

立法會
Legislative Council

LC Paper No. CB(2)1476/16-17

Ref : CB2/H/5/16

House Committee of the Legislative Council

**Minutes of the 23rd meeting
held in Conference Room 1 of the Legislative Council Complex
at 2:30 pm on Friday, 19 May 2017**

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
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 LEUNG Kwok-hung
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
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 LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki

Hon KWOK Wai-keung
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, 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 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
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

Members absent :

Hon SHIU Ka-chun
Hon Kenneth LAU Ip-keung, MH, JP

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 Anita SIT	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
Ms Amy YU	Principal Council Secretary 1
Ms Hallie CHAN	Head (Public Information)
Ms Alice LEUNG	Chief Council Secretary (2)6
Mr Alvin CHUI	Assistant Legal Adviser 3
Miss Winnie LO	Assistant Legal Adviser 7
Ms Clara TAM	Assistant Legal Adviser 9
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
Miss Meisy KWOK	Legislative Assistant (2)6

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I. Confirmation of minutes of meeting

Minutes of 22nd meeting held on 12 May 2017

(LC Paper No. CB(2)1421/16-17)

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.

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3. The Deputy Chairman informed Members that at the last meeting with the Chief Secretary for Administration ("CS"), he had pointed out to CS that it was grossly inappropriate and regrettable that the Chief Executive ("CE") Mr LEUNG Chun-ying had interfered in the work of a select committee of the Legislative Council ("LegCo"). The Deputy Chairman further said that as the incident concerning CE being involved in amending the proposed major areas of study 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") had a serious adverse impact on the relationship between the Executive Authorities and the Legislature, he had requested CS to look into it and provide a reply at their next meeting.

4. The Chairman advised that the incident mentioned by the Deputy Chairman was not one of the issues discussed at the last meeting of the House Committee ("HC") held on 12 May 2017. The Deputy Chairman had given the above views about the said incident at their last meeting with CS at the request of some Members. In response to Mr Alvin YEUNG's enquiries, the Chairman said that CS had indicated at their meeting that he would look into the matter raised by the Deputy Chairman. While she had not yet received any reply from CS's Office, she would follow it up with CS at their next meeting. The Deputy Chairman added that he and the Chairman would also relay to CS at their next meeting the views expressed by Members at this HC meeting in relation to the said incident.

5. Mr IP Kin-yuen commented that the Chairman and the Deputy Chairman should state clearly at their next meeting with CS that there was a clear line between the powers and functions of the Executive Authorities and those of the Legislature, and that CE as well as all other government officials should not cross the line and should refrain from interfering in the business of LegCo.

6. Dr KWOK Ka-ki said that it was totally unacceptable that CE had, without public knowledge, sought to amend a paper of a LegCo select committee with the assistance of a LegCo Member. He considered that CS should be requested to attend a special HC meeting as soon as practicable to provide the Government's response on CE's handling of the said incident and to state the Government's views on the respective roles of the Executive Authorities and of the Legislature.

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7. Mr James TO, Mr LAM Cheuk-ting and Mr Jeremy TAM considered it odd that the Chairman indicated earlier that there was nothing special to report on her meeting with CS. Mr LAM commented that the said incident was the most serious incident of CE's interference in LegCo's internal business that had ever happened in the history of LegCo. Mr TO also commented that had the Deputy Chairman not attended this meeting, Members would not know that the said incident had been raised and discussed at the meeting of the Chairman and the Deputy Chairman with CS. In the view of Mr TO, Mr LAM and Mr TAM, the Chairman should have informed Members of the discussion on the said incident at the aforesaid meeting with CS. Dr Helena WONG stressed that as the Chairman met with CS on behalf of Members, the Chairman had an important duty to report to Members on her meetings with CS. She wondered whether the Chairman had selectively reported to Members the issues she had discussed with CS at their meetings and how she could be accountable to Members.

8. Ms Claudia MO said that she hoped that the Chairman and Deputy Chairman would relay to CS at their next meeting her view that Mr LEUNG Chun-ying should attend a Question and Answer session so that Members could put questions to Mr LEUNG on the said incident directly.

9. Mr LEUNG Kwok-hung considered that if Mr LEUNG Chun-ying had any views on the work of the Select Committee, he should have conveyed his views to the Committee through formal channels and not through Mr Holden CHOW.

10. Mr CHAN Chi-chuen requested the Chairman to ask CS at their next meeting whether he agreed with the view that the said incident had shown that Mr LEUNG Chun-ying being the head of the Executive Authorities had interfered in the business of LegCo. If CS could not give a clear reply, the Chairman should request CS and even Mr LEUNG Chun-ying to come to LegCo to explain to Members and the public the criteria they adopted for determining whether an act constituted interference in the business of LegCo.

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11. In response to Members' views, the Chairman explained that she was always mindful that she met with CS in her capacity as Chairman of HC. The Deputy Chairman had been invited to all meetings with CS and had attended most of the meetings. Apart from the Chairman and the Deputy Chairman, a representative of the Secretariat had also attended those meetings with CS. At her last meeting with CS, she had conveyed to CS the decisions made by HC at its last meeting and requested CS to take follow-up actions as necessary and appropriate. As the said incident was not discussed at the last HC meeting, she had not brought it up with CS at their last meeting. This notwithstanding, she noted that the Deputy Chairman had, at the request of some Members, spoken about the said incident at their last meeting with CS after she had conveyed to CS Members' views on the matters dealt with by HC at its last meeting. The Chairman added that since various Members had expressed their views on the said incident at this HC meeting, she would relay such views to CS at their next meeting.

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) Employment (Amendment) Bill 2017
(LC Paper No. LS68/16-17)

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

13. Mr LEUNG Yiu-chung, Mr WU Chi-wai and Mr HO Kai-ming considered it necessary to form a Bills Committee to study the Bill in detail. Members agreed. Mr LEUNG Yiu-chung, Mr WU Chi-wai and Mr HO Kai-ming agreed to join the Bills Committee.

(ii) Bank of Communications (Hong Kong) Limited (Merger) Bill
(LC Paper No. LS66/16-17)

14. The Chairman said that HC would decide on the need to form a Bills Committee after the Bill had been read the first and second times and was referred to HC in accordance with Rule 54(4) of the Rules of Procedure ("RoP"). Members noted the arrangement.

(b) Legal Service Division report on subsidiary legislation gazetted on 12 May 2017

(LC Paper No. LS67/16-17)

15. At the invitation of the Chairman, LA briefed Members on the report prepared by LSD on five items of subsidiary legislation (i.e. L.N. 76 to L.N. 80) which were gazetted on 12 May 2017. Of these, three items (i.e. L.N. 76 to L.N. 78) were tabled in Council on 17 May 2017 and the other two items (i.e. L.N. 79 and L.N. 80) were regulations made under the United Nations Sanctions Ordinance (Cap. 537) which were not required to be tabled before LegCo and were not subject to amendment by LegCo.

16. Members agreed that the United Nations Sanctions (Central African Republic) Regulation 2017 (L.N. 79) and the United Nations Sanctions (Yemen) Regulation 2015 (Amendment) Regulation 2017 (L.N. 80) be referred to the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions as they came within the Subcommittee's terms of reference.

17. Dr KWOK Ka-ki considered it necessary to form a subcommittee to study in detail the Financial Institutions (Resolution) (Protected Arrangements) Regulation (L.N. 76) and the Financial Institutions (Resolution) Ordinance (Commencement) Notice 2017 (L.N. 77). Members agreed. Mr James TO, Dr KWOK Ka-ki and Mr CHAN Chun-ying agreed to join the subcommittee.

18. Members did not raise any question on the Employees Retraining Ordinance (Amendment of Schedule 2) (No. 2) Notice 2017 (L.N. 78).

19. The Chairman reminded Members that the deadline for amending the three items of subsidiary legislation which had been tabled in Council on 17 May 2017 (i.e. L.N. 76 to L.N. 78) would be the Council meeting of 14 June 2017, or that of 5 July 2017 if extended by a resolution of the Council.

IV. Further business for the Council meeting of 24 May 2017

(a) **Tabling of papers**

Report No. 18/16-17 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments
(LC Paper No. CB(2)1423/16-17)

20. The Chairman said that the Report covered 10 items of subsidiary legislation and the period for amending them would expire at the Council meeting of 24 May 2017. No Member had indicated intention to speak on the subsidiary legislation.

(b) **Members' motions**

Proposed resolution to be moved by Ir Dr Hon LO Wai-kwok under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the Promotion of Recycling and Proper Disposal (Electrical Equipment and Electronic Equipment) (Amendment) Ordinance 2016 (Commencement) Notice 2017
(LC Paper No. CB(3)576/16-17)

21. The Chairman said that Ir Dr LO Wai-kwok, Chairman of the Subcommittee on the above Commencement Notice, would move a proposed resolution at the meeting to extend the period for amending the Commencement Notice to the Council meeting of 14 June 2017.

V. Business for the Council meeting of 31 May 2017

(a) **Questions**

(LC Paper No. CB(3)571/16-17)

22. 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**

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

(c) **Government motion**

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

(d) **Members' motions**

25. The Chairman said that since the Council could not deal with Members' motions at its meeting of 17 May 2017, the Members' motions which had been scheduled for debate at previous Council meetings would be rescheduled to the following Council meetings.

VI. The Chief Executive's Question and Answer Session on 1 June 2017

26. The Chairman said that CE's Question and Answer Session would be held on 1 June 2017, from 9:30 am to 11:00 am.

VII. Reports of Bills Committees and subcommittees

(a) **Report of the Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2017**

27. Mr Kenneth LEUNG, Chairman of the Bills Committee, made a verbal report on the deliberations of the Bills Committee. Mr LEUNG said that the purpose of the Inland Revenue (Amendment) (No. 3) Bill 2017 was to amend the Inland Revenue Ordinance (Cap. 112) to mandate financial institutions in Hong Kong to conduct due diligence and collect the required information from account holders who were tax residents of prospective and confirmed partners of Hong Kong in respect of automatic exchange of financial account information in tax matters ("AEOI"), and report the information to the Inland Revenue Department for exchange with the reportable jurisdictions.

28. Mr LEUNG informed Members that the Bills Committee had no objection to the Bill in principle. In the course of its deliberations, the Bills Committee had discussed the criteria for amending the list of reportable jurisdictions; issues relating to data collection, safeguards to protect taxpayers' privacy and confidentiality of information exchanged; and publicity on the revised AEOI arrangements. The Bills Committee had made suggestions to the Administration on how to reduce the compliance burden on financial institutions arising from AEOI data

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collection and reporting, such as phasing in the reportable jurisdictions by batches and providing financial institutions with certain options in the scope of data submission in the first reporting year of 2018. The Administration had considered such suggestions but maintained the view that the current proposal under the Bill had struck a balance of various factors including expansion of AEOI network, maintaining a level playing field for AEOI participants, as well as assurance of data security. The Administration had advised that it would adopt a facilitating approach and keep the compliance burden of financial institutions to a minimum.

29. Mr LEUNG further said that the Bills Committee had examined and agreed to the Committee stage amendments ("CSAs") proposed by the Administration to include Turkey in the list of reportable jurisdictions and to defer the first reporting year for AEOI with Korea from 2018 to 2019. The Bills Committee supported the resumption of the Second Reading debate on the Bill at the Council meeting of 7 June 2017 and would not propose any CSAs to the Bill. Members noted that the written report of the Bills Committee would be provided in due course.

30. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, proposed to be moved to the above Bill would be Saturday, 27 May 2017.

(b) Report of the Bills Committee on Arbitration (Amendment) Bill 2016

(LC Paper No. CB(4)1041/16-17)

31. Mr Martin LIAO, Chairman of the Bills Committee, briefed Members on the deliberations of the Bills Committee as detailed in its report. Members noted that the Bills Committee had examined the Administration's proposed CSAs and raised no objection. Members also noted that 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 14 June 2017.

32. The Chairman reminded Members that the deadline for giving notice of CSAs, if any, proposed to be moved to the above Bill would be Monday, 5 June 2017.

VIII. Position on Bills Committees and subcommittees

(LC Paper No. CB(2)1422/16-17)

33. The Chairman said that as at 18 May 2017, there were 10 Bills Committees (two of which would need to work beyond three months since its commencement), 14 subcommittees under HC and five subcommittees on policy issues under Panels in action. Seven subcommittees on policy issues were on the waiting list.

IX. Proposals to move a motion under Rule 49B(1A) of the Rules of Procedure at a Council meeting to censure Hon Holden CHOW

(a) **Letters from Hon Claudia MO**

(LC Paper Nos. CB(2)1434/16-17(01) and CB(2)1441/16-17(01))

(b) **Letter from Dr Hon KWOK Ka-ki**

(LC Paper No. CB(2)1434/16-17(02))

34. The Chairman said that Ms Claudia MO and Dr KWOK Ka-ki had respectively written to her suggesting that HC discuss their proposals to move a motion under RoP 49B(1A) at a Council meeting to censure Mr Holden CHOW. The Chairman invited Members to note that 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. Pursuant to the relevant rules of RoP, a Member could give the requisite notice for moving a censure motion at a Council meeting and the notice had to be signed by three other Members. According to the mechanism for the censure of a Member under RoP 49B(1A), if the matter stated in the relevant censure motion was referred to an investigation committee, Members should vote on the motion only after the investigation committee had completed its work and reported to the Council. She would invite Ms Claudia MO and Dr KWOK Kwok-ki to speak respectively on their proposals and Mr Holden CHOW to respond, following which Members could express their views on the proposals.

35. The Chairman drew to Members' attention that as the last meeting of the Select Committee was held in camera, any reference to that meeting should only be confined to information available in the public domain. Members should also refrain from discussing the deliberations of the Select Committee at that meeting in order to avoid prejudicing the work of the Select Committee.

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36. As regards Dr KWOK Ka-ki's proposal for HC to discuss also matters concerning the future operation of the Select Committee at this HC meeting, the Chairman pointed out that the Select Committee was not appointed by or formed under HC but established pursuant to RoP 20(6). According to RoP 78(2), the size of the Select Committee was decided, and the Chairman, Deputy Chairman and members thereof were appointed, by the President after taking into account the recommendations of HC. As the Select Committee had already commenced its work and would continue its discussion on matters relating to the proposed amendments to the proposed major areas of study of the Select Committee provided by Mr Holden CHOW ("the proposed amendments"), she invited Members to take note of the above when expressing their views.

37. When the Chairman invited Ms Claudia MO to speak on her proposal, Dr KWOK Ka-ki raised a point of order. Dr KWOK said that as Members would discuss proposals to censure Mr Holden CHOW and the Chairman was also the Chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") to which Mr CHOW belonged, he requested the Chairman to consider whether it would be more appropriate for another Member to chair the meeting for the discussion on this item in order to ensure fairness. Ms Claudia MO, Dr Helena WONG and Mr LEUNG Kwok-hung also expressed similar views. Ms MO pointed out that as the Chairman had indicated openly that she had spoken with Mr Holden CHOW on matters relating to the proposals under discussion, the Chairman should seriously consider whether any possible conflict of interests and/or roles would arise from her chairing of the meeting for the discussion on this item. Dr WONG commented that given the close relations between the Chairman and Mr Holden CHOW, it would not be conducive to facilitating the holding of the discussion in an efficient manner if the Chairman continued to take the chair.

38. Mr CHEUNG Kwok-kwan pointed out that if it was considered not appropriate for the Chairman to preside over the discussion on this item, it would not be appropriate either for the Deputy Chairman or any other Member to do so given that they had expressed clearly and openly their views on the proposals under discussion. He therefore considered it not necessary to ask another Member to take the chair. Mr Jeffrey LAM also commented that as the proposals under discussion were concerned with the censure of a Member and not a political party, he did not see any problem with the Chairman presiding over the discussion on this item.

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39. Referring to Mr CHEUNG Kwok-kwan's comments, the Deputy Chairman said that he also considered himself not suitable to preside over the discussion on this item and would refrain from doing so given that he had indeed spoken on the proposals under discussion on various occasions.

40. In response, the Chairman said that she had well taken note of Members' views expressed. While RoP 83A had set out the requirement concerning the disclosure of personal pecuniary interest by a Member before that Member moved any motion or amendment relating to a matter or spoke on any such matter, there was no provision under RoP governing the chairing by a committee chairman of the discussion on a matter in which he/she might have a conflict of interests or roles. The Chairman pointed out that she did not have any pecuniary interest in the proposals under discussion. She also did not consider that her presiding over the discussion on this item would give rise to any conflict of interests or roles. Furthermore, as this meeting was open to public, whether or not she had chaired the meeting in a fair and impartial manner was subject to public scrutiny. The Chairman stressed that she would continue to chair this meeting in accordance with RoP and the House Rules, as she had done in the past.

41. At the invitation of the Chairman, Ms Claudia MO said that while Mr Holden CHOW had finally announced in the morning of the day of this HC meeting his resignation from the Select Committee, he still considered and claimed that he had not hidden anything or breached any rule or law. As it was clear that the general public considered otherwise, she had proposed to move a motion under RoP 49B(1A) in Council to censure Mr CHOW. Ms MO commented that if Mr CHOW had nothing to hide, he should have informed the Select Committee in the first place that the proposed amendments were actually made by CE Mr LEUNG Chun-ying. Mr CHOW's failure to do so and his provision of assistance to Mr LEUNG to interfere in the work of the Select Committee were a clear violation of the established political principle that the Executive Authorities should not intervene in the business of the Legislature. Ms MO further pointed out that under BL, a LegCo Member must not commit any act of misbehavior or breach the oath of allegiance to the Hong Kong Special Administrative Region which he had taken when assuming office.

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42. Dr KWOK Ka-ki said that the incident of Mr Holden CHOW having allegedly assisted Mr LEUNG Chun-ying to amend the proposed major areas of study of the Select Committee ("the incident in question") was a very serious matter because members of the Select Committee had been entrusted by LegCo with an important duty to inquire, for public interest, into matters about the agreement between Mr LEUNG Chun-ying and UGL Limited. In his view, Mr CHOW being the former Deputy Chairman of the Select Committee had disregarded his duty as a member of the Committee and enabled Mr LEUNG Chun-ying to interfere in the Committee's work. Dr KWOK further said that had it not been reported by the media, no one would know that Mr LEUNG Chun-ying had, with the agreement of Mr CHOW, proposed more than forty amendments to the proposed major areas of study of the Select Committee. Dr KWOK stressed that as Mr CHOW's act in question had not only disgraced himself but also adversely affected the operation of LegCo, he hoped that all Members would support the moving of a motion to censure Mr CHOW so as to restore public confidence in LegCo.

43. Mr Holden CHOW said that the proposals put forward by Ms Claudia MO and Dr KWOK Ka-ki were full of unfounded allegations and were an attempt to smear him. Mr CHOW stressed that he had not hidden anything or breached any rule or law when participating in the work of the Select Committee, and he had all along considered that the inquiry conducted by the Select Committee must be fair and comprehensive. Mr CHOW further pointed out that the paper on the proposed major areas of study of the Select Committee was an open document and any person could make comments on it. He had earlier on raised some comments on the paper mainly because he noted that there were some inconsistencies between the proposed major areas of study of the Select Committee and the facts known to the public. In his view, it was necessary to make suitable amendments to the proposed major areas of study to prevent the Select Committee from reaching biased, unfair or incomplete conclusions.

44. Dr Pierre CHAN said that in order to properly exercise the powers and functions of LegCo as stipulated in BL 73, Members should monitor the work of the Government as well as the conduct of public officers including CE. If Mr Holden CHOW's behaviour as detailed in the letters from Ms Claudia MO and Dr KWOK Ka-ki was found to be true, he considered that Mr CHOW had failed to properly discharge his duties as a LegCo Member. Dr CHAN added that in the public's view, the explanation given by Mr CHOW on the incident in question was not fully convincing. He hoped that Members would follow up seriously on the incident in question so as not to disappoint the public.

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45. Dr Priscilla LEUNG said that the Select Committee had discussed issues relating to the incident in question at its closed meeting held on 15 May 2017 ("the said closed meeting"), but it had not reached any conclusion and would hold another meeting for further discussion. She therefore found it disappointing and regrettable that before the Select Committee had completed its deliberations on the relevant issues, Ms Claudia MO and Dr KWOK Ka-ki had respectively proposed to move a censure motion against Mr Holden CHOW. Dr LEUNG further said that she started to wonder whether the Select Committee could continue its work as usual after such controversy over the incident in question. Therefore, she considered it worth discussing whether the Select Committee should be dissolved so that the inquiry concerned could start afresh, as suggested in Dr KWOK's letter.

46. Mr Nathan LAW said that as Mr Holden CHOW had not disclosed that the proposed amendments were actually made by Mr LEUNG Chun-ying until the truth was revealed, he did not accept Mr CHOW's claim that he had not hidden anything and had not done anything wrong. He stressed that it was unacceptable for any Member to assist the subject of inquiry to interfere with the scope of inquiry of a select committee. In his view, Mr CHOW's act in question had undermined the impartiality and credibility of LegCo, and amounted to a dereliction of duty and misconduct on Mr CHOW's part. Mr LAW therefore supported the proposals to move a motion under RoP 49B(1A) at a Council meeting to censure Mr Holden CHOW.

47. Mr LAM Cheuk-ting said that Mr Holden CHOW had repeatedly indicated at the meeting of the Select Committee on 25 April 2017 that the proposed amendments were originated from his own views, but it was later revealed that these amendments were actually made by Mr LEUNG Chun-ying. He added that as Mr CHOW did not disclose such fact to other members of the Select Committee at the said meeting, he considered that Mr CHOW had deliberately concealed such fact from other Members as well as the public. In Mr LAM's view, Mr CHOW had not properly discharged his duties as a LegCo Member and should therefore step down from office.

48. Mrs Regina IP considered that Mr LEUNG Chun-ying had not properly handled the matter, and that Mr LEUNG should submit his written views direct to the Select Committee or attend the hearings to be held by the Committee, instead of contacting Mr Holden CHOW in private. She believed that Mr CHOW who was a young Member with not much experience should have already learnt a lesson. In her view, a

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motion under RoP 49B(1A) to censure a Member should not be proposed lightly. Mrs IP added that she did not support the proposals to move such a motion to censure Mr CHOW and considered that the incident in question should not be pursued any further.

49. The Deputy Chairman considered that as Mr Holden CHOW had repeatedly indicated at the meeting of the Select Committee on 25 April 2017 that the proposed amendments were originated from his own views, Mr CHOW had deliberately concealed the fact that such amendments were actually made by Mr LEUNG Chun-ying. Furthermore, had Mr CHOW followed the proper procedures, Mr CHOW should have told Mr LEUNG Chun-ying that his proposed amendments should be sent direct to the Select Committee for consideration. The Deputy Chairman therefore considered it totally unacceptable for Mr CHOW to still claim that he had not hidden anything or breached any rule or law. In his view, Mr CHOW's act in question showed his disrespect to the procedures and duty of LegCo, and was disgraceful to the legal profession.

50. Mr WONG Kwok-kin said that as the Select Committee had not yet reached any conclusion on issues relating to the incident in question, the media reports about the incident in question were based on one-sided information disclosed by several members of the Select Committee. He considered that before the Select Committee had reached any conclusion, it was inappropriate to propose to move a motion under RoP 49B(1A) to censure Mr Holden CHOW. Therefore, Members of the Hong Kong Federation of Trade Unions did not support the two proposals put forward by Ms Claudia MO and Dr KWOK Ka-ki. Mr WONG further said that he also considered it worth discussing whether the Select Committee should be dissolved so that the inquiry concerned could start afresh, as suggested in Dr KWOK's letter.

51. Dr CHENG Chung-tai considered that Mr Holden CHOW's act in question did not only constitute misbehaviour, but might also be an offence of misconduct in public office. To his understanding, the common law offence of misconduct in public office encompassed any serious misuse of power or position by public officials even in the absence of evidence that they had received a bribe or had any pecuniary gains as a result. Dr CHENG therefore considered it necessary for Members to seriously follow up the incident in question.

52. Dr Helena WONG expressed dissatisfaction that Mr Holden CHOW still claimed that he had not hidden anything or breached any rule or law. She considered that as Mr CHOW had not disclosed at the meeting of the Select Committee held on 25 April 2017 that the proposed amendments were actually made by Mr LEUNG Chun-ying, she was convinced that Mr CHOW had colluded with Mr LEUNG Chun-ying to interfere in the inquiry of the Select Committee. Furthermore, given that it was against the proper procedures of LegCo that the subject of inquiry discussed in private the scope of the inquiry with members of the select committee responsible for the inquiry, what Mr LEUNG Chun-ying and Mr Holden CHOW had done in the incident in question had seriously undermined the impartiality and credibility of LegCo.

53. Mr KWONG Chun-yu shared similar views of Dr Helena WONG, adding that it was disappointing that Mr Holden CHOW still claimed that he had not hidden anything or breached any rule or law. He commented that if it was not found in the softcopy of the proposed amendments that such amendments were in fact made by Mr LEUNG Chun-ying, the truth would still be concealed from Members and the public. Therefore, Mr KWONG considered it appropriate to move a motion under RoP 49B(1A) at a Council meeting to censure Mr CHOW.

54. Mr CHAN Hak-kan said that Mr Holden CHOW was a new Member who was inexperienced in dealing with political matters. He considered that the political controversy surrounding the incident in question should end given that Mr CHOW had already given a response and resigned from the Select Committee. Mr CHAN further said that it was highly inappropriate for the four pro-democracy members of the Select Committee to comment openly on the Committee's closed-door deliberations without any regard to the Committee's confidentiality requirement, which in his view might prejudice the inquiry of the Committee. He also considered it regrettable that a member of the Select Committee, who often claimed that he had formerly worked as an Investigator of the Independent Commission Against Corruption ("ICAC"), had taken the lead in making such disclosure. Mr CHAN added that it was no wonder this member had served in ICAC only for a short period of time.

55. Ms Tanya CHAN, Dr Helena WONG and Ms Claudia MO expressed strong dissatisfaction at the remarks made by Mr CHAN Hak-kan, which, in their view, apparently implied that Mr LAM Cheuk-ting got fired from ICAC for having disclosed confidential

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information. Ms Tanya CHAN said that this was a serious allegation against Mr LAM without any factual basis. In the view of Ms Tanya CHAN, Dr Helena WONG and Ms Claudia MO, Mr CHAN Hak-kan had clearly contravened RoP 41(4) and 41(5) which provided that it should be out of order to use offensive and insulting language about Members and a Member should not impute improper motives to another Member.

56. Mr CHAN Han-pan considered that it was Members of the pro-democracy camp who were trying to impute improper motives to Mr CHAN Hak-kan. Dr CHIANG Lai-wan said that she recalled that Mr CHAN Hak-kan had not mentioned the name of any member of the Select Committee in his earlier remarks.

57. Mr LAM Cheuk-ting said that he considered it an honour to have served in ICAC. While he did not agree with what Mr CHAN Hak-kan had said earlier, he hoped that Members would end the argument over Mr CHAN's remarks and focus their discussion on the incident in question and the proposals to censure Mr Holden CHOW.

58. Mr LEUNG Yiu-chung said that he did not agree with the view of some Members that HC should consider the need to follow up the incident in question only after the Select Committee had completed its deliberations on the relevant issues. Mr LEUNG further said that according to media reports, Mr Holden CHOW stated at an earlier meeting of the Select Committee that he had drafted the proposed amendments but Mr LEUNG Chun-ying subsequently admitted that such proposed amendments were made by him. It was crystal clear that Mr CHOW had hidden the truth from the Select Committee and such act of Mr CHOW had nothing to do with his being young and inexperienced.

59. Dr Fernando CHEUNG said that as the incident in question clearly showed that Mr Holden CHOW was shameless and guilty of misconduct and dereliction of duty, the moving of a motion in Council to censure Mr CHOW was the most lenient action that should be taken to admonish him. While he considered that Mr CHOW should apologize to the public for his wrongdoing and resign as a Member of LegCo, he believed that Mr CHOW would not do so with the support of his DAB counterparts. In Dr CHEUNG's view, the refusal of Mr CHOW to admit his wrongdoing and his lack of remorse had set a bad example for the young generation.

60. Mr Andrew WAN said that no member of the Select Committee would have thought that Mr Holden CHOW, former Deputy Chairman of the Committee, would collude with Mr LEUNG Chun-ying, the subject of

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inquiry, to interfere with the major areas of study of the Committee. Had the incident in question not been uncovered by the Secretariat, the proposed amendments which were actually made by Mr LEUNG could have been accepted and the Committee's inquiry unduly affected. Mr WAN criticized Members of the pro-establishment camp for trying to shift the public attention from Mr CHOW's wrongdoing by putting the blame on other members of the Select Committee. He also criticized Mr CHOW for having apologized only for mishandling the paper on the proposed amendments and still claiming at this meeting that he had not hidden anything or breached any rule or law. Mr WAN added that he strongly disagreed with Mr CHOW's views on the paper prepared by the Secretariat on the proposed major areas of study of the Select Committee. In Mr WAN's view, the proposed major areas of study as set out in the paper were clear and organized and the approach adopted in drafting the paper was in line with that adopted in drafting the major areas of study of other select committees.

61. Mr IP Kin-yuen said that the law, rules and regulations, and political ethics were the key pillars of any society. He cautioned that LegCo would no longer be able to duly perform its functions if it was considered acceptable for a LegCo Member to enable CE or any other government official to amend the paper of a LegCo committee and to present CE's or the official's amendments to the committee without informing the committee that the amendments were proposed by CE or the official. Mr IP stressed that it was necessary for LegCo to draw a clear line between the powers and functions of the Executive Authorities and those of the Legislature. In his view, it was necessary to move a motion to censure Mr Holden CHOW in order to uphold the parliamentary system.

62. Mr CHU Hoi-dick said that while Mr Holden CHOW claimed that he had not hidden anything because he had provided, after the Select Committee meeting on 25 April 2017, the soft copy of the paper on the proposed amendments to the Secretariat with the relevant amendments marked up in revision mode, many members of the public queried why Mr CHOW had not informed the Select Committee in the first place that the relevant amendments were actually made by Mr LEUNG Chun-ying. The provision of the soft copy of the relevant paper by Mr CHOW should not be taken to prove that he had been telling the whole truth. Mr CHU therefore considered it necessary to establish an investigation committee, through the moving of a censure motion under RoP 49B(1A), to inquire into whether Mr CHOW had colluded with Mr LEUNG Chun-ying to interfere in the work of the Select Committee.

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63. Mr YIU Si-wing was of the view that Mr Holden CHOW who was a new Member had mishandled the paper on the proposed amendments and failed to take adequate measures to safeguard the independence of LegCo Members. He considered it appropriate for Mr CHOW to resign from the Select Committee. Mr YIU further said that as the paper concerned was only a draft and an open document rather than a confidential document, Mr CHOW had not breached the law. In light of the above, he did not support the proposals to move a motion under RoP 49B(1A) to censure Mr CHOW. On the other hand, given that queries had been raised on the credibility of the Select Committee in its future work, he agreed that consideration should be given to Dr KWOK Ka-ki's proposal for HC to discuss whether the Select Committee should be dissolved.

64. Mr CHAN Chi-chuen said that he disagreed with the view that Mr Holden CHOW felt sorry for what he had done. While Mr CHOW was right in pointing out that any member of the public could submit to the Select Committee his/her views and comments on the paper concerning the proposed major areas of study of the Committee, it was grossly inappropriate for Mr CHOW to accept the amendments proposed by Mr LEUNG Chun-ying, who was the subject of inquiry, to the paper and present them to the Committee. In Mr CHAN's view, it was clear that Mr CHOW had colluded with Mr LEUNG to interfere in the work of the Select Committee. Mr CHAN stressed that as the incident in question not only discredited Mr CHOW himself but also brought LegCo into disrepute, Members of the pro-establishment camp should not defend Mr CHOW's wrongdoing indiscriminately.

65. Mr MA Fung-kwok said that as a member of the Select Committee, he wished to point out that the Committee had not yet reached a conclusion on matters relating to the incident in question. It was regrettable that some members of the Select Committee had disclosed to the public information relating to the incident after the said closed meeting. In his view, such disclosure was unfair to all parties involved in the incident and had undermined the credibility of LegCo. Against this background, he considered it inappropriate and regrettable that Mr Claudia MO and Dr KWOK Ka-ki had raised their proposals for HC's discussion at this meeting. Mr MA called on Members to respect the Select Committee for its work in following up the matters relating to the incident in question.

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66. Mr WU Chi-wai said that he could not subscribe to the argument put forward by some Members that HC should not discuss the proposals of Ms Claudia MO and Dr KWOK Ka-ki at this meeting because the Select Committee had yet to conclude its deliberations on matters relating to the incident in question. He considered that some Members were trying to shift the public attention from the crux of the matter, i.e. a member of the Select Committee had colluded with the subject of the inquiry to interfere with the major areas of study of the Committee, by highlighting their concern about the disclosure of confidential information by some members of the Committee.

67. Mr HUI Chi-fung said that in his view, Mr Holden CHOW's act in question had amounted to misconduct in public office. He commented that the incident in question was not simply a matter concerning the personal integrity of Mr CHOW as it had seriously undermined the constitutional status of LegCo and impacted on its work in monitoring the Government. Mr HUI further said that he did not consider that the moving of a censure motion under RoP 49B(1A) to disqualify Mr CHOW as a LegCo Member had gone too far. He opined that Mr CHOW should resign as a Member of LegCo in order to restore the credibility of LegCo.

68. Dr Junius HO said that he was a member of the Select Committee and that it was agreed at the said closed meeting that all members should observe the Committee's confidentiality requirement. However, information relating to the incident in question which was discussed at the said closed meeting was widely reported by the media soon after the meeting. He further said that if Mr Holden CHOW's act in question was considered as a serious matter, the nature of intentional disclosure of confidential information was, in his view, even more serious. Dr HO considered that it would be more appropriate for the Select Committee to follow up on the relevant issues relating to the incident in question including the disclosure of confidential information. He added that he did not support the proposals to move a censure motion against Mr Holden CHOW at the present stage.

69. Dr YIU Chung-yim considered it important for select committees to uphold the principle of impartiality in conducting their inquiries. He criticized that Mr Holden CHOW still claimed that he had not hidden anything or breached any rule or law as the paper on the proposed major areas of study of the Select Committee was an open document and any person could make comments on it. He commented that if Members considered Mr CHOW's explanation acceptable, it would have far-reaching implications on the future operation of LegCo.

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70. Mr CHEUNG Kwok-kwan commented that pro-democracy members of the Select Committee had defied the Committee's confidentiality requirement and justified their act of disclosing information discussed at the said closed meeting under the disguise of upholding impartiality and independence of the Committee. Mr CHEUNG considered that if Members were truly concerned about the impartiality of the Select Committee, the public's concern about the potential conflict of interests or roles of Mr Kenneth LEUNG in his capacity as a member of the Committee should also be addressed given that Mr LEUNG Chun-ying had filed a defamation case against Mr Kenneth LEUNG.

71. Mr CHAN Han-pan said that as Mr LEUNG Chun-ying, the subject of inquiry, had filed a lawsuit against Mr Kenneth LEUNG who was a member of the Select Committee responsible for conducting the inquiry, he considered that this would inevitably give rise to a conflict of interests on the part of Mr Kenneth LEUNG. In his view, Mr Kenneth LEUNG should respond to this issue. Mr CHAN further commented that while pro-democracy Members had stressed the importance of personal integrity throughout the discussion, they had not respected and observed the principle of confidentiality of information.

72. Mr LEUNG Che-cheung considered it regrettable that information relating to the incident in question which was discussed at the said closed meeting was widely reported by the media soon after the meeting. He also held the view that matters relating to the incident in question should be followed up by the Select Committee and following Mr Holden CHOW's resignation from the Committee, the incident in question should be put to an end. Mr LEUNG further said that the criticisms made by pro-democracy Members against Mr CHOW were prejudicial, irrational and unjustified. He therefore did not support the proposals to move a censure motion against Mr CHOW.

73. Mr CHAN Chun-ying said that according to the practice and procedure of the Select Committee endorsed by the Committee at its meeting on 3 March 2017, the Committee's practice and procedure should be fair and be seen to be fair, especially to parties whose interests or reputation might be affected by the proceedings of the Committee. To his understanding, Mr LEUNG Chun-ying who was the subject of the inquiry conducted by the Select Committee should be one of the parties referred to in the said practice and procedure. As such, although the way in which Mr Holden CHOW had handled the paper on the proposed

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major areas of study of the Select Committee was unsatisfactory, it had nevertheless not deviated from the agreed practice and procedure. He therefore would not support the proposals to move a censure motion against Mr CHOW. Mr CHAN added that he agreed that Members should discuss the future operation of the Select Committee as suggested in Dr KWOK Ka-ki's proposal.

74. Dr Elizabeth QUAT said that while Mr Holden CHOW had resigned from the Select Committee, many members of the public remained concerned about its future operation. Given that Mr LEUNG Chun-ying had filed a defamation case against Mr Kenneth LEUNG, the public was concerned whether Mr Kenneth LEUNG had any potential conflict of interests or roles in his capacity as a member of the Select Committee. There was a suggestion that Mr Kenneth LEUNG should also resign from the Select Committee and in her view, Mr Kenneth LEUNG should give a response. Dr QUAT further said that as information about the Select Committee's deliberations at the said closed meeting had been disclosed to the media, she considered that an investigation should also be conducted into such disclosure so as to restore the credibility of the Select Committee.

75. Mr Alvin YEUNG pointed out that the fact was that members of the Select Committee had been appointed before Mr LEUNG Chun-ying filed the defamation case against Mr Kenneth LEUNG. It was therefore unreasonable to suggest that Mr Kenneth LEUNG should also resign from the Select Committee. Otherwise, if the subject of inquiry filed a lawsuit against every member of the Select Committee, the Committee's work would be seriously affected. Mr YEUNG urged Members of the pro-establishment camp to treat the incident in question seriously as it had undermined the dignity of LegCo. He added that it was grossly unacceptable that Mr Holden CHOW still claimed that he had not hidden anything or breached any rule or law.

76. Mr Steven HO said that he was also concerned about the credibility of the Select Committee. He commented that as Members from different political parties and groupings had their own pre-determined positions on various issues, it was unlikely that the Select Committee could conduct the inquiry concerned in a fair and impartial manner. He also pointed out that as the Select Committee had been following up on the relevant issues relating to the incident in question, it was highly undesirable that information about the Select Committee's deliberations at the said closed meeting had been disclosed to the media. Mr HO considered that while Mr Holden CHOW's handling of the paper on the

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proposed amendments was unsatisfactory, the matter was not so serious as to warrant the moving of a motion under RoP 49B(1A) to censure Mr CHOW.

77. Ms Claudia MO strongly criticized Mr Holden CHOW for showing no shame nor remorse for his wrongdoing. She also considered it absurd for Mr CHOW to claim that she was trying to smear him. She stressed that her criticisms against Mr CHOW were based on facts and Mr CHOW had indeed colluded with Mr LEUNG Chun-ying in interfering in the work of the Select Committee.

78. Dr KWOK Ka-ki considered it unacceptable that Mr CHOW still claimed that he had not hidden anything or breached any rule or law. He also considered it ignoble ("賤" in Chinese) for the pro-establishment parties to attempt to shift the attention from the collusion between Mr Holden CHOW and Mr LEUNG Chun-ying by blaming some members of the Select Committee for disclosing information discussed at the said closed meeting.

79. Dr CHIANG Lai-wan expressed dissatisfaction that Dr KWOK Ka-ki had used the Chinese expression "賤" (meaning ignoble in English) in his earlier remarks. She considered that Dr KWOK had contravened RoP 41(4) and should withdraw such an expression which was highly inappropriate.

80. Dr KWOK Ka-ki responded that he had not used the said expression to describe any LegCo Member in his earlier remarks.

81. Mr Holden CHOW said that some Members were trying to smear him by alleging that he had colluded with Mr LEUNG Chun-ying. He reiterated that he had not hidden anything or breached any rule or law when participating in the work of the Select Committee. He added that it was very rude of Dr KWOK Ka-ki to have used offensive and insulting language in his earlier remarks.

82. The Chairman concluded that Members from different political parties and groupings had expressed their views on the proposals of Ms Claudia MO and Dr KWOK Ka-ki. According to the established procedure for the censure of a Member under RoP, if the matter stated in the relevant censure motion was referred to an investigation committee, Members would debate and vote on the motion at a Council meeting after the investigation committee had completed its work and reported to the Council.

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X. Any other business

83. There being no other business, the meeting ended at 4:28 pm.

Council Business Division 2
Legislative Council Secretariat
25 May 2017