

**Extract from the minutes of the
meeting of the House Committee on 24 May 2013**

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VIII. Appointment of a subcommittee to prepare for the operation of the select committee to which the petition presented at the Council meeting of 8 May 2013 has been referred

(LC Paper No. CB(4)674/12-13)

26. Referring to the paper prepared by the Secretariat, the Chairman said that having regard to the arrangements for setting up select committees in the past and the fact that it was the first time that a select committee was formed pursuant to Rule 20(6) of the Rules of Procedure, it was recommended that a subcommittee be appointed by HC to undertake preparatory work for the operation of the select committee.

27. Members agreed to the proposed appointment of a preparatory subcommittee. The following Members agreed to join the subcommittee: Mr James TO, Ms Cyd HO, Mr IP Kwok-him and Mr Dennis KWOK.

28. The Chairman said that the Secretariat would issue a circular to invite Members to join the preparatory subcommittee.

29. In response to Ms Emily LAU's enquiry, the Chairman said that while no limit had been set on the membership size of the preparatory subcommittee, it was his understanding that during an informal discussion among some Members, there was a general agreement that the membership size of the select committee should be 13, and that those Members who would join the select committee should also be members of the preparatory subcommittee. The Chairman further informed Members that the President would decide the size of the select committee and appoint the chairman, deputy chairman and members thereof, taking into account HC's recommendations.

30. Responding to Ir Dr LO Wai-kwok's enquiry on the timeframe for completion of work of the preparatory subcommittee, the Chairman said that the subcommittee would draw up its work schedule. In line with established practice, the Secretariat would issue notice of the first meeting of the subcommittee after consulting the Member who had the highest precedence on the preliminary membership list.

31. Mr Abraham SHEK said that as Chairman of the Public Accounts Committee ("PAC"), he received a letter from the Director of Public Prosecutions ("DPP") that morning before PAC's public hearing was held on Chapter 7 of the Director of Audit's Report No. 60 concerning the Independent Commission Against Corruption ("ICAC"). The purpose of the letter was to bring to the attention of PAC certain matters that might be relevant to the conduct of the hearing. He invited LA to brief Members on the letter.

32. At the invitation of the Chairman, LA said that DPP's letter was received shortly before PAC's public hearing was held that morning. In gist, DPP drew to PAC's attention that under Article 63 of the Basic Law, the Department of Justice ("DoJ") should control criminal prosecutions free from any interference; and given such responsibility, DoJ was keen to ensure that PAC would bear in mind the need to protect the integrity of the criminal investigation currently underway in relation to the former ICAC Commissioner, Mr Timothy TONG, when conducting the public hearing.

33. Mr Abraham SHEK said that while he appreciated that DPP had written that letter with good intentions, he considered it unnecessary for the Executive to remind LegCo Members what they should do as they were fully aware of how they should exercise their powers and functions as LegCo Members.

34. Mr Ronny TONG said that under the principle of separation of powers, he could not see any need for law enforcement agencies to remind LegCo Members how to carry out their work. He stressed that the objective of the public hearing was to find out the truth, which, in his view, would not prejudice the investigation or prosecution work of law enforcement agencies. DPP should rest assured that LegCo would exercise its powers and functions prudently.

35. Ms Cyd HO said that she had attended the public hearing of PAC held in the morning. As she was not a member of PAC, she did not have sight of DPP's letter. She wished that a copy of the letter could be sent to all Members for reference. Ms HO further said that Members were aware that ICAC was conducting criminal investigation into complaints against Mr Timothy TONG. Members were only trying to find out the truth and they knew full well what should and should not be done when discharging their powers and functions.

36. Ms Emily LAU expressed her dissatisfaction with DPP's letter. She pointed out that Members were accountable to the public for the work

of LegCo and were well aware of how they should discharge their duties in a proper manner. She stressed the importance of safeguarding the dignity and independence of LegCo and considered it unnecessary for the Executive to remind LegCo how it should work. She requested the Chairman to relay Members' views and concerns to CS. The Chairman undertook to do so.

37. Mr Abraham SHEK agreed to make available a copy of DPP's letter for HC Members' reference.

(Post-meeting note: The letter was circulated to Members vide LC Paper No. CB(2) 1211/12-13 dated 27 May 2013.)

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**Extract from the minutes of the
meeting of the House Committee on 31 May 2013**

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II. Matters arising

Report by the Chairman on his meeting with the Chief Secretary for Administration ("CS")

2. The Chairman said that he had relayed to CS Members' views and concerns about the letter dated 24 May 2013 from the Director of Public Prosecutions ("DPP") to the Chairman of the Public Accounts Committee ("PAC") regarding the criminal investigation of the former Commissioner of Independent Commission Against Corruption ("ICAC"). CS responded that the Administration had no intention at all to interfere with the operation of the Legislative Council ("LegCo"). CS explained that as PAC's public hearing might involve matters concerning the criminal investigation of the former Commissioner of ICAC, the Department of Justice ("DoJ") might be asked whether it had taken any step to reduce the risk of the criminal investigation being prejudiced should prosecution be instituted in the future. CS stressed that DPP's letter was only a gentle reminder to ensure that the Legislature and the prosecution authorities could fulfill their respective constitutional functions without jeopardizing the criminal investigation.

3. Ms Emily LAU sought clarification on whether it was CS's view that PAC's hearing would prejudice the criminal investigation of the case and future prosecution.

4. At the invitation of the Chairman, the Deputy Chairman said that subsequent to the last House Committee ("HC") meeting, DPP had called him on the matter. He had clearly relayed to DPP Members' view that PAC's hearing would not in any way prejudice ICAC's criminal investigation. He had also indicated to DPP that whether or not PAC's hearing might affect the court's judgment should prosecution be instituted on the case in the future was a matter for the court, not DoJ. The Deputy Chairman added that DPP had clearly taken note of Members' stance.

5. The Chairman said that he had also conveyed Members' views to the Secretary for Justice on an informal occasion. The Secretary for Justice had reiterated that DPP's letter was only a gentle reminder and

the Administration had no intention at all to interfere with the operation of LegCo.

6. Ms Emily LAU stressed that it was not necessary for the Executive to remind the Legislature how to carry out its work, as Members were well aware of their powers and functions and had been discharging their duties in a responsible manner. It was important for the Executive and the Legislature to pay due respect to each other. She hoped that the Executive would not do anything which might affect the work of PAC.

7. The Chairman reiterated that he and the Deputy Chairman had already fully conveyed Members' views and concerns about DPP's letter to the Administration.

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