

立法會
Legislative Council

LC Paper No. CB(2)276/16-17

Ref : CB2/H/5/16

House Committee of the Legislative Council

**Minutes of the 7th meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 25 November 2016**

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, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, BBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
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 Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon Christopher CHEUNG Wah-fung, SBS, JP

Dr Hon Fernando CHEUNG Chiu-hung
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
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 LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon HUI Chi-fung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

Members absent:

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Dr Hon CHIANG Lai-wan, JP
Hon HO Kai-ming
Hon SHIU Ka-chun
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung
Hon Kenneth LAU Ip-keung, MH, JP
Hon Nathan LAW Kwun-chung

Clerk in attendance :

Miss Flora TAI Clerk to the House Committee

Staff in attendance :

Mr Kenneth CHEN, SBS	Secretary General
Ms Connie FUNG	Legal Adviser
Miss Odelia LEUNG	Deputy Secretary General
Ms Connie SZETO	Acting Assistant Secretary General 1
Ms Dora WAI	Assistant Secretary General 3
Mr Matthew LOO	Assistant Secretary General 4
Mr Timothy TSO	Senior Assistant Legal Adviser 1
Mr Stephen LAM	Senior Assistant Legal Adviser 2
Mr Kelvin LEE	Senior Assistant Legal Adviser 3
Ms Amy YU	Principal Council Secretary 1
Ms Hallie CHAN	Head (Public Information)
Ms Alice LEUNG	Chief Council Secretary (2)6
Miss Joyce CHAN	Assistant Legal Adviser 1
Mr Alvin CHUI	Assistant Legal Adviser 3
Ms Wendy KAN	Assistant Legal Adviser 6
Mr Richard WONG	Senior Council Secretary (2)6
Ms Jasmine TAM	Senior Council Secretary (2)8
Miss Connie AU	Council Secretary (2)6
Ms Anna CHEUNG	Senior Legislative Assistant (2)3
Mr Arthur KAN	Legislative Assistant (2)7

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I. Confirmation of minutes of meeting

Minutes of 6th meeting held on 18 November 2016

(LC Paper No. CB(2)239/16-17)

The minutes were confirmed.

II. Matters arising

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

2. The Chairman said that there was nothing special to report.

III. Business arising from previous Council meetings

(a) **Legal Service Division report on bill referred to the House Committee in accordance with Rule 54(4)**

Private Columbaria Bill

(LC Paper No. LS10/16-17)

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

4. The Chairman invited Members to note the written submission from "各界關注骨灰龕法案大聯盟" which was received shortly before the meeting, requesting Members not to form a Bills Committee to study the Bill. The submission had been issued to Members and was tabled at the meeting for Members' easy reference.

5. Dr KWOK Ka-ki and Mr CHAN Chi-chuen considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. The following Members agreed to join the Bills Committee: Mr LEUNG Yiu-chung, Mr CHAN Hak-kan, Mr CHAN Chi-chuen, Ms Alice MAK, Dr KWOK Ka-ki and Ms Tanya CHAN.

(b) **Legal Service Division report on subsidiary legislation gazetted on 18 November 2016 and tabled in Council on 23 November 2016**

(LC Paper No. LS9/16-17)

6. At the invitation of the Chairman, LA briefed Members on the LSD report on the Legislation Publication Ordinance (Commencement) Notice 2016 (L.N. 170) which was gazetted on 18 November 2016 and tabled in Council on 23 November 2016.

7. Members did not raise any question on the Notice.

8. The Chairman reminded Members that the deadline for amending the Notice would be the Council meeting of 14 December 2016.

IV. Further business for the Council meeting of 30 November 2016

(a) **Tabling of papers**

Report No. 5/16-17 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments
(*LC Paper No. CB(2)241/16-17*)

9. The Chairman said that the Report covered two items of subsidiary legislation and the period for amending them would expire at the Council meeting of 30 November 2016. No Member had indicated intention to speak on the subsidiary legislation.

(b) **Questions**

(*LC Paper No. CB(3)147/16-17*)

10. The Chairman said that Ms Claudia MO had replaced her oral question.

(c) **Members' motions**

Proposed resolution under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the Marine Parks (Designation) (Amendment) Order 2016 to be moved by Hon Tanya CHAN
(*LC Paper No. CB(3)152/16-17*)

11. The Chairman said that Ms Tanya CHAN, Chairman of the Subcommittee on the above Order, would move a proposed resolution at the meeting to extend the period for amending the Order to the Council meeting of 11 January 2017.

V. Business for the Council meeting of 7 December 2016

(a) **Questions**

(*LC Paper No. CB(3)148/16-17*)

12. The Chairman 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. The Chairman said that no notice had been received yet.

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(c) **Government motion**

14. The Chairman said that no notice had been received yet.

(d) **Members' motions**

(i) **Motion to be moved by Hon Paul TSE**

(ii) **Motion to be moved by Hon CHAN Han-pan**

15. The Chairman said that the subjects of the motions to be moved by Mr Paul TSE and Mr CHAN Han-pan were "Formulating a housing policy to alleviate the keen housing demand" and "Updating the Hong Kong Planning Standards and Guidelines and increasing community facilities to enhance living environment" respectively.

16. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the above two motions would be Wednesday, 30 November 2016.

Report of House Committee on Consideration of Subsidiary Legislation and Other Instruments

17. The Chairman invited Members to note the list tabled at the meeting (LC Paper No. CB(3)160/16-17), which contained three items of subsidiary legislation the period for amendment of which would expire at the Council meeting of 7 December 2016. She reminded Members to indicate their intention by 5:00 pm on Tuesday, 29 November 2016, should they wish to speak on any of these items of subsidiary legislation.

VI. Reports of Bills Committees and subcommittees

(a) **Report of the Subcommittee on Road Traffic (Public Light Buses: Limit on Number) Notice 2016**

(LC Paper No. CB(4)163/16-17)

18. Mr Frankie YICK, Chairman of the Subcommittee, briefed Members on the deliberations of the Subcommittee as detailed in its report. Members noted that the Subcommittee supported the above Notice.

(b) Report of the Subcommittee on Mandatory Provident Fund Schemes (Amendment) Ordinance 2016 (Commencement) Notice

(LC Paper No. CB(1)164/16-17)

19. Mr Jeffrey LAM, Chairman of the Subcommittee, briefed Members on the deliberations of the Subcommittee as detailed in its report. Members noted that the Subcommittee had no objection to the above Notice and would not propose any amendment to it.

20. The Chairman reminded Members that as the period for amending the above item of subsidiary legislation would expire at the Council meeting of 7 December 2016, the deadline for giving notice of amendments, if any, would be Wednesday, 30 November 2016.

VII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)240/16-17)

21. The Chairman said that as at 24 November 2016, there were 11 subcommittees under the House Committee ("HC") and five subcommittees on policy issues under Panels in action. Five subcommittees on policy issues were on the waiting list.

VIII. Request of Hon Paul TSE to seek the House Committee's support for him to move a motion under Rule 49B(1A) of the Rules of Procedure at the Council meeting of 14 December 2016 to censure Dr Hon CHENG Chung-tai

(LC Paper Nos. CB(2)252/16-17(01) and (02))

22. The Chairman said that Mr Paul TSE requested to seek HC's support for his proposal to move a motion under Rule 49B(1A) of the Rules of Procedure ("RoP") at the Council meeting of 14 December 2016 to censure Dr CHENG Chung-tai for his acts at the Council meeting of 19 October 2016. The mechanism for the censure of a Member under RoP 49B(1A) was established to implement Article 79(7) of the Basic Law ("BL"), which could lead to disqualification of a Member from office.

23. The Chairman drew to Members' attention that pursuant to the relevant rules of RoP, Mr Paul TSE could move the proposed motion at the Council meeting of 14 December 2016 so long as he could get three other Members to sign the notice of the proposed motion with him and

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such notice was given by 29 November 2016. According to the mechanism for the censure of a Member under RoP 49B(1A), Members should vote on Mr TSE's proposed motion only after the investigation committee had completed its work and reported to the Council. The Chairman further said that while she had explained the relevant procedures to Mr TSE, she would invite Mr TSE to speak on his proposal and Dr CHENG Chung-tai to respond, following which Members could express their views on the matter.

24. At the invitation of the Chairman, Mr Paul TSE said that the importance of the national flag and the regional flag could be seen from the Court of Final Appeal's judgment on the case of *Hong Kong Special Administrative Region v Ng Kung Siu and Another* (1999) 2 HKCFAR 442, in which former Chief Justice LI pointed out that the national flag was the unique symbol of the People's Republic of China ("PRC") representing her dignity, unity and territorial integrity, and the regional flag was the unique symbol of the Hong Kong Special Administrative Region ("HKSAR") as an inalienable part of PRC under the principle of "one country, two systems". The intrinsic importance of the national flag and the regional flag to HKSAR was also demonstrated by the fact that the handover ceremony in Hong Kong which marked PRC's resumption of the exercise of sovereignty over Hong Kong began by the raising of the national flag and the regional flag.

25. Mr Paul TSE further pointed out that the National Flag and National Emblem Ordinance ("the National Flag Ordinance") and the Regional Flag and Regional Emblem Ordinance ("the Regional Flag Ordinance") were enacted to provide for the use and protection of the national flag and national emblem and the regional flag and regional emblem in HKSAR. It was a serious criminal offence under the two Ordinances to publicly and wilfully desecrate the national flag and the regional flag. BL 79(7) also provided that a Legislative Council ("LegCo") Member would be disqualified from office when he or she was censured for misbehaviour or breach of oath by a vote of two-thirds of the LegCo Members present. Mr TSE stressed that given the importance of the national flag and the regional flag, Members should not overlook Dr CHENG Chung-tai's acts of inverting the national flags and the regional flags placed on the desks of Members of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") at the Council meeting of 19 October 2016 ("acts in question"). He appealed to Members to support his proposal.

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26. Dr CHENG Chung-tai said that it was apparent that his certain acts at the Council meeting of 19 October 2016 had been played up and used by Mr Paul TSE as an instrument to bring him to a political trial and initiate a political struggle in LegCo. While it should be for the Police and the Judiciary to follow up should his acts constitute an offence, those flags placed on the desks of the Members concerned at the Council meeting of 19 October 2016 would most probably be considered as mock-ups only given that the sizes and measurements of the national flag and the regional flag were specifically prescribed in the relevant Ordinances. Dr CHENG added that should the Members concerned genuinely consider those flags as the national flags and the regional flags which should be treated solemnly, they would not have put them in the glass holders and walked out of the Chamber to cause the adjournment of the Council meeting. He hoped that for the benefit of Hong Kong, all Members, in particular Members of the pro-establishment camp, should refrain from intensifying divisions in LegCo.

27. Mr CHAN Hak-kan said that as Dr CHENG Chung-tai's acts in question were alleged to have violated the National Flag Ordinance and the Regional Flag Ordinance, DAB Members had reported the case to the Police. DAB Members also considered that Dr CHENG should not have taken the LegCo Oath and continue to hold the office of a Member of LegCo if he resented the national flag and the regional flag. They supported Mr Paul TSE's proposal in order to convey a clear message to the community that all LegCo Members who had sworn allegiance to HKSAR had to respect the national flag and the regional flag.

28. Mr LAM Cheuk-ting said that notwithstanding his disapproval of and criticism against Dr CHENG Chung-tai's acts in question which could be described as "puerile" ("小學雞" in Chinese), it appeared that Mr Paul TSE's proposal was a means of political oppression. Mr LAM illustrated his point by quoting Mr Paul TSE's speech when Mr TSE moved a motion of not referring the matter stated in the censure motion moved by the then LegCo Member Ms Miriam LAU against the then LegCo Member Mr KAM Nai-wai to an investigation committee at the Council meeting of 9 December 2009 as follows: "... It is definitely inadvisable to invoke [RoP] 49B(1A) immediately to address the personal integrity or conduct of individual Members.... This is because, in doing so, the Legislative Council will be turned into a court to try the integrity or conduct of the relevant Member, which is inappropriate."

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29. Dr KWOK Ka-ki said that while he did not approve of Dr CHENG Chung-tai's acts in question which were rather "puerile" ("小學雞"), he objected to the way Mr Paul TSE had sought to follow up the incident. He was concerned that the relevant mechanism put in place for the implementation of BL 79(7) might be used as a tool for political oppression by Members of the pro-establishment camp against Members who did not belong to the pro-establishment camp if RoP 49B(1A) was to be invoked so casually to disqualify a Member from office. In his view, only when a Member had committed a misbehavior of a serious nature would the invocation of RoP 49B(1A) be warranted.

30. Mr IP Kin-yuen said that he did not approve of Dr CHENG Chung-tai's acts in question as he had tampered with the belongings of other Members. However, the proposed motion was to censure Dr CHENG and the passage of it would lead to disqualification of Dr CHENG from office. Mr IP considered that the invocation of RoP 49B(1A) was disproportionate to Dr CHENG's acts in question. He stressed that the invocation of the mechanism for the censure of a Member who was elected by members of the public for misbehaviour or breach of oath under BL 79(7) should be considered in a very prudent manner.

31. Mr Alvin YEUNG said that Members of the Civic Party were of the view that Dr CHENG Chung-tai's acts in question were improper. However, he considered that such acts were of political nature, and therefore, it should be up to the voters who elected Dr CHENG and the public to monitor Dr CHENG. Unless Dr CHENG did violate any law and was found guilty by the court, Members of the pro-establishment camp should not go so far as to attempt to disqualify Dr CHENG from office. Mr YEUNG also questioned why Members of the pro-establishment camp did not take it as a serious matter when their supporters were found leaving the national flags and the regional flags on the ground after participating in public assemblies.

32. Mr YIU Si-wing said that given that the national flag was a symbol of the country and the sovereignty of the country, and the regional flag a symbol of HKSAR as an inalienable part of PRC, all Hong Kong people should respect the national flag and the regional flag. Mr YIU stressed that Dr CHENG Chung-tai's acts in question were serious in nature. If Dr CHENG's acts in question were of political nature, Dr CHENG should bear the political consequences. He considered it appropriate for Members to debate Dr CHENG's acts in question so as to bring out the seriousness of the incident.

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33. Mr Andrew WAN said that while he disapproved of Dr CHENG Chung-tai's acts in question, he considered that such acts should not be followed up by the moving of the proposed motion under RoP 49B(1A). He also doubted whether those flags placed on the desks of the Members concerned at the Council meeting of 19 October 2016 were made in accordance with the specifications as stipulated under the National Flag Ordinance and the Regional Flag Ordinance. Mr WAN further said that he was unconvinced of the reasoning behind Mr Paul TSE's proposal as it was inconsistent with the remarks made by Mr TSE in his speech given at the Council meeting of 9 December 2009 during the debate on the censure motion moved against the then LegCo Member Mr KAM Nai-wai.

34. Mr HUI Chi-fung considered that the mere acts of having inverted the mock-ups of the national flags and the regional flags did not warrant invoking the relevant procedures under RoP for relieving the duties of a LegCo Member. In his view, while Dr CHENG Chung-tai's acts in question might be rightly described as "puerile" ("小學雞"), Members of the pro-establishment camp were simply taking the proposed motion as an opportunity to demonstrate their patriotism. He hoped that Members of the pro-establishment camp would stop further politicizing the incident and turn their focus to people's livelihood issues.

35. Mr CHAN Chi-chuen considered that the purpose of moving the proposed motion was to turn the incident into a political struggle. Given that the case related to Dr CHENG Chung-tai's acts in question had already been reported to the Police, it should be for the Police to investigate and consider prosecution, and if so, for the court to decide. If Dr CHENG was found guilty by the court and was sentenced to imprisonment for one month or more, Members could then invoke RoP 49B(1) to relieve Dr CHENG's duties as a LegCo Member if they so wished. However, he opined that Dr CHENG had not violated the relevant Ordinances as he had not burned, mutilated, scrawled on, defiled or trampled on the national flag or the regional flag.

36. Mr Holden CHOW criticized Members belonging to the pro-democracy camp for conniving at the insulting acts towards the country, and was unconvinced of the view expressed by some Members belonging to the pro-democracy camp that a censure motion should not be moved against a Member who was elected by members of the public. In his view, desecration of the national flag and the regional flag must not be tolerated. Mr CHOW also queried that some Members belonging to the pro-democracy camp were adopting double standard in considering Mr Paul TSE's proposal. These Members argued that a censure motion

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against Dr CHENG Chung-tai should not be moved as the case had already been reported to the Police but the same rationale was not applied when they requested LegCo to investigate the incident relating to the receipt of UGL Limited's payments by the Chief Executive ("CE") Mr LEUNG Chun-ying ("the UGL incident"). He considered that Members could move a censure motion against Dr CHENG before the Police had completed their investigation.

37. Mr LAU Kwok-fan concurred with Mr Holden CHOW's view, adding that Dr CHENG Chung-tai's acts in question had gone too far. He pointed out that the display of the national flags and the regional flags by Members of the pro-establishment camp on that day was to convey an important message that Hong Kong was an inalienable part of PRC under BL 1. He also pointed out that the passage of Mr Paul TSE's proposed motion which would lead to disqualification of Dr CHENG Chung-tai from office would require a vote of two-thirds of the LegCo Members present.

38. Mr WU Chi-wai considered that a motion to censure a Member should only be moved after the court had made a judgment in relation to the Member's misbehaviour or breach of oath under BL 79(7). In his view, it was unacceptable for any Member to be censured and hence be disqualified from office for misbehaviour or breach of oath by a majority vote of the LegCo Members present. He questioned whether Mr Paul TSE still stood by the arguments he made at the Council meeting of 9 December 2009 that Rule 49B(1A) should not be invoked lightly, as it would turn LegCo into a court and risk undermining the credibility of LegCo.

39. Mr KWONG Chun-yu said that while he considered that Dr CHENG Chung-tai's acts in question were "puerile" ("小學雞"), he did not consider it appropriate to invoke RoP 49B(1A) which could lead to disqualification of Dr CHENG from office. He pointed out that at the Council meeting of 9 December 2009, Mr Paul TSE moved a motion that no further action should be taken on the censure motion moved by the then LegCo Member Ms Miriam LAU under RoP 49B(1A) and stated that "...things will simply see no end after the mechanism is activated." He concurred with the remarks made by Mr Paul TSE at that Council meeting.

40. Mr WONG Ting-kwong said that he noted that many Members belonging to the pro-democracy camp had expressed disapproval of Dr CHENG Chung-tai's acts in question and criticized such acts as "puerile" ("小學雞") or improper. He found it perplexing that Mr Alvin YEUNG

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considered Dr CHENG's acts in question as political acts. Mr WONG stressed that Dr CHENG should admit that he had acted wrongly and should be responsible for his own misbehaviour.

41. Ms Claudia MO said that in her view, what Dr CHENG Chung-tai did at the Council meeting of 19 October 2016 was not too appropriate as he should not have fiddled with the belongings of other Members. However, she considered that the incident had been blown out of proportion.

42. Mr LEUNG Yiu-chung said that Mr Paul TSE should clarify whether the national flags and the regional flags placed on the desks of the Members concerned at the Council meeting of 19 October 2016 had met the specifications prescribed in the relevant Ordinances. He considered that such clarification was essential prior to establishing the alleged misbehaviour as stated in Mr TSE's proposed censure motion. Mr LEUNG further said that while he considered it inappropriate for Dr CHENG Chung-tai to tamper with the belongings of other Members, the invocation of the mechanism under RoP 49B(1A) to disqualify Dr CHENG from office was disproportionate to Dr CHENG's acts in question.

43. Ir Dr LO Wai-kwok said that it was ironical for Dr CHENG Chung-tai to speak of "solemnity of Council meetings" and "no political struggle" in his earlier remarks when Dr CHENG himself was the one who had disrupted the order of the Council meetings and brought about political struggles. Ir Dr LO stressed that any Member who used a political act to pursue a political agenda with a view to achieving certain political ends would need to bear the political consequences. He considered that Dr CHENG should explain what political views he would like to exemplify by inverting the national flags and the regional flags placed on the desks of the Members concerned at the Council meeting of 19 October 2016.

44. Dr Junius HO said that the issue at stake was whether Dr CHENG Chung-tai's acts in question were improper and not whether the national flags and the regional flags placed on the desks of the Members concerned had met the specifications stipulated under the relevant Ordinances. He pointed out that Dr CHENG did not follow the directions of the President and refused to leave the Chamber at the Council meeting of 19 October 2016, making the Council unable to conduct its business normally. Dr HO commented that Members belonging to the pro-democracy camp applied double standard in the incident. He considered that Mr Paul TSE's proposal warranted serious consideration of Members.

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45. In response to the views expressed by Mr Holden CHOW and Dr Junius HO that Members belonging to the pro-democracy camp applied a double standard, Dr YIU Chung-yim said that the reason for proposing to invoke the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to investigate the UGL incident was due to the lack of a mechanism under law to empower the Independent Commission Against Corruption to conduct investigations independent of CE. He considered that as Dr CHENG Chung-tai's case had already been reported to the Police, the proposed motion should not be moved before the Police had completed their investigation.

46. Mr SHIU Ka-fai said that apparently, the proposed censure motion which could lead to disqualification of Dr CHENG Chung-tai from office would not be passed by the Council as the passage of it would require a two-thirds majority vote of the LegCo Members present. However, the public had seen clearly how Dr CHENG behaved at the Council meeting of 19 October 2016 and they would judge whether Dr CHENG's acts in question were proper. Mr SHIU stressed that while some Members would regard such acts as mere demonstration of a political stance, such acts had already gone beyond the bottom line of society and disrespectful acts against the country, the national flag and the regional flag should not be tolerated.

47. Mr CHU Hoi-dick said that he did not agree with the view that the incident had been blown out of proportion or the proposed censure motion was an overkill. In his view, Members of the pro-establishment camp had the intention to take the proposed censure motion as a stepping stone enabling them to use the mechanism for the censure of a Member for misbehavior or breach of oath under BL 79(7) as a tool to oppress other Members whose political stances were different from those of the Central People's Government. Mr CHU added that it was disgusting to hear the patriotic remarks made by a Member with a foreign nationality.

48. Ms Alice MAK said that she recalled that the use of the Chinese expression "小學雞" to describe a Member had been considered by the President to be offensive and inappropriate at a Council meeting. While she noted that the expression had been used by a number of Members of the pro-democracy camp at this meeting to describe Dr CHENG Chung-tai and no Member indicated that it was offensive, she reckoned that protest would be raised if such expression was used by her to describe a Member of the pro-democracy camp. This clearly showed that some Members merely based on their political stances and not facts in making judgements. She hoped that Members would base on facts in debating the motion proposed by Mr Paul TSE in Council and they should recognize the fact that Dr CHENG Chung-tai's acts in question were truly unacceptable.

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49. Mr LEUNG Kwok-hung said that Mr Paul TSE's current proposal and the proposal for LegCo to inquire into the UGL incident were fundamentally different in that the former proposal might lead to disqualification of a Member from office while the latter proposal had not demanded Mr LEUNG Chun-ying to step down from the office of CE. The matter for consideration by Members was whether it was appropriate to resort to the mechanism under BL 79(7) to censure Dr CHENG Chung-tai which could lead to his disqualification from the office of a LegCo Member, and not whether Dr CHENG's acts in question were right or wrong. Mr LEUNG added that should Dr CHENG be convicted and sentenced to imprisonment for one month or more for his acts, Members might invoke BL 79(6) to relieve him of his duties as a LegCo Member if they so wished.

50. Mr Steven HO considered that due regard should be given to a Member's words and acts, and not whether he/she had the right of abode in foreign countries, in judging whether or not he/she loved the country and Hong Kong. He pointed out that it was provided under BL that permanent residents of Hong Kong who were not of Chinese nationality might also be elected Members of LegCo, provided that the proportion of such Members did not exceed one-fifth of the total membership of LegCo. Mr HO further said that it was clear that Dr CHENG Chung-tai had desecrated the national flags and the regional flags placed on the desks of the Members concerned with intent and breached the LegCo Oath he had taken.

51. Dr Elizabeth QUAT criticized that while some Members of the pro-democracy camp had expressed disapproval of Dr CHENG Chung-tai's acts in question by saying that Dr CHENG was naughty and "puerile" ("小學雞"), none of them indicated that Dr CHENG should be censured for his acts in question. In her view, Dr CHENG's acts in question had caused doubt on whether he was sincere in swearing allegiance to HKSAR and whether he was suitable to hold the office of a LegCo Member. Dr QUAT considered that Mr Paul TSE's proposal could provide an opportunity for Members to discuss in Council the attributes required of a LegCo Member.

52. Mr LEUNG Kwok-hung said that he had never thought that Members of the pro-establishment camp were "puerile" ("小學雞"); he only thought that they were "chickens" ("雞" in Chinese). Dr Elizabeth QUAT requested Mr LEUNG Kwok-hung to clarify who he was referring to as "chickens".

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(Despite the Chairman's requests to stop, Mr LEUNG Kwok-hung continued to speak loudly on his way to leave the meeting venue.)

53. Ms Alice MAK requested the Chairman to rule on whether Mr LEUNG Kwok-hung had used offensive language about Members by referring to all Members of the pro-establishment camp as "chickens". Mr CHAN Hak-kan said that Mr LEUNG Kwok-hung had clearly said that "LegCo Members were chickens". He considered such an expression offensive to Members as the word "chickens" carried connotations of prostitutes in Cantonese, and that the Chairman should rule the expression as unparliamentary.

54. Mr LAM Cheuk-ting clarified that Mr LEUNG Kwok-hung had only said that all Members of the pro-establishment camp, and not all LegCo Members, were "chickens". Mr Andrew WAN said that the word "chickens" carried different meanings and the President had earlier advised that a Member's speech did not necessarily have to be based on facts.

55. The Chairman said that while there was no requirement under RoP that a Member's speech had to be based on facts, RoP did provide that it should be out of order to use offensive language about Members. She would have to make a ruling if a Member pointed out that an expression used by another Member was offensive.

56. Ms Alice MAK reminded Members that the Handbooks for the Chairmen of Committees had included a list of expressions which had been ruled to be offensive language about Members and were prohibited to be used by Members at committee meetings. She reiterated her request for the Chairman to rule on whether the expression "all Members of the pro-establishment camp were chickens" used by Mr LEUNG Kwok-hung was offensive language about Members. Ir Dr LO Wai-kiwok also raised a similar request.

57. The Chairman said that as Mr LEUNG Kwok-hung had already left the meeting venue, she could not request Mr LEUNG to elucidate the meaning of his earlier remarks. Given that Members had pointed out that Mr LEUNG had used the expression "Members of the pro-establishment camp were chickens" in his earlier remarks and having regard to the context in which it was used by Mr LEUNG, she ruled that such an expression was offensive and inappropriate.

58. The Chairman then invited Dr CHENG Chung-tai and Mr Paul TSE to respond to Members' views.

Action

59. Dr CHENG Chung-tai said that the conduct of a Member who was elected by members of the public should be subject to public scrutiny, and it should be for his/her voters to decide in future elections whether he/she should continue to serve as a LegCo Member. Given that the President had already ruled that his conduct at the Council meeting of 19 October 2016 was grossly disorderly and had ordered him to withdraw from the meeting, he considered that Mr Paul TSE was clearly trying to use the incident to subject him to a political trial and as a tool for political struggle.

60. Mr Paul TSE said that he could not subscribe to Dr CHENG Chung-tai's view that Members' conduct should only be subject to public scrutiny as the availability of a mechanism for the censure of a Member under BL 79(7) had indicated that it might be necessary for Members to monitor the conduct of one another in certain circumstances. He stressed that Dr CHENG's acts in question were clearly intended to desecrate the country and HKSAR publicly. Mr TSE also pointed out that pursuant to section 8 of the National Flag Ordinance and that of the Regional Flag Ordinance, a copy of the national flag or the regional flag that was not an exact copy but that so closely resembled the national flag or the regional flag as to lead to the belief that the copy in question was the national flag or the regional flag was taken to be the national flag or the regional flag for the purposes of the Ordinances. He added that the circumstances under which his current proposal was made were different from those surrounding Mr KAM Nai-wai's case and he had opposed the moving of a motion to censure Mr KAM mainly because the main witness concerned had refused to assist in the relevant investigation.

61. The Chairman concluded that according to the established procedure for the censure of a Member under RoP, Members would debate and vote on the censure motion proposed by Mr Paul TSE after the investigation committee had completed its work and reported to the Council.

IX. Any other business

62. There being no other business, the meeting ended at 3:49 pm.