

**Practice and Procedure
of the Investigation Committee
established under Rule 49B(2A) of the Rules of Procedure
in respect of the motion to censure Dr Hon CHENG Chung-tai**

Terms of reference

The Investigation Committee (“IC”) is responsible for establishing the facts stated in the censure motion moved under Rule 49B(1A) of the Rules of Procedure (“RoP”), and giving its views on whether or not the facts as established constitute grounds for the censure of the Member who is the subject of the motion (RoP 73A(2)).

The investigation process

Collation of information before hearings

2. The IC will first invite:
 - (a) the Members who initiated the censure motion (i.e. the mover and the three Members who jointly signed the notice of the motion) to provide in writing information in support of the particulars of misbehaviour set out in the schedule to the censure motion and any information which may assist the IC in carrying out its work; and
 - (b) the Member who is the subject of the censure motion (“Member under investigation”) to respond in writing to the censure motion and information provided under (a) above by the Members who initiated the censure motion, and to provide any information which may assist the IC in carrying out its work.
3. The IC will also instruct the Clerk to the IC to gather information relevant to the censure motion.

Meetings and hearings

4. For the purposes of this Practice and Procedure, meetings of the IC at which the Member under investigation or a witness or witnesses appear to give evidence or to produce documents are referred to as “hearings”.

5. On the basis of the information and responses provided to the IC under paragraphs 2 and 3 above, the IC will decide if it is necessary to conduct hearings for the purpose of establishing the facts stated in the censure motion. If it is considered necessary, the IC will decide on the persons to be called to attend its hearings to give evidence. These persons may include the Members who initiated the censure motion, the Member under investigation and any person whom the IC considers to be able to provide information which will be relevant and useful to the investigation.

6. Subject to paragraph 7, all meetings of the IC, including hearings at which the Member under investigation or a witness or witnesses appear, will be held in private (RoP 73A(4)).

7. Only the Member under investigation may elect for hearings to be held in public, and the election must be made before the first hearing. Where he makes such an election, all hearings shall be held in public throughout the entire investigation unless, upon an application by a witness or a request from a member of the IC, the IC on sufficient reason decides otherwise (RoP 73A(5)(a) and (b)).

8. Any witness and the Member under investigation may apply to the IC for any hearing or any part of it to be held in private where an election for hearings to be held in public has been made by the Member under investigation. Similarly, any member of the IC may request, throughout the investigation, that any hearing or any part of it be held in private (RoP 73A(5)(b)). Such an application or request may be made after an election for hearings in public has been made by the Member under investigation, before or after the relevant person(s) attends a hearing, or during a hearing. In deciding whether or not to grant such an application or accede to such a request, the factors that the IC will take into account include whether the evidence to be obtained concerns matters of privacy and whether sufficient protection is accorded to the person(s) concerned.

9. Where appropriate, the IC may hold a hearing at a venue away from the Legislative Council (“LegCo”) Complex.

10. Apart from hearings, meetings of the IC to consider the following matters are held in private: procedural matters, progress of its work, logistical arrangements for hearings, the evidence obtained, the draft report of the IC and any other matters relevant to or arising from the IC’s work.

Witnesses

11. Witnesses are to be invited to attend hearings to be examined and to provide information to the IC. If considered necessary by the IC and authorized by the Council to exercise the power to summon under section 9(1) of Cap. 382, the IC may order the attendance of witnesses by summons. Only witnesses summoned under section 9(1) to give evidence or to produce any paper, book, record or document at a hearing will enjoy the same right or privilege as before a court of law in accordance with section 14(1) of Cap. 382.

12. In determining whether witnesses should be invited or summoned, the IC will have regard to factors including the views of the witnesses, whether the relevant hearings will be held in private or public, and whether sufficient protection is accorded to the witnesses concerned.

13. The Member under investigation will be informed of the witnesses whom the IC has decided to call and he may propose additional witnesses for the IC's consideration.

Accompanying persons

14. The Member under investigation and witnesses appearing before the IC may be accompanied by a maximum of three persons, including no more than one legal adviser. During a hearing, the witness must not engage in discussions with the accompanying persons nor receive any prompting, whether oral or in writing, from such persons but he may, with the permission of the Chairman, seek advice from his legal adviser.

Conduct of hearings

15. The IC may ask the Member under investigation to submit a written statement to the IC before attending the relevant hearings. The IC may also forward the written statement and relevant information submitted by him, or relevant parts thereof, to the relevant witnesses, who may make a written response, to which the Member under investigation may respond.

16. Also, the IC may ask the witnesses to submit written statements to the IC before attending the relevant hearings. The IC may also forward the written statement and relevant information submitted by a witness, or relevant parts thereof, to the Member under investigation, who may make a written response, to which the witness may respond.

17. Hearings are conducted for the examination of witnesses by way of questions and answers in order to establish the facts stated in the schedule to the censure motion. Members should not make comments or statements during these hearings. Hearings are normally conducted in the following manner:

- (a) the Chairman opens a hearing by stating the purpose of the hearing and reminds the witness of the role of the accompanying persons;
- (b) where it is decided that the witness should be examined on oath, the Chairman will administer the oath under section 11 of Cap. 382 before the examination starts;
- (c) the Chairman will first ask a witness to formally produce his written statement to the IC and if he has anything to add;
- (d) the Chairman will then ask the witness an appropriate opening question, giving him an opportunity to state his case;
- (e) the Chairman will then allow members to put questions to the witness; and
- (f) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the IC's investigation.

Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings

18. In accordance with RoP 41(2), a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This Rule applies to the proceedings of the IC by virtue of RoP 43.

19. If there are pending legal proceedings arising from matters which are related to the subject of the IC's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

- (a) the Department of Justice ("DoJ") will be asked to keep the IC informed of the development of the criminal proceedings concerned, if any;

- (b) the Chairman would explain to each witness that the function of the IC is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the IC's own motion, the IC may determine to hold closed hearings to obtain evidence from a witness;
- (d) where the IC considers necessary, it will provide DoJ with a copy of the draft findings and observations of the IC and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and
- (e) the report of the IC should not contain any material which might prejudice a pending jury trial.

20. In respect of pending civil proceedings, the following principles will, in addition to any applicable measures stated in paragraph 19 above, apply:

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;
- (c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and
- (d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the IC in two possible ways:
 - (i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and

- (ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

Attendance of non-IC Members

21. Members who are not members of the IC (“non-IC Members”) are not allowed to be present at the IC’s meetings and hearings held in private unless they are summoned or invited to attend as witnesses. Where a hearing is held in public, non-IC Members may attend but they may not speak, either by way of addressing the IC or putting questions to witnesses.

Provision of verbatim transcripts

22. The relevant parts of the draft verbatim transcripts of the proceedings of the hearings containing the evidence of a witness or the Member under investigation are forwarded to that person for sight and correction, before they are incorporated into the minutes of evidence. For hearings held in private, before the verbatim transcripts are passed to such persons, they are required to sign an undertaking that they would not make copies of the drafts, make public use of them (including quoting from the transcripts at hearings held in public) and use the transcripts in a manner prejudicial to the work of the IC, and that they would return the drafts to the IC before a specified date.

23. Any witness and the Member under investigation may also, on request, be provided with the verbatim transcripts of the proceedings of hearings held in public containing the evidence of another witness. He may also be provided, on his request, with the verbatim transcripts of hearings held in private containing the evidence of another witness, subject to his signing of an undertaking that he would not make copies of the transcripts, make public use of them (including quoting from the transcripts at hearings held in public) and use the transcripts in a manner prejudicial to the work of the IC, and that he would return the transcripts to the IC before a specified date. The IC may, on sufficient reason, reject such requests for transcripts of hearings held in private.

24. If a hearing is held in public, members of the public may obtain a copy of the finalized form of the verbatim transcript for that hearing upon the payment of a fee prescribed by the LegCo Secretariat.

Preparation and publication of report

25. Those parts of the IC's report which set out the evidence, on the basis of which the IC has established the facts stated in the censure motion, will be forwarded to the Member under investigation and the witnesses concerned for comment. Such comments will be recorded in the IC's report and will be taken into account by the IC in finalizing its report.

26. Upon completion of its report, the IC will table it in the Council pursuant to RoP 73A(12). Shortly before the report is tabled, the Member under investigation and the witnesses concerned will be provided with an advance copy of the report on the condition that it will not be released to the public until the relevant Council meeting has begun. This arrangement is to enable the Member under investigation and the witnesses concerned to prepare themselves for responding to the public and media enquiries. After the report has been tabled in the Council, it will be made public.

Confidentiality requirement

Classification of confidential information

27. Evidence obtained in hearings held in private, written statements and other documents provided to the IC, information relating to other meetings of the IC and any related correspondence are confidential and remain so unless and until they are published or declassified by the IC.

Use of confidential information

28. The source of information obtained at hearings held in private may be disclosed at a hearing held in public only if it is necessary to do justice to the witness or to enable him to understand a question. Before such disclosure, the IC may consult the relevant persons who may be affected by the disclosure.

29. Information obtained at hearings held in private from a witness who is a party to pending legal proceedings shall be used with care so as to avoid possible prejudice to that person's interest in such proceedings, and where possible, the identity of the witness who has provided the information should not be disclosed if it is so decided by the IC.

Application for exclusion of confidential information from report

30. The minutes of evidence, which form part of the report to be submitted to the Council upon completion of investigation under RoP 73A(12), shall contain all evidence taken by the IC at hearings held in private and public. However, the IC may, upon request made by a witness, decide to exclude confidential information from the report on grounds that such exclusion is necessary to protect privacy without jeopardizing the public interest in knowing the material facts on which the IC has based its views.

Communications between Members and members of the IC

31. Non-IC Members, the Member under investigation and Members who expect to be or have been called to appear before the IC as witnesses should not, outside meetings of the IC, engage in communications by conversations or any other form with members of the IC on any matter relating to the work of the IC.

Communications with the media

32. With the consent of the IC, the Chairman or the Deputy Chairman may respond in general terms to enquiries from the media on the progress of the investigation. No member other than the Chairman or the Deputy Chairman shall be authorized to handle media enquiries on matters relating to the work of the IC.

Confidentiality undertaking

33. All members of the IC, the Member under investigation and witnesses as well as accompanying persons attending meetings or hearings of the IC held in private shall be required to sign a confidentiality undertaking that they will not publish, without the prior written authorization of the IC, any matter relating to the proceedings of meetings or hearings of the IC held in private, including evidence taken before the IC, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by the IC to the Council. They are also required to take the necessary steps to prevent publication of such matter either before or after the IC presents its report to the Council, unless the confidential classification has been removed by the IC.

Premature publication of evidence

34. RoP 81 provides that the evidence taken before the IC under RoP 80 (Attendance of Witness) and documents presented to it shall not, except in the case of its meetings held in public, be published by a member of the IC or by any other person before the IC has presented its report to the Council. Any member of the IC who fails to comply with RoP 81 may be admonished or reprimanded by the Council on a motion to that effect.

Other matters

Term of office

35. The IC shall be dissolved upon the tabling of its report in the Council (RoP 73A(12)) or at the end of a term. If the IC is of the opinion that it will not be able to complete consideration of the matter before the end of a term, it shall so report to the Council.

Chairmanship

36. All meetings of the IC are chaired by the Chairman or, in the Chairman's absence, by the Deputy Chairman. In the event of the temporary absence of the Chairman and Deputy Chairman, the IC may elect a chairman to act during such absence (RoP 73A(6)).

Quorum

37. The quorum of the IC shall be five members including the Chairman (RoP 73A(3)). The Clerk will draw to the attention of the Chairman the absence of a quorum as and when there is such absence .

Voting

38. Decisions of the IC shall be decided by a majority of the members present and voting, which is done by a show of hands. Non-IC Members attending hearings held in public are not allowed to vote.

39. Where a member claims a division, the Clerk shall take divisions by asking each member separately how he wishes to vote and record the votes accordingly (RoP 73A(8)). Abstentions are not counted for the purpose of determining the result of the vote.

40. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he shall have a casting vote (RoP 73A(9)). The casting vote shall not be exercised in such a way as to produce a majority vote in favour of the question put (RoP 79A(1)).

Appointment of experts

41. Where appropriate, the IC may appoint experts to advise on any matter relevant to or arising from its work.

Verbatim transcripts and minutes of proceedings of meetings of the IC

42. Verbatim transcripts of the proceedings will be kept for all hearings and, on the IC's direction, for particular meetings. Minutes will be kept for other meetings, which are normally presented in a condensed form, recording the IC's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Where a meeting or part thereof is for the consideration of the draft report of the IC, the minutes of proceedings of the IC will record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the IC, showing the names of members voting in the division or declining to vote (RoP 73A(10)).

Reports of the IC

43. The report to be tabled in the Council pursuant to RoP 73A(12) for the purpose of resumption of the debate on the censure motion shall be so stated when the report is tabled. Apart from that report, the IC may table reports in the Council on any matter relating to or arising from its work as and when it considers necessary.

Disclosure of interests

44. RoP 83A and 84 relating to Members' pecuniary interest shall apply to the proceedings of the IC.

45. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, the member should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public hearings of the IC the nature of interests so declared by individual members.

Revival of the IC

46. The IC may be revived to deal with any further matters arising from the censure motion by resolution of the Council (RoP 73A(12)).

Council Business Division 3
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