

Chapter 1 Introduction

Background

1.1 At the Council meeting of 7 June 2017, Hon Claudia MO moved a motion under Rule 49B(1A) of the Rules of Procedure ("RoP") to censure Hon Holden CHOW Ho-ding ("Mr CHOW") under Article 79(7) of the Basic Law¹ ("BL") ("censure motion"). The wording of the censure motion is as follows:

That this Council, in accordance with Article 79(7) of the Basic Law, censures Hon Holden CHOW Ho-ding for misbehaviour and breach of oath under Article 104 of the Basic Law (details as particularized in the Schedule to this motion).

Schedule

Details of Hon Holden CHOW Ho-ding's misbehaviour and breach of oath under Article 104 of the Basic Law are particularized as follows:

Improperly interfering with and obstructing the Select Committee's inquiry

(1) As a Legislative Council ("LegCo") Member and the Deputy Chairman 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"), Hon Holden CHOW Ho-ding discussed the major areas of study of the Select Committee with the subject of inquiry, Chief Executive LEUNG Chun-ying, and further conspired with and assisted Mr LEUNG Chun-ying to improperly involve in and interfere with the investigation. At his own risk, Hon Holden CHOW Ho-ding accepted Mr LEUNG Chun-ying's request to amend the major areas of study of the Select Committee, and directly submitted the amendments made by Mr LEUNG Chun-ying to the

¹ BL 79(7) provides that the President of the Legislative Council shall declare that a Member of the Legislative Council is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members of the Legislative Council present.

proposed major areas of study to the Select Committee for discussion at its meeting on 25 April 2017 (the "Amendments"), in an attempt to obstruct and pervert the course of the open inquiry proceedings, and conspire with Mr LEUNG Chun-ying to create results advantageous to Mr LEUNG. Such behaviours seriously obstruct the Select Committee in the proper discharge of its duty, violate procedural justice and damage the independence, impartiality and legitimacy of the investigation of the Select Committee. Hon Holden CHOW Ho-ding fails to fulfil the obligation of a committee member. This incident clearly involves role conflicts and/or even conflicts of interests since the aforementioned behaviours are in favour of Mr LEUNG Chun-ying and lead to the suspicion that the cooperation between Hon Holden CHOW Ho-ding and Mr LEUNG Chun-ying may involve transfers of benefits.

Contempt of the LegCo

- (2) *As a LegCo Member, Hon Holden CHOW Ho-ding conspired with and assisted Mr LEUNG Chun-ying to involve in and interfere with the matters of the LegCo in his capacity as the Chief Executive. Such behaviours damage the dignity, autonomy and independence of the LegCo, amounting to contempt of the functions and powers of the LegCo, bringing shame on the LegCo and seriously undermining the public's confidence in the LegCo and LegCo Members.*

Making false representations in the LegCo

- (3) *As a LegCo Member and the Deputy Chairman of the Select Committee, Hon Holden CHOW Ho-ding intentionally and repeatedly made false representations in relation to the origin of the Amendments at the meeting of the Select Committee on 25 April 2017, with the intention to mislead the Select Committee and the public into believing that the Amendments were genuinely raised by Hon Holden CHOW Ho-ding himself. He refused to admit until the fact that the Amendments were made by Mr LEUNG Chun-ying was revealed. Such behaviours completely fail to meet the level of the credibility, integrity and dutifulness expected of a LegCo Member.*

*The aforementioned conduct amounting to misbehaviour and
breach of oath*

(4) As a LegCo Member, Hon Holden CHOW Ho-ding committed the aforementioned misbehaviour for Mr LEUNG Chun-ying, clearly indicating that he has breached the oath he made on 12 October 2016 under Article 104 of the Basic Law and the Oaths and Declarations Ordinance (Cap. 11) that he will "serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity", which is a basic duty of a LegCo Member.

1.2 Upon the moving of the censure motion at the above Council meeting, and in the absence of any motion being moved that no further action should be taken on the censure motion, the debate on the censure motion was adjourned and the President of the Legislative Council ("LegCo") referred the matter stated in the censure motion to an investigation committee, as provided under RoP 49B(2A).

Investigation Committee

1.3 The Investigation Committee established under RoP 49B(2A) in respect of the motion to censure Hon Holden CHOW Ho-ding ("IC") is the third investigation committee established in accordance with a motion moved under RoP 49B(1A) since the First LegCo.² As stipulated under RoP 73A(2), IC is responsible for establishing the facts stated in the Schedule to the censure motion, and giving its views on whether or not the facts as established constitute grounds for the censure.

² The first, second and fourth Investigation Committees established under RoP 49B(2A) are: the Investigation Committee in respect of the motion to censure Honourable KAM Nai-wai (which completed its work in March 2012) in the Fourth LegCo, the Investigation Committee in respect of the motion to censure Dr Hon CHENG Chung-tai (which completed its work in April 2018) and the Investigation Committee in respect of the motion to censure Hon HUI Chi-fung in the Sixth LegCo.

Establishment and membership

1.4 RoP 73A(1) provides that an investigation committee required to be established under RoP 49B(2A) shall consist of a chairman, a deputy chairman and five members (i.e. a total of seven members) who shall be Members appointed by the President of LegCo ("President") in accordance with an election procedure determined by the House Committee ("HC"). RoP 73A(1) also provides that the mover of the censure motion (i.e. Hon Claudia MO), the Members jointly signing the censure motion (i.e. Hon CHU Hoi-dick and Hon CHAN Chi-chuen),³ and the Member who is the subject of the censure motion ("Member under investigation") (i.e. Mr CHOW) shall not be appointed to IC.

1.5 HC at its meeting held on 23 June 2017 endorsed the election procedure for IC (**Appendix 1.1**)⁴ and decided that the election of IC members for appointment by the President be held at the meeting on 7 July 2017. All Members were invited to make nominations for the election and by the deadline of 3 July 2017, the LegCo Secretariat received a total of nine valid nominations.⁵ As the number of valid nominations was more than seven,⁶ in accordance with paragraph 7 of the election procedure, a poll was taken at the HC meeting on 7 July 2017.

1.6 The seven nominees getting the highest numbers of votes were declared elected for appointment to IC by the President. These seven Members then elected among themselves two Members to be nominated respectively as Chairman and Deputy Chairman of IC. In accordance

³ Mr Nathan LAW Kwun-chung was one of the Members who jointly signed the censure motion. According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, Mr Nathan LAW Kwun-chung had been disqualified from assuming the office of a member of LegCo, and had vacated the same since 12 October 2016, and was not entitled to act as a member of LegCo.

⁴ The election procedure for IC is the same as the one endorsed by HC for 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 on 6 January 2017.

⁵ The nine valid nominees were Hon James TO Kun-sun, Hon Abraham SHEK Lai-him, Hon WONG Ting-kwong, Hon Charles Peter MOK, Hon Dennis KWOK Wing-hang, Hon Martin LIAO Cheung-kong, Hon Jimmy NG Wing-ka, Hon LUK Chung-hung and Mr YIU Chung-yim.

⁶ With the withdrawal of Hon Charles Peter MOK's nomination, there were eight valid nominations standing for the election of IC members at the HC meeting on 7 July 2017.

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with RoP 73A(1), the President appointed IC members on 7 July 2017 as follows:

Hon Abraham SHEK Lai-him (Chairman)
Hon Martin LIAO Cheung-kong (Deputy Chairman)
Hon James TO Kun-sun
Hon WONG Ting-kwong
Hon Jimmy NG Wing-ka
Hon LUK Chung-hung
Mr YIU Chung-yim

Filling of a vacancy in the membership of IC

1.7 On 14 July 2017, the Court of First Instance of the High Court ("the Court") in its judgment⁷ declared that Mr YIU Chung-yim had since 12 October 2016 been disqualified from assuming and entering on the office of a member of LegCo, or had vacated the same, and was not entitled to act or claim to act as such. A vacancy had therefore arisen in the membership of IC following the above judgment of the Court.⁸

1.8 At its meeting on 6 October 2017, HC endorsed the procedure for election of a Member for appointment by the President to fill the vacancy in the membership of IC (**Appendix 1.2**)⁹ and decided to hold the election at the meeting on 20 October 2017. As the only valid nominee by the deadline of 16 October 2017, Hon Dennis KWOK Wing-hang was declared elected on 20 October 2017 and was appointed as an IC member by the President in accordance with RoP 73A(1) on the same day to fill the vacancy.

Practice and Procedure

1.9 RoP 73A(13) provides that subject to RoP, the practice and procedure of an investigation committee shall be determined by the committee. Modelled on the 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 ("second

⁷ The legal proceedings in the Court which relate to Mr YIU Chung-yim are HCAL 226 of 2016 and HCMP 3378 of 2016.

⁸ Mr YIU Chung-yim did not file a notice of appeal against the Court's judgment by the deadline of 11 September 2017.

⁹ The election procedure for filling the vacancy in the membership of IC was largely modelled on the election procedure for IC endorsed by HC on 23 June 2017.

IC"),¹⁰ IC at its first meeting on 20 November 2017 endorsed its Practice and Procedure (**Appendix 1.3**)¹¹ for operational needs and in the interest of fair conduct of business. IC's Practice and Procedure is also underpinned by the following guiding principles which were also adhered to by the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai ("first IC") and the second IC when determining their practices and procedures:

- (a) IC should be fair, and seen to be fair, to the Member under investigation, to the Members making the allegations, and to the other parties involved in the investigation, and it should observe the principles of following due process in its investigation;
- (b) IC should adopt a fair and impartial attitude and act independently in obtaining, examining and analyzing evidence and information and it should not have any regard to political, party or personal considerations;
- (c) IC is accountable not only to LegCo but also to the public. Subject to RoP 73A(4) which provides that all meetings are to be held in private (except in circumstances specified in RoP 73A(5)), IC should be as transparent as possible in its operation; and
- (d) IC should work in a conscientious and efficient manner as public resources are involved.

Standard of proof

1.10 Given that RoP do not prescribe how IC should go about assessing evidence or what standard of proof IC should adopt in determining whether the facts as set out in the Schedule to the censure

¹⁰ The Practice and Procedure of the second IC was drawn up with reference to the practices and procedures of the first IC and select committees of the Council as well as the experience of overseas legislatures in the investigation of alleged misbehaviour of their members.

¹¹ IC's Practice and Procedure has been uploaded onto the LegCo website and provided to the Member under investigation and all witnesses to facilitate their understanding of the operation of IC and rights and obligations of the relevant parties.

motion are established, IC has considered the standards of proof applied in the following types of proceedings:

- (a) the standard of proof applied by courts in criminal proceedings – *proof beyond reasonable doubt*;
- (b) the standard of proof applied by courts in civil proceedings – *proof on a balance of probabilities*; and
- (c) the standard of proof adopted in disciplinary proceedings – *the more serious the allegation or criticism, the more compelling the evidence is required to establish the allegation or criticism.*¹²

Considering that the alleged misbehaviour of the Member under investigation directly relates to the Member's discharge of duties in his capacity as a LegCo Member, and the severity of the possible sanction involved, i.e. disqualification from the office, IC has decided that the standard of proof as applied in disciplinary proceedings be adopted. IC notes that the first and the second ICs adopted the same standard of proof.¹³

Weighting of evidence

1.11 Noting that the strict rules of evidence do not apply to IC's proceedings, IC has decided to assess each item of evidence to decide how much weight, if any, is to be given to it. In evaluating the weight of evidence, IC has taken into account the following factors:

- (a) *Reliability of the evidence* – articles and reports in newspapers, magazines and social media contain hearsay evidence from unknown or unverifiable sources. Care must be taken in relying on such materials whose veracity cannot be confirmed.

¹² In disciplinary proceedings, the strength of the evidence needed to establish a preponderance of probability depends on the seriousness and inherent improbability of the allegation to be proved: *A Solicitor v The Law Society of Hong Kong* (2008) 11 HKCFAR 117 at 167D.

¹³ See paragraph 1.59 of the first IC's report and paragraph 1.14 of the second IC's report.

- (b) *Directness of evidence* – whether the evidence given by a witness is direct first-hand evidence as opposed to hearsay evidence.
- (c) *Credibility of the witness* – whether the witness testifies in person before IC on oath (so that IC can observe his/her demeanour while giving evidence) or whether the witness only produces an unsworn written statement.
- (d) *Possible bias of witnesses* – it is possible for a party (or a representative or member of an organization) whose interests or reputation would be affected by IC's investigation to make self-serving statements to protect his/her own interests (or the interests of his/her organization). IC would also need to consider whether ostensibly "neutral" witnesses may possibly be biased in the circumstances of the case.

Investigation process

1.12 IC has conducted its investigation work in the following stages:

- (a) *Stage 1* to carry out relevant preparatory work including endorsing IC's Practice and Procedure; deciding on the major areas of investigation; inviting the Members who initiated the censure motion to provide information in support of the particulars set out in the Schedule to the censure motion; gathering information which may be relevant to the censure motion; and deciding on whether to conduct hearings for the purpose of establishing the facts stated in the censure motion; if so, identifying the witnesses to be invited to attend hearings to give evidence;
- (b) *Stage 2* to conduct hearings for obtaining evidence from witnesses and deliberate on the evidence so obtained; and
- (c) *Stage 3* to deliberate on the contents of the draft report and finalize the Report of IC in accordance with RoP 73A(10).

Identifying potential witnesses to attend hearings

1.13 Noting the information and responses provided to IC under paragraphs 2 and 3 of the Practice and Procedure, IC decided to conduct closed hearings for the purpose of establishing the facts stated in the Schedule to the censure motion in accordance with paragraphs 5 and 6 of the Practice and Procedure. After thorough consideration, IC decided to invite a total of 16 potential witnesses to attend closed hearings to give evidence (**Appendix 1.4**), comprising the following three groups:

- (a) the Member under investigation and the three Members who initiated the censure motion;
- (b) nine members of the Select Committee to Inquire into Matters about the Agreement between Mr LEUNG Chun-ying and the Australian firm UGL Limited ("Select Committee") present at the open meeting of the Select Committee held on 25 April 2017 and the Clerk to the Select Committee; and
- (c) the subject former Chief Executive of the Hong Kong Special Administrative Region ("HKSAR") and former Special Assistant in the Chief Executive's Office.

Witnesses attending hearings

1.14 Of the 16 invited potential witnesses, six of them (as listed below) ("six witnesses") accepted IC's invitations to be witnesses and agreed to attend the closed hearings to give evidence before IC:

Members initiating the censure motion

- (a) Hon Claudia MO (i.e. mover of the censure motion)
- (b) Hon CHU Hoi-dick (i.e. Member who jointly signed the censure motion)

Members of the Select Committee present at the open meeting on 25 April 2017

- (c) Hon Kenneth LEUNG
- (d) Hon Alvin YEUNG
- (e) Hon Andrew WAN Siu-kin
- (f) Hon LAM Cheuk-ting

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The above witnesses (except Hon CHU Hoi-dick) also provided written statements (**Appendices 1.5 to 1.9**)¹⁴ (Chinese version only for Appendices 1.5 and 1.7; English version only for Appendices 1.6, 1.8 and 1.9) for IC's consideration.

Mr LEUNG Chun-ying's response to IC's invitation to be a witness

1.15 IC sent a letter dated 9 February 2018 to Mr LEUNG Chun-ying ("Mr LEUNG") (i.e. the subject former Chief Executive) inviting him to be a witness and furnish IC with a written statement to assist IC in establishing the facts stated in the censure motion. IC also took the opportunity to seek Mr LEUNG's confirmation on whether the transcripts of his meetings with the media on 15, 16 and 17 May 2017 (**Appendices 1.10 to 1.12**) (Chinese version only for Appendices 1.11 and 1.12) published by the Information Services Department ("ISD") contained a complete record of his remarks in relation to the subject of IC's investigation made on the relevant occasions. While declining to be a witness in his reply dated 28 February 2018 (**Annex XV** to Appendix 1.14), Mr LEUNG had not replied to IC's request for his views on the completeness of the aforesaid transcripts.

1.16 While not accepting IC's invitation to be a witness, the Clerk to the Select Committee provided a written statement for IC's consideration (**Appendix 1.13**) (English version only). A summary of the replies from the 16 potential witnesses to IC's invitations is set out in **Appendix 1.14**.

1.17 IC conducted two closed hearings for examination of the six witnesses on 26 February and 29 April 2019. Hon Claudia MO, Hon CHU Hoi-dick, Hon Kenneth LEUNG, Hon Alvin YEUNG and Hon Andrew WAN Siu-kin attended the first closed hearing, while Hon LAM Cheuk-ting attended the first and second closed hearings.¹⁵

¹⁴ IC has redacted the parts of written statements which IC considers contain information relating to closed-door deliberations of the Select Committee. See paragraphs 1.19 to 1.22 and 3.15 of this Report for details.

¹⁵ Hon Claudia MO and Hon CHU Hoi-dick declined IC's invitation to attend the second closed hearing (**Appendices 1.15 and 1.16**).

1.18 The six witnesses attending the closed hearings had decided to be examined on oath,¹⁶ which was administered by the Chairman of IC under section 11 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) before the examination started. The six witnesses also confirmed with IC that they had no accompanying persons to attend the closed hearings.¹⁷ To facilitate witnesses' understanding of matters relating to the conduct of closed hearings, the six witnesses were provided with a summary of such matters as referred to in IC's Practice and Procedure for sight before attending the closed hearings (**Appendix 1.17**).

Confidentiality obligations of witnesses who are members of the Select Committee and possible duty of confidence owed by IC

1.19 Of the six witnesses, four (i.e. Hon Kenneth LEUNG, Hon Alvin YEUNG, Hon Andrew WAN Siu-kin and Hon LAM Cheuk-ting) are members of the Select Committee. IC notes that under paragraph 26 of the Practice and Procedure of the Select Committee, members of the Select Committee should not disclose any information about the internal deliberations held or documents considered at its closed meetings. IC is also aware of the Select Committee's decision, as announced by Hon Paul TSE Wai-chun, Chairman of the Select Committee, at a media session on 12 April 2018, that the confidentiality in respect of the deliberations made at the Select Committee's closed meetings would not be waived for individual members of the Select Committee, who accepted IC's invitation to be witnesses, to provide IC with any information relating to such closed-door deliberations.

1.20 IC has considered issues relating to the receipt and use of confidential information divulged by witnesses in their written statements provided to IC and at IC's closed hearings. IC notes that for a third party (such as IC) to be held liable to the confider (such as the Select Committee) in equity for a breach of confidence, there must be awareness of the fact that the information was confidential or willingness to turn a

¹⁶ In accordance with paragraph 17(b) of IC's Practice and Procedure, Hon Claudia MO, Hon CHU Hoi-dick, Hon Kenneth LEUNG, Hon Alvin YEUNG, and Hon Andrew WAN Siu-kin decided to make affirmation, while Hon LAM Cheuk-ting decided to take oath.

¹⁷ In accordance with paragraph 14 of IC's Practice and Procedure, the Member under investigation and witnesses appearing before IC may be accompanied by a maximum of three persons, including no more than one legal adviser.

proverbial blind eye.¹⁸ IC, however, notes that not every piece of information relating to the discussions at a meeting of the Select Committee would necessarily be "confidential information". For example, discussions of the Select Committee at its open meeting held on 25 April 2017, which is available for public viewing via webcast, would not be confidential information. Nor would information already in the public domain or widely reported in the media, albeit the subject of discussion at a closed meeting of the Select Committee, be subject to any duty of confidentiality.

1.21 Notwithstanding the above, IC is mindful that where the supply of confidential information to a third party (e.g. IC) involves the supplier (e.g. a witness) acting in a breach of a contractual duty of confidence, the third party may be liable for the tort of inducement of breach of contract if he actively induces, persuades or entices¹⁹ the supplier to disclose information, either:

- (a) with knowledge that the supplier is acting in breach of contract; or
- (b) deliberately shutting his eyes to any suspicion that the supplier may be under a contractual duty of confidence.²⁰

IC understands that in other words, it may be held liable for a breach of confidence or for inducing a breach of contract if IC knows (or ignores a justified suspicion) that the evidence given by a witness contains confidential information divulged by him/her in breach of his/her duty of confidentiality to the Select Committee, but nonetheless actively induces, persuades or entices him/her to disclose such information to IC.

1.22 To minimize IC's potential liability for inducing a breach of contract, and to avoid giving the impression that IC in any way induces, persuades or entices a witness to disclose confidential information, IC reminded the witnesses concerned (i.e. Hon Kenneth LEUNG, Hon Alvin YEUNG, Hon Andrew WAN Siu-kin and Hon LAM Cheuk-ting) in writing on 7 January 2019 that they were not required to disclose to IC any information that might be subject to any duty of confidentiality, and

¹⁸ Toulson & Phipps (2012) *Confidentiality*, 3rd Edition 3-071. *Clerk & Lindsell on Torts*, 22nd Edition (2018), 27-17.

¹⁹ Srivastava et al, *The Law of Tort in Hong Kong*, 3rd Edition (2014) 27.19 and 27.24.

²⁰ Toulson & Phipps 3-072.

that they should seek independent legal advice before disclosing any such information to IC. IC also reminded IC members to refrain from asking the witness any questions about the contents of any discussions, or of any documents tabled or examined, during a closed meeting of the Select Committee. In preparing this Report, IC is cognizant that insofar as IC wishes to refer to, or incorporate in its Report, any confidential information about the closed meetings of the Select Committee on the basis that such information is relevant to IC's investigations and disclosure of it may prejudice the conduct of the Select Committee's investigations, it may be necessary for IC to obtain the Select Committee's specific consent unless such information is already disclosed in the Select Committee's report or minutes laid on the table of the Council pursuant to RoP 79(10) or already in the public domain (i.e. the information is so generally accessible, that it cannot be regarded as confidential in all the circumstances).

Hon Holden CHOW Ho-ding's responses to IC's invitations to closed hearings and IC's requests relevant to the investigation

1.23 To ensure that the investigation procedures are fair and seen to be fair to all the parties involved, IC has strictly observed due process throughout the investigation. During the course of collation of information relevant to the censure motion in accordance with paragraphs 2(b) and 3 of the Practice and Procedure, IC sent a letter to Mr CHOW dated 8 December 2017 ("first letter") (**Appendix 1.18**) (English version only) inviting him to: (a) respond in writing to the censure motion; (b) provide any information which he considered might assist IC in carrying out its work; and (c) confirm the completeness of the information contained in the transcripts of his meetings with the media on 16 and 19 May 2017²¹ (**Appendices 1.19 and 1.20**) (Chinese version only). Pending the reply by Mr CHOW to the matters as referred to in the first letter, IC sent two separate reminders to Mr CHOW on 20 March and 17 May 2018 respectively (**Appendices 1.21 and 1.22**) (English version only) requesting him to respond to the first letter. Mr CHOW sent his reply to IC on 28 May 2018 stating that he would not at that stage provide any written response to the censure motion or any other information to IC, nor would he comment on the transcripts (**Appendix 1.23**) (Chinese version only).

²¹ The two transcripts were prepared by the LegCo Secretariat based on the relevant video footages available on the website of i-Cable News.

1.24 IC also wrote to Mr CHOW on 4 July 2018 and 7 January 2019 respectively to invite him to attend a closed hearing to give evidence and provide a written statement to IC. Mr CHOW replied to IC on 25 July 2018 and 14 January 2019 (**Annexes IV and V** to Appendix 1.14) respectively that he would not attend the closed hearing nor would he provide a written statement to IC. Also, he did not elect for the hearings to be held in public in accordance with RoP 73A(5)(a) (**Appendix 1.24**).

1.25 In accordance with paragraph 15 of IC's Practice and Procedure, IC informed Mr CHOW in writing on 15 November 2018 of the witnesses whom IC had invited to attend closed hearings to give evidence²² and forwarded the written statements submitted by four witnesses (i.e. Hon Kenneth LEUNG, Hon Alvin YEUNG, Hon Andrew WAN Siu-kin and Hon LAM Cheuk-ting) to him for written response. Mr CHOW was also invited to propose additional witnesses for IC's consideration.²³ The written statement submitted by Hon Claudia MO dated 14 January 2019 was also forwarded to Mr CHOW on 17 January 2019 for written response. Mr CHOW replied to IC on 28 November 2018 and 24 January 2019 that he did not have additional witness(es) to propose for IC's consideration and he would not respond to the written statements submitted by the witnesses concerned (**Appendices 1.25 and 1.26**).

1.26 IC also decided by voting to accede to Mr CHOW's request made pursuant to paragraph 23 of the Practice and Procedure for provision of the verbatim transcripts of its first and second closed hearings held on 26 February and 29 April 2019 respectively containing the evidence given by the six witnesses (**Appendix 1.27**).²⁴ In this regard, Mr CHOW signed a confidentiality undertaking and returned the said verbatim transcripts to IC before the specified date.

²² The witnesses were Hon Claudia MO, Hon CHAN Chi-chuen, Hon CHU Hoi-dick, Hon Kenneth LEUNG, Hon Alvin YEUNG, Hon Andrew WAN Siu-kin and Hon LAM Cheuk-ting. Hon CHAN Chi-chuen subsequently informed IC on 4 January 2019 that he decided not to attend the hearing (**Annex II** to Appendix 1.14).

²³ Prior to the letter of 15 November 2018, IC had, vide its letter dated 4 July 2018, invited Mr CHOW to propose witness(es) for IC's consideration. IC received no reply from Mr CHOW in that regard by the deadline of 25 July 2018.

²⁴ According to paragraph 38 of IC's Practice and Procedure, the Chairman of IC put to vote at the meeting on 11 May 2020 Mr CHOW's request for provision of the verbatim transcripts of IC's closed hearings held on 26 February and 29 April 2019. Four members voted for and two members voted against Mr CHOW's request. According to RoP 73A(9) and paragraph 40 of IC's Practice and Procedure, the Chairman of IC did not vote on Mr CHOW's request.

Meetings and hearings

1.27 As Mr CHOW did not elect for the hearings to be held in public pursuant to RoP 73A(5)(a), all hearings of IC were held in private in accordance with RoP 73A(4).²⁵

1.28 IC held a total of eight closed meetings, including two closed hearings during the course of its investigation. A schedule of the closed hearings is in **Appendix 1.28**. To keep the public apprised of IC's work progress, the Chairman of IC, with IC's consent, responded in general terms to enquiries from the media on the progress of the investigation on some occasions after IC's meetings.

Draft findings

1.29 Pursuant to paragraph 25 of the Practice and Procedure, those parts of the Report of IC which set out the evidence, on the basis of which IC has established the facts stated in the Schedule to the censure motion, were forwarded to Mr CHOW and the witnesses concerned for comments. Mr CHOW and the witnesses concerned had respectively replied to IC that they had no comment on the relevant parts of evidence (**Appendix 1.29**).

Report of IC

1.30 As stipulated under RoP 73A(12), IC shall, as soon as it has completed investigation of the matter referred to it, report to the Council thereon and IC shall be dissolved accordingly.

²⁵ Pursuant to RoP 73A(4) and paragraph 6 of IC's Practice and Procedure, all meetings of IC, including hearings at which the Member under investigation or a witness or witnesses appear, shall be held in private. Yet, the Member under investigation may, according to RoP 73A(5)(a) and paragraph 7 of IC's Practice and Procedure, elect for the hearings to be held in public, and such an 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 an IC member, IC on sufficient reason decides otherwise in accordance with RoP 73A(5)(b) and paragraph 8 of IC's Practice and Procedure.

Consideration of the Chairman's and member's reports

1.31 Under RoP 73A(10)(a), the Chairman of IC and Hon Dennis KWOK Wing-hang had brought their respective reports for IC's consideration. In accordance with the procedure specified in RoP 73A(10)(a), IC at its meeting on 23 June 2020 considered the two reports in order until one was accepted as a basis for discussion, beginning with the Chairman's report. Since the question proposed by the Chairman that "the Chairman's report be read a second time paragraph by paragraph" was agreed to, no further question was proposed on Mr KWOK's report.

1.32 By a 3:1 majority,²⁶ the Chairman's report was adopted as IC's report to the Council under RoP 73A(10)(b). This Report of IC comprises the following chapters:

- (a) *Chapter 1* introduces the background of the censure motion and sets out major issues relating to the establishment and operation of IC;
- (b) *Chapter 2* elaborates on the constitutional and statutory requirements relating to the censure motion, and provides reference information on overseas parliamentary rules and practices relating to Members' communications with witnesses and the act of deliberately misleading the House or a committee;
- (c) *Chapter 3* presents the evidence and information relevant to the particulars of Mr CHOW's alleged misbehaviour and breach of oath as stated in the Schedule to the censure motion; and
- (d) *Chapter 4* reports on IC's consideration of whether the facts as stated in the Schedule to the censure motion can be established and sets out IC's views on whether or not the facts as established constitute grounds for the censure of Mr CHOW.

²⁶ According to RoP 73A(9) and paragraph 40 of IC's Practice and Procedure, the Chairman of IC did not vote on the question put under RoP 73A(10)(b). See the minutes of meeting of IC which record the proceedings on consideration of its Report as set out in Appendix 1.30 to this Report for details.

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IC has completed its investigation and submits this Report to the Council pursuant to RoP 73A(12).

1.33 This Report also includes in its Appendices the relevant parties' replies to IC, the written statements provided by witnesses, relevant documents considered, minutes of evidence in the form of verbatim transcripts in the original language used at the hearings, and the minutes of meeting of IC which record the proceedings on consideration of this Report (**Appendix 1.30**). This Report shall be made available for public viewing on the LegCo website at www.legco.gov.hk upon its tabling in LegCo.