

立法會
Legislative Council

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Tel : 3919 3300

Date : 1 June 2017

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 14 June 2017

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

The Department of Justice (“DoJ”) has submitted a request in **Appendix I** for special leave of the Council under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (**Appendix II**) and Rule 90 of the Rules of Procedure (“RoP”) (**Appendix III**) for two Members and five officers of the Council to give evidence in the criminal proceedings of *HKSAR v CHENG Chung-tai* (Case No. ESCC 1139 of 2017) (“the Request”).

2. In accordance with Rule 90(2) of RoP, the President has directed that the Request be placed on the Agenda for the Council meeting of 14 June 2017.

3. Members are invited to note that under Rule 90(2), unless on a motion which may be moved without notice at the above meeting by any Member the Council determines that such leave shall be refused, the Council shall be deemed to have ordered that such leave be granted.

(Dora WAI)
for Clerk to the Legislative Council

Encl.

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本司檔號 Our Ref: ESCC 1139/2017
來函檔號 Your Ref:
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18 May 2017

Mr Kenneth CHEN
Clerk to the Legislative Council
The Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax (2845 2444) and By Post

Dear Mr CHEN,

**Application for Special Leave of the Legislative Council
for Members and officers of and persons employed by the Council to give
evidence in respect of proceedings held before the Council on 19 October 2016
in the criminal proceedings of:**

HKSAR v CHENG Chung-tai
(Case No. ESCC 1139/2017)

This is an application for Special Leave of the Legislative Council ("LegCo") under section 7 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and rule 90 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (Instrument No. A501) for the following Members and officers of and persons employed by the LegCo to give evidence in the criminal proceedings instituted against Hon CHENG Chung-tai ("Hon CHENG") in respect of the proceedings held before the LegCo on 19 October 2016 (the "Council meeting"):-

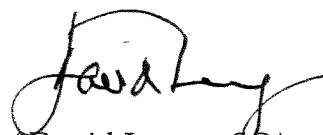
	Name	Role	Remarks
1	Hon LAU Kwok-fan 劉國勳	Member of the LegCo	- witnessed the events that happened during the Council meeting
2	Hon CHIANG Lai-wan 蔣麗芸	Member of the LegCo	- witnessed the events that happened during the Council meeting

3	Mr CHAN Che-fai, Bosco 陳志輝	Senior Public Information Officer of the LegCo	- monitored the filming of the LegCo webcast video capturing the events that happened during the Council meeting
4	Mr SO Ho-kit 蘇豪傑	Security Assistant (I) of the LegCo	- operated the CCTV cameras capturing the events that happened during the Council meeting
5	Mr LAM Tsz-fung 林子峰	Senior Information Technology Officer of the LegCo	- provided video discs containing the CCTV footage of the LegCo and the LegCo webcast video, which capture the events that happened during the Council meeting
6	Mr KWONG Chin-hei 鄺展希	Security Assistant (II) of the LegCo	- witnessed the events that happened during the Council meeting
7	Mr LEE Wing-keung 李永強	Steward of the LegCo	- witnessed the events that happened during the Council meeting

The reasons for the application are as follows. Hon CHENG has been prosecuted for the offence of "Desecration of the national flag", contrary to section 7 of the National Flag and National Emblem Ordinance (No. 116 of 1997), and the offence of "Desecration of the regional flag", contrary to section 7 of the Regional Flag and Regional Emblem Ordinance (No. 117 of 1997). It is alleged that during the Council meeting held in the Chamber of the LegCo on 19 October 2016 and while the summoning bell was ringing, Hon CHENG went to the vacant seats of the other Members of the LegCo and inverted the National Flags and Regional Flags displayed on their desks. It is the prosecution case that Hon CHENG had desecrated the National Flag and the Regional Flag by publicly and wilfully defiling the Flags. The evidence of the above-named witnesses will be necessary in the trial of Hon CHENG, and may involve events which had happened in the Chamber while the Council meeting was held.

Hon CHENG pleaded not guilty to the above offences at the hearing on 16 May 2017. The court set down a Pre-trial Review on 27 June 2017. It is expected that the date of the trial will be fixed soon.

Please do not hesitate to contact me or Mr Derek Lau (2867-3513) if we can be of any further assistance.



(David Leung, SC)

Deputy Director of Public Prosecutions

第 382 章 立法會(權力及特權)條例

7. 未經許可不得就立法會或任何
委員會的會議程序作證

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

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

(由 2000 年第 71 號第 3 條修訂)

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

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

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

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

90. 就立法會會議程序提供證據一事取得許可的程序

(1) 為取得根據《立法會(權力及特權)條例》(第382章)第7條所需的立法會許可，以就會議紀要、作證紀錄或提交立法會、委員會或小組委員會會議席上省覽的任何文件的內容，或就立法會、委員會或小組委員會的任何會議或審查程序，在立法會以外的地方提供證據，要求該許可的人須向立法會秘書書面陳述其請求及說明其理由，並須提供立法會秘書在個別情況下按立法會主席的指示所進一步要求的資料。(2017年第14號法律公告)

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

(3) 立法會秘書須以書面將立法會的決定通知該要求許可的人。

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

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

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

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

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

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