

立法會
Legislative Council

LC Paper No. CB(3) 834/15-16

Ref : CB(3)/P/2/OL

Tel : 3919 3300

Date : 18 August 2016

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

**Application for special leave of the Council
to give evidence of Council proceedings**

The Department of Justice (“DoJ”) has submitted an application in **Appendix I** for special leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and Rule 90 of the Rules of Procedure (“RoP”) for two officers of the Council to give evidence in the criminal proceedings of *HKSAR v TSANG Yam-kuen Donald* (Case No.: HCCC 484 of 2015).

2. In accordance with section 7(2) of Cap. 382 and Rule 90(4) of RoP, the President has ordered that such leave be given. Copies of section 7 of Cap. 382 and Rule 90 of RoP are in **Appendices II and III** respectively for Members’ reference.

3. As directed by the President, a letter (English version only) in **Appendix IV** has been issued to DoJ stating that the special leave is granted on the understanding that the relevant records of proceedings of the Council will be used in court in such a way that is consistent with the privileges provided in sections 3 and 4 of Cap. 382 and the Council’s stance with respect to the use of or reference to the relevant records in the criminal proceedings will be conveyed to the parties concerned.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

律政司

刑事檢控科
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DEPARTMENT OF JUSTICE
Prosecutions Division
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本司檔號 Our Ref.: HCCC 484 of 2015
來函檔號 Your Ref.:
電話號碼 Tel. No.: 2867 2221

(只備英文本
English version only)

6 June 2016

By Fax (2845 2444) and By Post

Mr. Kenneth Chen
Secretary General of the Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Chen,

**Re : Application for Special Leave of the Legislative Council
for officers of the Council to give evidence of Council
Proceedings concerning the Chief Executive's Question
and Answer Session on 1 March 2012**

**HKSAR v TSANG Yam-kuen Donald
Case No. : HCCC 484 of 2015**

We refer to our letter dated 8 October 2015 and the reply from your Mr Kelvin Lee, Senior Assistant Legal Advisor (Ag.) dated 12 November 2015 concerning our application for special leave of the Legislative Council ("LegCo") to facilitate attendance by the relevant officers in the captioned proceedings to produce two video discs containing footage of the Chief Executive's Question and Answer Session on 1 March 2012 ("the Q & A Session").

We consider that sections 4 and 8A of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the Ordinance") are not engaged. Section 4 provides as follows:

"No civil or criminal proceedings shall be instituted against any member for words spoken before, or written in a report to, the Council or a committee, or by reason of any matter brought by him therein by petition, Bill, resolution, motion or otherwise."

We took the view that section 4 does not prohibit the production and use of evidence in a court of law. This is evident from a reading of section 21 which provides as follows:

“Upon any inquiry touching the privileges, immunities and powers of the Council or of any member, any copy of the journals printed or purporting to be printed by the Director of Government Logistics shall be admitted as evidence of such journals in all courts and places without any proof being given that such copy was so printed.”

Furthermore, the institution of criminal proceedings against Mr Tsang has no relevance to what he said in the captioned LegCo proceedings.

Rather, the criminal prosecution is brought for his failure to declare or disclose to or conceal from the Executive Council (“**ExCo**”) his dealings and negotiations with Wong Cho-bau, the major shareholder of Wave Media Limited (“**WML**”), in respect of a three-storey residential property in Shenzhen (“**Shenzhen Property**”). This happened at a time when he was involved in decision making in relation to WML’s applications. The production of the footage will assist the Prosecution to prove, as a matter of history, the explanations offered by Mr. Tsang for his non-declaration to the ExCo in relation to the Shenzhen property. In so doing, it is not against section 4 of the Ordinance.

For your reference, Mr Bosco Chan Che-fai has produced the relevant video recordings by his statement dated 19 August 2015 in accordance with the requirements under section 22A of the Evidence Ordinance (Cap. 8). Mr. Kenneth Wong Kin Man has produced the official record of proceedings in respect of the Q & A Session. Those statements are admissible evidence in a court of law. Having furnished us with the video footage for use in court and a statement by the relevant officer, there is no reason why that officer should not be available to testify as to the authenticity of the videos or records in question.

We would therefore invite you to give special leave under section 7 of the Ordinance to allow the relevant officers to produce the official record of proceedings of the LegCo and the video discs containing footage of the Q & A Session.

Yours sincerely,



(Alice Chan)

Senior Assistant Director of Public Prosecutions

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本司檔號 Our Ref: ESCC 3247/2015 (IF/2012/2391)
來函檔號 Your Ref:
電話號碼 Tel. No.: 2867-2336

8th October 2015

Mr. Kenneth CHEN
Secretary General of the Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax (2845 2444) and By Post

Dear Mr. CHEN,

Re: Application for Special Leave of the Legislative Council for officers of the Council to give evidence of Council Proceedings concerning the Chief Executive's Question and Answer Session on 1st March 2012

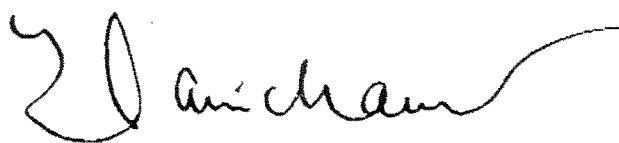
**HKSAR v TSANG Yam-kuen Donald
Case No: ESCC 3247/2015**

This is an application for special leave of the Legislative Council ("LegCo") under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and rule 90 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Instrument No. A501) for the following officers of the LegCo to give evidence in the criminal proceedings instituted against TSANG Yam-kuen Donald ("TSANG") in respect of the Chief Executive's Question and Answer Session on 1st March 2012 ("the Session").

	Name	Role	Remarks
1	Mr. WONG Kin-man, Kenneth 黃健文	Head (Translation & Interpretation) of the LegCo Secretariat	- Producing the Official Record of Proceedings of the LegCo in respect of the Session
2	Mr. CHAN Che-fai, Bosco 陳志輝	Senior Public Information Officer of the LegCo Secretariat	- Producing two video discs containing footage of the Session

The reason for the application is as follows. TSANG is charged with two counts of misconduct in public office, contrary to Common Law and punishable under section 101I(1) of the Criminal Procedure Ordinance (Cap. 221). Charge 1 concerns his failure to declare or disclose to or conceal from the Executive Council the lease negotiations with WONG Cho-bau and the payment of 800,000 Renminbi to East Pacific (Holdings) Limited. Charge 2 concerns his failure to disclose to or conceal from Kenneth MAK, the then Permanent Secretary for the Chief Executive's Office and others his interest in the lease of a flat at East Pacific Garden in Shenzhen and the engagement of HO Chow-lai Barrie for interior design of that flat. Given that TSANG has provided information during the Session which forms the subject matter of the two charges, Mr. WONG and Mr. CHAN are required to give evidence to produce the Official Record of Proceedings and the video footage of the Session.

Thank you very much for your assistance.



(Dr. Alain Sham)
Deputy Director of Public Prosecutions

第 382 章 立法會 (權力及特權) 條例

7. 未經許可不得就立法會或任何
委員會的會議程序作證

(1) 如未經立法會特別許可，任何議員或立法會人員，以及受僱在立法會或任何委員會會議席上錄取會議紀要或保存證據紀錄的人，不得就上述會議紀要或證據紀錄的內容、或就提交立法會或任何委員會的文件內容(視屬何情況而定)、或就立法會或任何委員會所進行的會議程序或訊問(視屬何情況而定)，在其他地方作證。

(2) 在立法會休會或押後會議期間，第(1)款所提述的特別許可，可由主席給予；如主席因不在香港或喪失履行職務能力以致不能行事者，則可按照議事規則給予。

(由 2000 年第 71 號第 3 條修訂)

CAP. 382 *Legislative Council (Powers and Privileges)*

7. **Evidence of proceedings in the Council or any
committee not to be given without leave**

(1) No member or officer of the Council, and no person employed to take minutes or keep any record of evidence before the Council or a committee, shall give evidence elsewhere in respect of the contents of such minutes or record of evidence, or of the contents of any document laid before the Council or committee, as the case may be, or in respect of any proceedings or examination held before the Council or committee, as the case may be, without the special leave of the Council.

(2) During a recess or adjournment of the Council, the special leave referred to in subsection (1) may be given by the President or, if the President is unable to act owing to his absence from Hong Kong or incapacity, in accordance with the Rules of Procedure. (*Amended 71 of 2000 s. 3*)

(1) 為取得根據《立法局(權力及特權)條例》(第382章)第7條所需的立法會許可，以就會議紀要、作證紀錄或提交立法會、委員會或小組委員會會議席上省覽的任何文件的內容，或就立法會、委員會或小組委員會的任何會議或審查程序，在立法會以外的地方提供證據，要求該許可的人須向立法會秘書書面陳述其請求及說明其理由，並須提供立法會秘書在個別情況下按立法會主席的指示所進一步要求的資料。

(2) 許可的請求須列入立法會主席所指定會議的議程內；除非立法會藉任何議員在該次會議動議的一項可無經預告的議案，決定拒絕給予許可，否則立法會須當作已命令給予許可。

(3) 立法會秘書須以書面將立法會的決定通知該要求許可的人。

(4) 凡有人在立法會休假、休會待續或解散期間，向立法會要求取得第(1)款所述的許可，可由立法會主席給予，如立法會主席不能執行主席職務，則可由主持立法會會議的議員給予許可。

90. Procedure for Obtaining Leave to Give Evidence of Council Proceedings

(1) For the purpose of obtaining the leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) in order that evidence may be given elsewhere in respect of the contents of minutes, records of evidence or any document laid before the Council or a committee or subcommittee, or in respect of any proceedings or examination held before the Council or a committee or subcommittee, the person seeking such leave shall submit to the Clerk a written statement of the request and the reasons therefor and such further information as the Clerk, on the direction of the President, may require in any particular case.

(2) The request for leave shall be placed on the Agenda for such meeting as the President may appoint and, unless on a motion which may be moved without notice at that meeting by any Member the Council determines that such leave shall be refused, the Council shall be deemed to have ordered that such leave be granted.

(3) The Clerk shall give written notice of the decision of the Council to the person by whom the request for leave is made.

(4) Where the leave of the Council referred to in subrule (1) is sought during any recess or adjournment or dissolution of the Council such leave may be given by the President or, if the President is unable to act, by the Member presiding.



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

附錄 IV
Appendix IV
(只備英文本
English version only)



立法會

LEGISLATIVE COUNCIL

來函檔號 YOUR REF : HCCC 484 of 2015
本函檔號 OUR REF : CB(3)/P/2/OL
電 話 TELEPHONE : 3919 3300
圖文傳真 FACSIMILE : 2810 1691

18 August 2016

By Fax (2869 0236) and By Post

Ms Alice CHAN
Senior Assistant Director of Public Prosecutions
Prosecutions Division
Department of Justice
7/F, High Block
Queensway Government Offices
66 Queensway, Hong Kong

Dear Ms CHAN,

**Application for special leave of the Legislative Council
for officers of the Council to give evidence of
Council proceedings concerning the Chief Executive's
Question and Answer Session on 1 March 2012**

**HKSAR v TSANG Yam-kuen Donald
Case No. : HCCC 484 of 2015**

I refer to your request in your letter dated 6 June 2016 for the special leave of the Council for two officers of the Council to produce the official record of the proceedings of the Council and the video recordings ("the relevant records") relating to the Chief Executive's Question and Answer Session on 1 March 2012 and our subsequent exchange of correspondence on 22 June and 18 July 2016.

This is to advise you that the special leave of the Council is granted under section 7(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and Rule 90(4) of the Rules of Procedure of the Legislative Council on the understanding that the relevant records will be used in court in such a way that is consistent with the privileges provided in sections 3 and 4 of Cap. 382 in the light of the principles developed in decided cases regarding the use of parliamentary

records in courts. We also expect that the Legislative Council's stance with respect to the use of or reference to the relevant records in the above criminal proceedings will be conveyed to the parties concerned having regard to the principle of fairness and the interests of the administration of justice.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dora Wai', with a long horizontal flourish extending to the right.

(Ms Dora WAI)
for Clerk to the Legislative Council