

立法會

Legislative Council

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Paper for the House Committee meeting on 6 January 2017

Establishment of the Investigation Committee under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai

Purpose

This paper invites the House Committee (“HC”) to consider the proposals relating to the establishment of the Investigation Committee (“IC”) under Rule 49B(2A) of the Rules of Procedure (“RoP”) in respect of the motion to censure Dr Hon CHENG Chung-tai (“the censure motion” in **Appendix I**).

Background

2. At the Council meeting of 14 December 2016, Hon Paul TSE moved the censure motion under RoP 49B(1A) and Article 79(7) of the Basic Law (“BL”).¹ Upon the moving of such motion, Hon CHAN Chi-chuen moved without notice the motion under RoP 49B(2A) that no further action shall be taken on the censure motion. Mr CHAN’s motion was negatived. Accordingly, under RoP 49B(2A), the debate on the censure motion was adjourned, and the matter stated in the censure motion was referred to an IC.

3. Under RoP 73A, an IC shall be responsible 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. The IC shall consist of a chairman, a deputy chairman and five members who shall be Members appointed by the President in accordance with an election procedure determined by HC. The mover of the censure motion, the Members jointly signing the motion (i.e. Dr Hon CHIANG Lai-wan, Hon Martin LIAO and Hon CHUNG Kwok-pan), and the Member who is the subject of the motion shall not be appointed to the IC.

¹ BL79(7) provides that the President of the Legislative Council (“LegCo”) shall declare that a member of LegCo is no longer qualified for the office when he or she is censured for misbehavior or breach of oath by a vote of two-thirds of the members of LegCo present.

Preparatory work for the establishment of an IC in the past

4. The first and the only IC established in the past was 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 first IC”), which was formed in January 2010 and completed its work in March 2012.

5. On 9 October 2009, HC discussed the matter arising from Mr KAM’s dismissal of an assistant, and agreed that the matter be followed up by the moving of a motion under RoP 49B(1A) and BL79(7) and a subcommittee be formed under HC to consider and make recommendations on the wording of the motion.² On 16 October 2009, HC decided that the subcommittee should not undertake the drafting of the motion wording, and should instead consider and propose a procedure for the election of Members for appointment by the President to the first IC, as well as undertaking other preparatory work as deemed necessary.³

6. The subcommittee, which comprised four members including the chairman, held one meeting only and reported on its work to HC on 6 November 2009. The subcommittee proposed a procedure for the election of Members for appointment to the first IC (“the Election Procedure”). The subcommittee considered that other than the deliberation on the Election Procedure, there was no preparatory work it should undertake in relation to the establishment of the first IC.

7. At the Council meeting of 9 December 2009, the motion to censure Mr KAM was moved. The debate on the motion was adjourned and the matter stated in the motion was referred to the first IC.

Election procedure for the first IC

8. The Election Procedure was endorsed by HC on 11 December 2009. The Election Procedure mainly followed the procedures for the elections of Members for appointment to the Public Accounts Committee (“PAC”), the Committee on Members’ Interests (“CMI”) and the Committee on Rules of Procedure (“CRoP”), members of which are appointed by the President in accordance with an election procedure determined by HC. Reference was also made to the relevant practice and procedure adopted by select committees.

² The 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”.

³ The subcommittee was subsequently renamed 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”.

9. To facilitate Members to carefully consider whether to make or accept a nomination, the nomination arrangement under the Election Procedure was modelled on that for the election of members of The Legislative Council Commission. Under such arrangement, nominations are invited at least seven clear days before the HC meeting at which the election is held, and a nomination is considered valid only if it is made in a nomination form delivered to the LegCo Secretariat at least three clear days before the election date.

10. In accordance with the Election Procedure, HC elected seven Members on 8 January 2010 for appointment by the President to the first IC.

Proposals

11. Having regard to the operational experience of the subcommittee which undertook limited preparatory work for the establishment of the first IC, i.e. only proposing the Election Procedure, and the smooth implementation of the Election Procedure endorsed by HC, it is proposed that:

- (a) a subcommittee need not be formed to undertake the preparatory work for the establishment of the IC in respect of the censure motion in Appendix I;
- (b) the proposed Election Procedure in **Appendix II**, which is the same as the Election Procedure endorsed by HC on 11 December 2009 except that an adjustment of a technical nature is made in paragraph 7 of the proposed Election Procedure, be adopted for the IC referred to in (a). The adjustment, together with the corresponding textual changes, seeks to replace “a show of hands” with “using the electronic voting system” for alignment with the relevant voting arrangements adopted for the elections of Members for appointment to PAC, CMI and CRoP since the Fifth LegCo; and
- (c) taking into account the nomination period set out in paragraph 2 of the proposed Election Procedure, the election of Members for appointment to the IC referred to in (a) be held at the HC meeting on 20 January 2017.

12. Subject to Members' approval of the above proposals and in accordance with paragraph 2 of the proposed Election Procedure in Appendix II, the LegCo Secretariat will invite nominations by issuing a circular and a nomination form to all Members at least seven clear days before the aforesaid proposed election date.

Advice sought

13. Members are invited to approve the proposals in paragraphs 11 and 12.

Council Business Division 3
Legislative Council Secretariat
4 January 2017

**Motion moved by Hon Paul TSE
under Rule 49B(1A) of the Rules of Procedure
to censure Dr Hon CHENG Chung-tai
at the Council meeting of 14 December 2016**

Wording of the Motion

That this Council, in accordance with Article 79(7) of the Basic Law, censures Dr Hon CHENG Chung-tai for misbehaviour (details as particularized in the Schedule to this motion).

Schedule

Details of Dr Hon CHENG Chung-tai's misbehaviour are particularized as follows:

- (1) Sixtus LEUNG Chung-hang and YAU Wai-ching requested to take their oath/affirmation afresh at the Council meeting of 19 October 2016 as their so-called oath/affirmation taken for the first time at the Council meeting of 12 October 2016 had been ruled invalid by the President of the Legislative Council ("LegCo") on the grounds that both of them could not be serious about their oath and were unwilling to be bound by it. At the Council meeting of 19 October, some 10 Members of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") placed the mock-ups of the national flags of the People's Republic of China ("national flags") and the regional flags of the Hong Kong Special Administrative Region of the People's Republic of China ("regional flags") on their desks in the Chamber, so as to highlight the solemnity and pledge of taking oath to uphold the Basic Law and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.
- (2) At the Council meeting of 19 October 2016, when the President directed Members to be summoned for a quorum and all DAB Members were not present, Dr Hon CHENG Chung-tai deliberately inverted the mock-ups of the national flags and the regional flags placed on the desks of DAB Members. After Dr Hon CHIANG Lai-wan found out what happened and returned

to the Chamber to rearrange the mock-ups of the national flags and the regional flags and place them in the same position and manner as before, Dr CHENG again deliberately inverted the mock-ups of the national flags and the regional flags. Eventually, the President reprimanded him for leaving his seat at will and disturbing other Members displaying objects, and ordered him to withdraw immediately from the Council as his conduct was grossly disorderly, but he refused to leave all along. What was happening in the Chamber was broadcast live on the television throughout that period of time.

- (3) The aforesaid conduct of Dr Hon CHENG Chung-tai: (i) was in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016 under Article 104 of the Basic Law and the Oaths and Declarations Ordinance (Cap. 11) to “uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China”; (ii) constitutes misbehaviour as he openly and deliberately humiliated the national flags and the regional flags in his capacity as a Member of LegCo.

Proposed procedure for the election of Members for appointment by the President to the investigation committee

1. An election of Members shall be held at a meeting of the House Committee, the date of which (“election date”) shall be appointed by the House Committee.
2. The Legislative Council Secretariat shall issue a circular and a nomination form to the Members of the Legislative Council at least seven clear days before election date, inviting nominations to be made.
3. Each nomination form shall be for the nomination of one Member and shall be signed by one Member as the proposer, one Member as the seconder, and by the nominee Member to signify his consent to the nomination.
4. Duly completed nomination forms shall be delivered to the Legislative Council Secretariat at least three clear days before the election date.
5. In cases where the number of nominations received by the Legislative Council Secretariat by the deadline for nomination is less than seven, further nominations may be proposed, at the House Committee meeting at which the election is conducted, by any Member and seconded by another, with the proposed nominee signifying his consent to the nomination.
6. In the case where the number of nominations received under paragraphs 4 and 5 is equal to seven, the Chairman of the House Committee shall declare the nominees duly elected.
7. In cases where the number of nominations received under paragraphs 4 and 5 is more than seven, a poll shall be taken at the House Committee meeting at which the election is conducted and Members should cast their votes by using the electronic voting system, whereby a Member may vote for not more than seven nominees. The nominees who get the highest numbers of votes will be declared elected.
8. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the manner of election provided in paragraph 7.

9. If, after a separate poll is held under paragraph 8, there is still a nominee who would have been elected but for there being one or more other nominees having been given the same number of votes, lots shall be drawn by the Chairman of the House Committee among such nominees to determine which of them will take up the remaining place/places.

10. Immediately after the election of Members for appointment to the investigation committee, the meeting of the House Committee shall be suspended for 10 minutes to enable the elected Members to elect amongst them the two Members to be nominated for appointment respectively as Chairman and Deputy Chairman of the investigation committee by the President.

11. The meeting of the House Committee will then resume and House Committee will be asked to endorse the results of the election of the Chairman and Deputy Chairman of the investigation committee.