

Executive Summary

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 Law ("BL") ("censure motion"). The allegations against Mr CHOW as particularized in the censure motion (paragraph 1.1 of this Report refers) include Mr CHOW's attempt to obstruct and pervert the inquiry of the Select Committee to Inquire into Matters about the Agreement between Mr LEUNG Chun-ying and the Australian firm UGL Limited ("Select Committee") by accepting the request of Mr LEUNG Chun-ying ("Mr LEUNG"), the former Chief Executive of the Hong Kong Special Administrative Region ("HKSAR"), to amend the Proposed major areas of study of the Select Committee. As alleged in the censure motion, the proposed amendments submitted by Mr CHOW for discussion at the open meeting of the Select Committee on 25 April 2017 ("Proposed Amendments") (Appendix 2.1 to this Report) were in fact made by Mr LEUNG, and Mr CHOW intentionally and repeatedly made false representations at the said Select Committee meeting over the origin of the Proposed Amendments with the intention to mislead the Select Committee into believing that those amendments were genuinely raised by himself. It is also alleged in the censure motion that Mr CHOW's behaviours amount to contempt of the Legislative Council ("LegCo") as well as "breach of oath" and "misbehaviour" under BL.
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 LegCo referred the matter stated in the censure motion to the Investigation Committee ("IC").
3. 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. Between 20 November 2017 and 23 June 2020, IC held a total of eight closed meetings, including two closed hearings, for its investigation work and deliberations on its findings. Upon completion of its investigation, IC has produced this Report.

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4. This Report consists of four Chapters. Chapter 1 sets out major issues relating to the establishment and operation of IC, including the standard of proof IC has adopted to establish the facts as alleged. Chapters 2 and 3 set out the constitutional and statutory requirements relevant to the censure motion, in particular the meaning of "breach of oath" and "misbehaviour"; overseas parliamentary rules and practices relating to Members' communications with witnesses appearing in parliamentary inquiries and the act of deliberately misleading the House or a committee; and the evidence obtained and information gathered by IC according to its Practice and Procedure in relation to the particulars of the censure motion, for the purpose of discharging IC's responsibility under RoP 73A(2). Chapter 4 reports on IC's consideration of whether the alleged facts stated in 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.

5. Based on the allegations particularized in the censure motion, IC has identified four facts to be established, namely the First, Second, Third and Fourth Facts as delineated in paragraph 4.2 of this Report, and has considered whether the allegations under each of these alleged Facts can be established having regard to the relevant evidence and information set out in Chapters 2 and 3 and by applying the standard of proof adopted by IC as discussed in Chapter 1, i.e. the more serious the allegation or criticism, the more compelling the evidence is required to establish the allegation or criticism.

Facts which are established

6. After consideration, IC is of the view that **the following facts are established:**

- (a) Mr CHOW had discussed with Mr LEUNG the Proposed major areas of study of the Select Committee; accepted Mr LEUNG's request to amend the major areas of study; and as a result submitted the Proposed Amendments to the Select Committee for discussion at its meeting on 25 April 2017 (Part of the allegations under the First Fact refers); and
- (b) the Proposed Amendments were made by Mr LEUNG (Part of the allegations under the Third Fact refers).

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Alleged facts which are not established

7. In the light of the available evidence and information, and the requisite standard of proof, IC is of the view that **the following alleged facts are not established:**

- (a) Mr CHOW's relevant behaviours constitute a failure on his part to fulfil the obligation of a member of the Select Committee; and that the incident involves role conflicts and/or even conflicts of interest, and/or has led to suspicion of transfers of benefits (Part of the allegations under the First Fact refers);
- (b) the Proposed Amendments would, if adopted by the Select Committee, obstruct and pervert the course of the inquiry proceedings of the Select Committee and create results advantageous to Mr LEUNG; and Mr CHOW has conspired with and assisted Mr LEUNG to improperly involve in and interfere with the investigation, obstruct the Select Committee in the proper discharge of its duty, violated procedural justice, and damaged the independence, impartiality and legitimacy of the investigation of the Select Committee (the allegations under the Second Fact refer);
- (c) Mr CHOW intentionally and repeatedly made false representations in relation to the origin of the Proposed Amendments at the meeting of the Select Committee on 25 April 2017 in order to mislead the Select Committee and the public into believing that the Proposed Amendments were genuinely raised by Mr CHOW himself; and Mr CHOW refused to admit the truth until it was revealed; and the above behaviours of Mr CHOW fail to meet the level of credibility, integrity and dutifulness of a LegCo Member (Part of the allegations under the Third Fact refers); and
- (d) Mr CHOW's behaviours as set out in the First, Second and Third Facts have damaged the dignity, autonomy and independence of LegCo; and such damage amounts to contempt of the functions and powers of LegCo, has brought shame on LegCo and seriously undermined the public's confidence in LegCo and LegCo Members (the allegations under the Fourth Fact refer).

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Allegations in the censure motion about "breach of oath" and "misbehaviour"

8. In order to give views on whether the First and Third partially-established Facts as mentioned in paragraph 6 (a) and (b) above constitute grounds for the censure of Mr CHOW in accordance with RoP 73A(2), IC has considered whether the following two allegations made in the censure motion are substantiated, i.e. whether Mr CHOW's relevant behaviours:

- (a) are in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016 under BL 104 and the Oaths and Declarations Ordinance (Cap. 11) that he will "serve [HKSAR] conscientiously, dutifully, in full accordance with the law, honestly and with integrity"; and
- (b) constitute "misbehaviour" under BL 79(7).

First allegation - whether Mr CHOW's behaviours are in breach of the LegCo Oath

9. On the question of whether Mr CHOW's behaviours as set out in the First and Third partially-established Facts are in breach of the LegCo Oath taken by him at the Council meeting of 12 October 2016, IC notes that the term "breach of oath" is not defined in BL, RoP or Cap. 11. IC understands that the LegCo Oath must be taken solemnly and sincerely, and that oath-taking under BL 104 is legally binding, and an oath taker shall bear legal responsibility if he/she makes a false oath, or, after taking the oath, engages in conduct in breach of the oath.

10. IC considers that it is likely that Mr CHOW's relevant behaviours have led the public to cast doubt on his ability as a member of the Select Committee to make independent and objective judgment as a result of his communications with the subject of inquiry, leaving the public with a negative perception of the incident. Yet, the behaviours of Mr CHOW as established by IC have no or no meaningful impact one way or another on his promise to uphold BL of HKSAR of the People's Republic of China, or to bear allegiance to HKSAR or to serve HKSAR conscientiously, dutifully, in full accordance with the law, honestly and with integrity. Quite apart from this, IC also bears in mind that the Proposed Amendments, which according to Mr CHOW also contained his own views and were considered appropriate by him as a whole, were proposals to amend an open document and their adoption or otherwise

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was for the Select Committee to decide after deliberations at open meetings. IC does not consider that Mr CHOW's behaviours constitute a failure or neglect by him to keep his promise made under oath in accordance with BL 104 and Cap. 11. As such, IC is not satisfied that the first allegation is substantiated.

Second allegation - whether Mr CHOW's behaviours constitute "misbehaviour" under BL 79(7)

11. IC notes that in the absence of the definition of the word "misbehaviour" in BL or RoP, IC needs to form its view on whether Mr CHOW's relevant behaviours as established by IC amount to "misbehaviour" under BL 79(7).

12. IC shares the view of the first IC (footnote 2 of this Report refers) that the sanction of disqualification should only apply when a Member was found to have committed extremely serious misconduct, and that a Member's misconduct should have seriously affected the reputation of LegCo as a whole. IC also takes the view that bringing serious discredit upon LegCo and acting contrary to the generally assumed standard of conduct expected of a LegCo Member as described in the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" ("Advisory Guidelines") should be elements in considering whether a particular conduct should constitute a Member's "misbehaviour" under BL 79(7). IC also bears in mind that since the current censure mechanism under BL 79(7) does not provide any alternative option of penalty for Member's misbehaviour other than disqualification, IC considers it necessary to exercise the highest level of prudence in forming its view on the second allegation.

13. IC considers that Mr CHOW's relevant behaviours as established by IC have impacted on the public perception of Members to a certain extent. That said, given that only part of the allegations under the First and Third Facts have been established by IC, IC considers that there is no sufficient basis to conclude that Mr CHOW's behaviours are serious enough to affect the reputation of LegCo as a whole. Nor is IC satisfied based on its findings that Mr CHOW's behaviours have brought serious discredit upon LegCo or that he acted contrary to the generally assumed standard of conduct expected of a LegCo Member as described in the Advisory Guidelines. As such, IC considers that Mr CHOW's behaviours do not warrant a finding of "misbehaviour" under BL 79(7), and is not satisfied that the second allegation is substantiated.

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Whether the facts as established constitute grounds for the censure of
Mr CHOW

14. IC is not satisfied that Mr CHOW's behaviours as set out in the First and Third partially-established Facts constitute "misbehaviour" and/or "breach of oath" under BL 79(7). IC has come to the conclusion that the facts as established are not sufficient to constitute grounds for the censure of Mr CHOW.