 of the Rules of Procedure is available at the webpage of LegCo at <http://www.legco.gov.hk/general/english/procedur/content/partm.htm#71>