

LC Paper No. CB(2)713/17-18

Ref : CB2/H/5/17

House Committee of the Legislative Council

Minutes of the 10th meeting held in Conference Room 1 of the Legislative Council Complex at 2:30 pm on Friday, 12 January 2018

Members present :

Hon Starry LEE Wai-king, SBS, JP (Chairman) Hon Dennis KWOK Wing-hang (Deputy Chairman) Hon James TO Kun-sun Hon LEUNG Yiu-chung Hon Abraham SHEK Lai-him, GBS, JP Hon Tommy CHEUNG Yu-yan, GBS, JP Prof Hon Joseph LEE Kok-long, SBS, JP Hon Jeffrey LAM Kin-fung, GBS, JP Hon WONG Ting-kwong, GBS, JP Hon CHAN Hak-kan, BBS, JP Hon CHAN Kin-por, GBS, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon WONG Kwok-kin, SBS, JP Hon Mrs Regina IP LAU Suk-yee, GBS, JP Hon Paul TSE Wai-chun, JP Hon Claudia MO Hon Michael TIEN Puk-sun, BBS, JP Hon Steven HO Chun-yin, BBS Hon WU Chi-wai, MH Hon YIU Si-wing, BBS Hon MA Fung-kwok, SBS, JP Hon Charles Peter MOK, JP Hon CHAN Chi-chuen Hon CHAN Han-pan, JP Hon LEUNG Che-cheung, SBS, MH, JP Hon Kenneth LEUNG Hon Alice MAK Mei-kuen, BBS, JP Dr Hon KWOK Ka-ki Hon KWOK Wai-keung, JP

Hon Christopher CHEUNG Wah-fung, SBS, JP Dr Hon Fernando CHEUNG Chiu-hung Dr Hon Helena WONG Pik-wan Hon IP Kin-yuen Dr Hon Elizabeth QUAT, BBS, JP Hon Martin LIAO Cheung-kong, SBS, JP Hon POON Siu-ping, BBS, MH Dr Hon CHIANG Lai-wan, JP Ir Dr Hon LO Wai-kwok, SBS, MH, JP Hon CHUNG Kwok-pan Hon Alvin YEUNG Hon Andrew WAN Siu-kin Hon CHU Hoi-dick Hon Jimmy NG Wing-ka, JP Dr Hon Junius HO Kwan-yiu. JP Hon HO Kai-ming Hon LAM Cheuk-ting Hon Holden CHOW Ho-ding Hon SHIU Ka-fai Hon SHIU Ka-chun Hon Wilson OR Chong-shing, MH Hon YUNG Hoi-yan Dr Hon Pierre CHAN Hon CHAN Chun-ying Hon Tanya CHAN Hon CHEUNG Kwok-kwan, JP Hon HUI Chi-fung Hon LUK Chung-hung Hon LAU Kwok-fan, MH Hon Kenneth LAU Ip-keung, BBS, MH, JP Dr Hon CHENG Chung-tai Hon KWONG Chun-yu Hon Jeremy TAM Man-ho

Member absent :

Hon Frankie YICK Chi-ming, SBS, JP

Clerk in attendance :

Miss Flora TAI

Staff in attendance :

Action

I. Confirmation of minutes of meeting

Minutes of 9th meeting held on 5 January 2018

(LC Paper No. CB(2)662/17-18)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration

Request for holding a special House Committee ("HC") meeting to discuss issues relating to the Hong Kong and Mainland customs, immigration, and quarantine procedures at the West Kowloon Station of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("the co-location arrangement")

2. <u>The Chairman</u> informed Members that she had relayed the above request from Members to the Chief Secretary for Administration, and the

Secretariat was following up with the Administration Wing on the date for holding the special HC meeting before the end of January. <u>The</u> <u>Chairman</u> further said that the Secretariat had further liaised with the Administration Wing on this matter before this meeting, but the Administration Wing had yet to give a confirmed reply. The Secretariat would issue the relevant notice of the special HC meeting to Members once the date of the meeting had been fixed.

III. Business arising from previous Council meetings

- (a) Legal Service Division reports on bills referred to the House Committee in accordance with Rule 54(4)
 - (i) Inland Revenue (Amendment) (No. 6) Bill 2017 (LC Paper No. LS19/17-18)

3. At the invitation of the Chairman, <u>Legal Adviser</u> ("LA") briefed Members on the report prepared by the Legal Service Division ("LSD") on the Bill.

4. <u>Mr Kenneth LEUNG</u> considered it necessary to form a Bills Committee to study the Bill in detail. <u>Members</u> agreed. Mr Kenneth LEUNG agreed to join the proposed Bills Committee.

(ii) Inland Revenue (Amendment) (No. 7) Bill 2017 (LC Paper No. LS20/17-18)

5. At the invitation of the Chairman, \underline{LA} briefed Members on the report prepared by LSD on the Bill.

6. <u>Mr WU Chi-wai</u> and <u>Mr Kenneth LEUNG</u> considered it necessary to form a Bills Committee to study the Bill in detail. <u>Members</u> agreed. Mr WU Chi-wai and Mr Kenneth LEUNG agreed to join the proposed Bills Committee.

(b) Legal Service Division report on subsidiary legislation gazetted on 5 January 2018 and tabled in Council on 10 January 2018 (LC Paper No. LS18/17-18)

7. At the invitation of the Chairman, <u>LA</u> briefed Members on the report prepared by LSD on the Public Health and Municipal Services

Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) Order 2018 (L.N. 1) ("the Order") which was gazetted on 5 January 2018 and tabled in Council on 10 January 2018.

8. <u>Members</u> did not raise any question on the Order.

9. <u>The Chairman</u> reminded Members that the deadline for amending the Order would be the Council meeting of 7 February 2018.

IV. Further business for the Council meeting of 17 January 2018

(a) <u>Questions</u>

(*LC Paper No. CB*(3)248/17-18)

10. <u>The Chairman</u> said that Dr CHIANG Lai-wan had replaced her oral question.

(b) <u>Government motions</u>

- (i) Proposed resolution to be moved by the Secretary for Transport and Housing under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (LC Paper No. CB(3)241/17-18)
- (ii) Proposed resolution to be moved by the Secretary for Constitutional and Mainland Affairs under section 8 of the District Councils Ordinance (Cap. 547) (LC Paper No. CB(3)242/17-18)

11. <u>Members</u> noted that the Administration would move the above two proposed resolutions at the meeting.

V. Business for the Council meeting of 24 January 2018

(a) **Questions**

(*LC Paper No. CB*(3)249/17-18)

12. <u>The Chairman</u> said that 22 questions (six oral and 16 written) had been scheduled for the meeting.

(b) Bill - First Reading and moving of Second Reading

13. <u>The Chairman</u> said that no notice had been received yet.

(c) <u>Government motion</u>

14. <u>The Chairman</u> said that no notice had been received yet.

(d) <u>Members' motions</u>

15. <u>The Chairman</u> said that Members' motions which had stood over from previous Council meetings would be dealt with at the meeting.

VI. Reports of Bills Committees and subcommittees

(a) Report of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 and Companies (Amendment) Bill 2017

16. Mr WONG Ting-kwong, Chairman of the Bills Committee, made a verbal report on the deliberations of the Bills Committee. He said that the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Bill 2017 ("the AML Bill") sought to amend the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) ("AMLO") to expand the scope of AMLO so as to apply the customer due diligence ("CDD") and record-keeping requirements now applicable to financial institutions to designated non-financial businesses and professions ("DNFBPs") (i.e. legal professionals, accounting professionals, estate agents, and trust or company service providers ("TCSPs")). The AML Bill also sought to introduce a licensing regime for TCSPs. Mr WONG further said that the Companies (Amendment) Bill 2017 ("the CO Bill") sought to amend the Companies Ordinance (Cap. 622) to require companies incorporated in Hong Kong to keep a "Significant Controllers Register" ("SCR") to enhance transparency of the beneficial ownership of such companies.

17. <u>Mr WONG</u> informed Members that the Bills Committee in general supported the key proposals of the two Bills, which would align Hong Kong's anti-money laundering and counter-terrorist financing regulatory regime with international requirements as promulgated by the Financial

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Action Task Force. With regard to the AML Bill, the major issues deliberated by the Bills Committee included: (i) the approach in applying the statutory CDD and record-keeping requirements to the legal professionals; (ii) the reliance by DNFBPs on third parties to carry out CDD measures on their behalf; (iii) the period of record-keeping requirement under AMLO; and (iv) the operation of the proposed licensing regime for TCSPs and the transitional arrangements for existing service providers. Regarding the CO Bill, the major issues deliberated by the Bills Committee included: (i) whether exemptions from the SCR regime should be provided to certain companies; (ii) requirements in relation to keeping of SCRs; and (iii) persons who would be allowed access to SCRs.

18. <u>Mr WONG</u> further advised that in response to the views of the Bills Committee on the AML Bill, the Administration would propose a number of Committee stage amendments ("CSAs") to the relevant provisions of the Bill which mainly sought to:

- (a) clarify that The Law Society of Hong Kong might have regard to or take into account Practice Direction P in providing guidance on the requirements under Schedule 2 to AMLO;
- (b) allow the Registrar of Companies to disclose information to the Estate Agents Authority; and
- (c) allow DNFBPs to rely on intermediaries to carry out CDD measures and amend the record-keeping requirement from six years to at least five years.

Members of the Bills Committee raised no objection to the CSAs proposed by the Administration.

19. <u>Members</u> noted that Mr James TO had indicated that he might consider proposing CSAs to the AML Bill to specify that prosecution for an offence under the newly added Part 5A of the Bill could only be instituted within a certain time limit after the commission of the offence.

20. <u>Members</u> further noted that the Bills Committee would not propose any amendments to the two Bills and that it had no objection to the resumption of the Second Reading debate on the two Bills at the Council meeting of 24 January 2018.

(b) Report of the Bills Committee on Inland Revenue (Amendment) (No. 5) Bill 2017

(LC Paper No. CB(1)452/17-18)

21. <u>Mr WONG Ting-kwong</u>, Chairman of the Bills Committee, briefed Members on the deliberations of the Bills Committee as detailed in its report. <u>Mr WONG</u> said that the Bills Committee supported the CSAs proposed by the Administration to the Bill. The Bills Committee would not propose any CSAs to the Bill and had no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 24 January 2018.

(c) Report of the Bills Committee on Banking (Amendment) Bill 2017

(LC Paper No. CB(4)458/17-18)

22. <u>Mr CHAN Chun-ying</u>, Chairman of the Bills Committee, briefed Members on the deliberations of the Bills Committee as detailed in its report. <u>Mr CHAN</u> said that both the Administration as well as the Bills Committee would not propose any CSAs to the Bill.

23. <u>Members</u> noted that the Bills Committee had no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 24 January 2018.

24. <u>The Chairman</u> reminded Members that the deadline for giving notice of CSAs, if any, proposed to be moved to the above four Bills would be Monday, 15 January 2018.

(d) Report of the Subcommittee on Proposed Resolution under <u>Section 7(a) of the Legal Aid Ordinance (Cap. 91)</u> (LC Paper No. CB(4)452/17-18)

25. <u>Mr Holden CHOW</u>, Chairman of the Subcommittee, briefed Members on the deliberations of the Subcommittee as detailed in its report. <u>Mr CHOW</u> said that the Subcommittee supported the proposed resolution and noted that the Administration would give fresh notice to move the proposed resolution at the Council meeting of 31 January 2018.

26. <u>The Chairman</u> reminded Members that the deadline for giving notice of amendments, if any, to the above proposed resolution would be Wednesday, 24 January 2018.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)663/17-18)

27. <u>The Chairman</u> said that as at 11 January 2018, there were 16 Bills Committees, seven subcommittees under HC and two subcommittees on policy issues under Panels in action. Eleven subcommittees on policy issues were on the waiting list.

VIII. Any other business

Letter from five Members requesting HC to call a special HC meeting

28. The Chairman said that she received a letter jointly signed by five Members of the Civic Party (namely, the Deputy Chairman, Dr KWOK Ka-ki, Mr Alvin YEUNG, Ms Tanya CHAN and Mr Jeremy TAM) on 8 January 2018 ("the joint letter") requesting HC to call a special HC meeting to invite the Secretary for Justice ("SJ") to respond to Members' questions on issues relating to the incident concerning the unauthorized building works ("UBWs") in her residence ("the incident concerned"). The Chairman further advised that from her understanding with the Secretariat, there was not a precedent that HC had called a special meeting for individual government officials to respond to Members' questions about their conduct not in the performance of their official Nevertheless, she understood that Members were very concerned duties. about the policy issues arising from the incident concerned and other related issues such as integrity checking for government officials. There was an occasion in the past where the relevant Panel followed up on policy issues arising from the incident involving an individual government official's conduct and invited the government official concerned to attend the Panel meeting. She also noted that the Panel on Administration of Justice and Legal Services ("the AJLS Panel") planned to invite SJ to brief the Panel on her work plan. The Chairman further said that she would be happy to listen to Members' views on the five Members' request.

29. <u>Mr Alvin YEUNG</u> said that as stated in the joint letter, it was necessary for SJ to attend a special HC meeting so that she could directly answer Members' questions on the incident concerned and related issues in a fair, open and just manner. In his view, given the importance of the role of SJ, inter alia, in safeguarding the rule of law, the incident concerned had not only affected the integrity of SJ but even the

governance credibility of the Hong Kong Special Administrative Region ("HKSAR") Government. Therefore, he considered it incumbent upon SJ to respond to Members' questions as soon as possible, and called on other Members to support their request.

Mr WU Chi-wai, Dr Helena WONG, Mr KWONG Chun-yu and 30. Mr HUI Chi-fung expressed support for calling a special HC meeting so that SJ could fully respond to Members' queries, thereby alloying public concerns over the incident concerned and restoring the public confidence Mr WU considered that the incident in the HKSAR Government. concerned was not only about the integrity of SJ, but also impacted on the governance credibility of the HKSAR Government. Mr WU added that calling a special HC meeting was the only and the best option available to follow up the incident concerned. Dr WONG said that even though a few Members had raised questions relating to the incident concerned during the Chief Executive's Question and Answer session ("the CE's Q&A session") held on 11 January 2018, it was more desirable if SJ could directly answer Members' questions at a special HC meeting which, in her view, was a suitable platform for such purpose. Mr KWONG commented that the incident concerned had aroused wide public concern and SJ should personally respond to Members' questions about it and related issues. Mr KWONG further said that CE had not declined at the CE's Q&A session held the day before this meeting Members' request for SJ to respond to Members' questions at a meeting of the Council or its Mr HUI considered that the evidence available so far committees. indicated that SJ was suspected of having violated the law, and therefore, it was incumbent upon her to directly respond to Members' questions and make clarifications on issues of public concern at a special HC meeting so as to allay public concerns.

31. <u>Mr Tommy CHEUNG</u> said that Members of the Liberal Party understood the public's concern about the incident concerned. However, SJ had already given an account to the media, and even if a special HC meeting was held, Members would not get any further information. Furthermore, SJ had undertaken that rectifications would be made as soon as possible, and that she would not be involved in any prosecution or legal procedures in respect of the incident concerned. Given the difficulty in attracting high-calibre people to fill the position as SJ, and that the appointment was made on a short notice, <u>Mr CHEUNG</u> considered that SJ should be given an opportunity to focus on her work on hand which included, among others, the legislative proposal for the co-location arrangement. Therefore, Members of the Liberal Party did not support the request for calling a special HC meeting. 32. <u>Mr Jeffrey LAM</u> said that with regard to the incident concerned, follow-up actions were being undertaken by the relevant government department and SJ had appointed an Authorized Person to review the building works of her residence and make rectifications as appropriate. <u>Mr LAM</u> further said that he did not support the request of calling a special HC meeting to invite SJ to answer Members' questions relating to the incident concerned but the following up of the matter by the relevant Panels could be considered.

33. On the remarks made by Mr Jeffery LAM, Mr CHU Hoi-dick said that while the Buildings Department ("BD") would investigate into cases concerning UBWs, it would not address the public's concern about the integrity of SJ. Mr CHU and Dr Fernando CHEUNG expressed a similar view that SJ should give a full account of the incident concerned publicly at the soonest possible time to allay public concern about her integrity. Mr CHU considered that Members of the pro-establishment camp should also support the five Members' request as the proposed special HC meeting would provide an opportunity for SJ to address the questions and concerns from Members of different political parties and groupings in one go. Dr CHEUNG pointed out that as the incident concerned involved different issues, including UBWs and the integrity of SJ, which straddled the policy areas of several Panels such as the Panel on Development and the AJLS Panel, he therefore considered it appropriate for HC to invite SJ to attend a special HC meeting to answer Members' questions relating to the incident concerned.

34. <u>Ms Tanya CHAN</u> said that the public were not only concerned about the incident concerned but also the approval given by CE for Ms Teresa CHENG to complete her handling of six arbitration cases after Ms CHENG had taken up the appointment as SJ. <u>Ms CHAN</u> further said that while the former issue was of relevance to the Panel on Development and the AJLS Panel, the latter was possibly more related to policy issues under the purview of the Panel on Constitutional Affairs and the Panel on Public Service. Considering that the public concerns surrounding the incident concerned straddled the policy areas of several Panels, she was of the view that it would be more appropriate for HC to hold a special HC meeting to invite SJ to answer Members' questions.

35. <u>Ms Claudia MO</u> considered that SJ should be given an opportunity to personally answer Members' queries and address their concerns about the incident concerned. She noted that CE had indicated at the CE's

Q&A session that CE would discuss with SJ regarding Members' request for SJ to respond to Members' questions relating to the incident concerned at a meeting of the Council or its committees. Therefore, she could not see the reason why a special HC meeting should not be held for SJ to answer Members' questions.

36. <u>Mr Jeremy TAM</u> said that some Members of the pro-establishment camp held the view that SJ should be given the benefit of doubt and this, in his view, indicated that these Members also had doubts and queries about the incident concerned. He therefore considered that SJ should be given an opportunity to clarify Members' doubts about the incident concerned and to make a full account of it to the public.

37. <u>Dr Priscilla LEUNG</u> said that members of the AJLS Panel would have the opportunity to meet with SJ as it was the usual practice for SJ to attend the Panel meetings from time to time to brief the Panel on the work of the Department of Justice ("DoJ"), and the Panel was now liaising with DoJ about inviting SJ to attend the Panel meeting to brief the Panel members on SJ's work plan in the coming year. <u>Dr LEUNG</u> further said that she agreed that the incident concerned involved different issues which straddled the policy areas of several Panels, including the AJLS Panel. She, as the Chairman of the AJLS Panel, would consult members of the Panel on the agenda item for inviting SJ to its meeting.

38. <u>Mr CHEUNG Kwok-kwan</u> said that he did not support the request of holding a special HC meeting on the incident concerned because there was no precedent for holding a special HC meeting to invite individual government officials to answer Members' questions about their conduct not in the performance of their official duties. He was worried that if the five Members' request was approved, it would set a precedent. In his view, it would be more appropriate for Members to follow-up the incident concerned at meetings of the relevant Panels. <u>Mr CHEUNG</u> further said that if the issue of UBWs of public figures was a matter of concern to Members, he wondered if Ms Claudia MO should also be invited to answer questions about the alleged UBWs in her property.

39. In response to Ms Claudia MO's query, <u>Mr CHEUNG Kwok-kwan</u> said that there were media reports on the alleged UBWs in Ms MO's property. <u>Ms MO</u> expressed dissatisfaction that Mr CHEUNG had made his remarks merely based on media reports. She clarified that there were no UBWs in her property.

40. <u>Mrs Regina IP</u> said that time should be given for Ms Teresa CHENG to adapt to her new job as SJ. Although the public had queries about the incident concerned and the approval being given to Ms CHENG to complete her private business in hand even after Ms CHENG had taken up the appointment of SJ, Members of the New People's Party were of the view that Members should wait until the investigations conducted by relevant government departments had completed before inviting SJ to give a full account of the incident concerned and the related issues at a meeting of the Council or its committees.

41. Pointing out that Ms Teresa CHENG was the co-author of the book entitled "Construction Law and Practice in Hong Kong" which covered topics including building works control and UBWs, <u>Mr CHAN Chi-chuen</u> said that he was unconvinced that SJ was unaware of UBWs in her residence until she received enquiries from the media on 5 January 2018. <u>Mr CHAN</u> opined that Ms Teresa CHENG should step-down from her post as SJ immediately and if she did not do so, she must give a full account of the incident concerned to Members to allay the doubts of the public about her integrity. In his view, a special HC meeting would be a suitable platform for SJ to answer Members' questions.

42. <u>Mr Andrew WAN</u> commented that the manner in which information on the incident concerned was released was like "squeezing toothpaste from a tube". He considered it very unsatisfactory as it might give the public an impression that someone had told one lie after another to cover the facts. <u>Mr WAN</u> considered that SJ should be given the opportunity to clarify the issues relating to the incident concerned and HC was a suitable platform for SJ to address the queries from Members in one go. He stressed that SJ was a principal official and scepticism about her integrity would pose a bigger problem than the incident concerned.

43. <u>Dr KWOK Ka-ki</u> said that members of the public had requested SJ to provide a full account of the incident concerned. He commented that if Members of the pro-establishment camp truly believed that SJ had nothing to hide, they should support the request of inviting SJ to attend a special HC meeting to respond to the queries from Members. Referring to Mr CHEUNG Kwok-kwan's earlier remarks, <u>Dr KWOK</u> said that to his understanding, BD had already confirmed in 2010 that there were no UBWs in Ms Claudia MO's property. He criticized Mr CHEUNG for smearing Ms MO.

44. <u>Mr WONG Kwok-kin</u> said that while SJ should give an open account on the matter so as to allay public concerns, he did not consider a special HC meeting an appropriate forum. In his view, a special HC meeting held for discussing the incident concerned would only turn into a forum where SJ was mercilessly attacked by Members of the pro-democracy camp. <u>Mr WONG</u> therefore did not support the request for calling a special HC meeting.

45. <u>Dr CHENG Chung-tai</u> considered that SJ should step down, or otherwise, it would be a disgrace to the legal profession and the rule of law in Hong Kong. However, if SJ was willing to answer Members' questions at a special HC meeting, he would see it as a face-saving gesture for SJ herself and the HKSAR Government, indicating that she would be held accountable for her mistakes. Therefore, <u>Dr CHENG</u> supported the request for inviting SJ to a special HC meeting.

46. The Chairman said that in considering whether to accede to the five Members' request, she would take into consideration a number of factors including whether Members had other platforms to raise their questions with SJ as well as whether HC was an appropriate platform to follow up the incident concerned and related issues. The Chairman further said that SJ would attend meetings of various committees in the near future. and Members would therefore have ample opportunities to follow up with SJ on various issues including the incident concerned. Besides, as she had already pointed out earlier, there was not a precedent that HC had called a special meeting for individual government officials to respond to Members' questions about their conduct not in the performance of their In light of the above, she would not call a special official duties. meeting at this stage. Having said that, she had noted the various views expressed by Members on the five Members' request and would discuss with the Secretariat including LA after this meeting and further consider the matter.

47. There being no other business, the meeting ended at 3:13 pm.

Council Business Division 2 <u>Legislative Council Secretariat</u> 18 January 2018