

立法會 *Legislative Council*

LC Paper No. CB(1) 1176/16-17

Ref: CB1/IC/16

Paper for the House Committee meeting on 23 June 2017

Establishment of the Investigation Committee under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Hon Holden CHOW Ho-ding

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 Hon Holden CHOW Ho-ding ("the censure motion") in **Appendix I**.

Background

2. At the Council meeting of 7 June 2017, Hon Claudia MO moved the censure motion under RoP 49B(1A) and Article 79(7) of the Basic Law ("BL").¹ Upon the moving of such motion, the debate on the censure motion was adjourned and the matter stated in the censure motion was referred to an IC, as provided under RoP 49B(2A).²

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. Hon Nathan LAW, Hon CHU Hoi-dick and Hon CHAN Chi-chuen), 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.

² Upon the moving of the censure motion at the Council meeting of 7 June 2017, no Member moved without notice a motion that no further action shall be taken on the censure motion.

Proposed election procedure and timing for election

4. The most recent occasion where HC considered the establishment of an IC under RoP 49B(2A) was the meeting on 6 January 2017.³ At that meeting, HC agreed that a subcommittee need not be formed to undertake the preparatory work for the establishment of an IC, given prior operational experience. HC also endorsed the Election Procedure in **Appendix II**.

5. Having regard to the aforesaid decisions of 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 6 January 2017, be adopted for the IC referred to in (a); 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 7 July 2017.

6. 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

7. Members are invited to approve the proposals in paragraphs 5 and 6.

Council Business Division 1
Legislative Council Secretariat
20 June 2017

³ See LC Paper No. CB(3) 251/16-17.

**Motion to be moved by Hon Claudia MO Man-ching
under Rule 49B(1A) of the Rules of Procedure
to censure Hon Holden CHOW Ho-ding
at the Council meeting of 7 June 2017**

Wording of the Motion

That this Council, in accordance with Article 79(7) of the Basic Law, censures Hon Holden CHOW Ho-ding for misbehaviour and breach of oath under Article 104 of the Basic Law (details as particularized in the Schedule to this motion).

Schedule

Details of Hon Holden CHOW Ho-ding's misbehaviour and breach of oath under Article 104 of the Basic Law are particularized as follows:

Improperly interfering with and obstructing the Select Committee's inquiry

- (1) As a Legislative Council ("LegCo") Member and the Deputy Chairman of the Select Committee to Inquire into Matters about the Agreement between Mr LEUNG Chun-ying and the Australian firm UGL Limited (the "**Select Committee**"), Hon Holden CHOW Ho-ding discussed the major areas of study of the Select Committee with the subject of inquiry, Chief Executive LEUNG Chun-ying, and further conspired with and assisted Mr LEUNG Chun-ying to improperly involve in and interfere with the investigation. At his own risk, Hon Holden CHOW Ho-ding accepted Mr LEUNG Chun-ying's request to amend the major areas of study of the Select Committee, and directly submitted the amendments made by Mr LEUNG Chun-ying to the proposed major areas of study to the Select Committee for discussion at its meeting on 25 April 2017 (the "**Amendments**"), in an attempt to obstruct and pervert the course of the open inquiry proceedings, and conspire with Mr LEUNG Chun-ying to create results advantageous to Mr LEUNG. Such behaviours seriously obstruct the Select Committee in the proper discharge of its duty, violate procedural justice and damage the independence, impartiality and legitimacy of the investigation of the Select Committee. Hon Holden CHOW Ho-ding fails to fulfil the

obligation of a committee member. This incident clearly involves role conflicts and/or even conflicts of interests since the aforementioned behaviours are in favour of Mr LEUNG Chun-ying and lead to the suspicion that the cooperation between Hon Holden CHOW Ho-ding and Mr LEUNG Chun-ying may involve transfers of benefits.

Contempt of the LegCo

- (2) As a LegCo Member, Hon Holden CHOW Ho-ding conspired with and assisted Mr LEUNG Chun-ying to involve in and interfere with the matters of the LegCo in his capacity as the Chief Executive. Such behaviours damage the dignity, autonomy and independence of the LegCo, amounting to contempt of the functions and powers of the LegCo, bringing shame on the LegCo and seriously undermining the public's confidence in the LegCo and LegCo Members.

Making false representations in the LegCo

- (3) As a LegCo Member and the Deputy Chairman of the Select Committee, Hon Holden CHOW Ho-ding intentionally and repeatedly made false representations in relation to the origin of the Amendments at the meeting of the Select Committee on 25 April 2017, with the intention to mislead the Select Committee and the public into believing that the Amendments were genuinely raised by Hon Holden CHOW Ho-ding himself. He refused to admit until the fact that the Amendments were made by Mr LEUNG Chun-ying was revealed. Such behaviours completely fail to meet the level of the credibility, integrity and dutifulness expected of a LegCo Member.

The aforementioned conduct amounting to misbehaviour and breach of oath

- (4) As a LegCo Member, Hon Holden CHOW Ho-ding committed the aforementioned misbehaviour for Mr LEUNG Chun-ying, clearly indicating that he has breached the oath he made on 12 October 2016 under Article 104 of the Basic Law and the Oaths and Declarations Ordinance (Cap. 11) that he will “serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity”, which is a basic duty of a LegCo Member.

Appendix II

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.