

## Practice and Procedure of the Select Committee

The procedure 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") is governed by the Rules of Procedure ("RoP") of the Legislative Council ("LegCo") and the relevant provisions of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) insofar as they are applicable. By reason of operational needs and in the interest of fair conduct of business, the Select Committee has determined and established its own set of practice and procedure, as detailed in the ensuing paragraphs. The practice and procedure include those not expressly provided for in RoP and Cap. 382.

2. The terms of reference of the Select Committee are as follows:

"The terms of reference of the Select Committee, which reflect the substance of the petition jointly presented by Hon Kenneth LEUNG and Hon Andrew WAN at the Council meeting of 2 November 2016 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure, are as follows:

To inquire into the following matters regarding Mr LEUNG Chun-ying's signing of an agreement with the Australian firm UGL Limited in 2011 ("UGL Agreement") and his receipt of payments amounting to £4 million from UGL Limited ("Payments") in connection with the UGL Agreement after assuming the office of Chief Executive: (i) whether Mr LEUNG had complied with the declaration requirements under Article 47 of the Basic Law and the system of declaration of interests by Members of the Executive Council, (ii) whether the UGL Agreement had given rise to any conflict of interests on the part of Mr LEUNG as the Chief Executive, and (iii) whether the Payments were taxable under the laws of Hong Kong."

### Principles

3. In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and committees which carried out inquiries. The Select Committee adopts the following principles:

- (a) the practice and procedure should be fair and be seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be a high level of transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's terms of reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted in a proper, fair and efficient manner; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

## **Practice and procedure**

### Term of office

4. In accordance with RoP 78(4) and (5), the Select Committee shall be dissolved upon reporting to the Council or at the end of the Sixth LegCo. If the Select Committee is of the opinion that it will not be able to complete consideration of the matter before the end of the Sixth LegCo, it shall so report to the Council.

### Chairmanship

5. All meetings and hearings of the Select Committee are chaired by the Chairman or, in his absence, by the Deputy Chairman. In accordance with RoP 79(3), in the event of the temporary absence of the Chairman and Deputy Chairman, the Select Committee may elect a chairman to act during such absence.

### Quorum

6. RoP 78(3) provides that the quorum of a select committee shall be one third of the members excluding the chairman, a fraction of a whole number being disregarded. If a member of the Select Committee draws to the attention of the Chairman on the absence of a quorum as and when there is such absence,

the Chairman shall direct the members to be summoned. If after 15 minutes have expired, a quorum is not present, the Chairman shall then close the meeting or hearing.

### Voting

7. Matters for the decision of the Select Committee shall be decided by a majority of the members present and voting, which is done by a show of hands. Abstentions are not counted for the purpose of determining the result of the vote.

8. In accordance with RoP 79(5), 79(6) and 79A(1), divisions in the Select Committee shall be taken by the Clerk who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he/she shall give a casting vote, which shall not be exercised in such a way as to produce a majority vote in favour of the question put.

### Obtaining evidence

9. The Select Committee may invite any person or body to attend a hearing to give evidence orally. The Select Committee may also request any person or body to give evidence in writing or any person or body to produce specified paper(s), book(s), record(s) or document(s) to the Select Committee.

10. Any person attending before the Select Committee to give evidence or to produce specified paper(s), book(s), record(s) or document(s) before the Select Committee does not enjoy the privileges given to witnesses under section 14(1) of Cap. 382.

### Conduct of meetings

#### *General principles*

11. In accordance with RoP 79(1), the deliberations of the Select Committee shall be confined to the matter or matters referred to it by the Council. The Select Committee shall focus its work on the areas of study in SC(2)(UA) Paper No.: L3, which may be subsequently amended if necessary, having regard to the terms of reference set out in paragraph 2 above.

12. A schedule of meetings for the Select Committee is usually agreed beforehand, but the Chairman has the authority to determine the agenda, and to vary the schedule by changing the date, time and venue of meetings, which

includes venues outside of the LegCo Complex. Members of the Select Committee will be notified by the Clerk of the agenda or any variations determined by the Chairman.

13. In accordance with RoP 79(2), meetings of the Select Committee shall be held in public unless the Chairman otherwise orders in accordance with any decision of the Select Committee.

*Hearings for the examination of witnesses*

14. Examination of witnesses will normally be conducted in public. Exceptions to open hearings may be made as decided by the Select Committee, based on the circumstances of each occasion.

15. During open hearings, members should only ask questions for the purpose of ascertaining facts relevant to, and within the scope of, the Select Committee's inquiry. Members should not make comments or statements during these hearings.

16. Open hearings are generally conducted in the following manner:

- (a) at the beginning of each open hearing, the Chairman will remind members of the public and the media that dissemination or disclosure of the evidence given at the hearing outside of the proceedings of the Select Committee is not protected under Cap. 382. Members of the public and the media should be reminded that they may obtain legal advice as to their legal responsibilities;
- (b) before the examination of a witness, the Chairman will remind the witness as appropriate that:
  - (i) the witness does not enjoy the privileges given to witnesses under section 14(1) of Cap. 382; and
  - (ii) any person appearing before the Select Committee who intentionally gives a false answer to any question material to the subject of inquiry during the course of any examination or presents to the Select Committee any false, untrue, fabricated or falsified document with intent to deceive the Select Committee, commits an offence under section 18 of Cap. 382;
- (c) facts are established by witnesses' answers to questions and other evidence given at hearings. Usually, the Chairman will first make

an introduction and then ask the witness an appropriate opening question, giving him/her an opportunity to state his/her case;

- (d) members wishing to ask questions should so indicate by a show of hands and they will ask the questions when called upon by the Chairman. The Chairman will ensure, as far as possible, that members have equal opportunities to ask questions and that the hearing is conducted in a structured and fair manner;
- (e) the Chairman will decide whether a question or a piece of evidence is relevant to, and within the scope of, the Select Committee's inquiry, as set out in its terms of reference;
- (f) short follow-up questions may be allowed for the purpose of seeking further answers to the original question or clarifications to the answers given. The Chairman has the discretion to decide whether a question is a follow-up question and whether it should be allowed or otherwise; and
- (g) the privileges provided in Cap. 382 are available to Members only within the context of the hearings. All Members, including non-Select Committee Members, should refrain from making comments relating to the hearings outside of the proceedings of the Select Committee. Evidence given in closed hearings should not be made public by any members.

17. Subject to the Select Committee's decision, witnesses attending before the Select Committee may be allowed to be accompanied by other persons, including legal adviser(s), to assist the witnesses concerned. However, such accompanying person(s) may not address the Select Committee.

*Measures taken to avoid possible prejudice to any party'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 Select Committee by virtue of RoP 43.

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

- (a) where the pending legal proceedings is a criminal matter, the Department of Justice will be asked to keep the Select Committee informed of the progress of the pending criminal proceedings concerned;
- (b) the Chairman would explain to each witness that the function of the Select Committee 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 case;
- (c) where it is considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, the Select Committee may determine to hold closed hearings to obtain evidence from a witness;
- (d) where the Select Committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and observations of the Select Committee and request for comment on whether the contents of the draft might prejudice the pending criminal proceedings; and
- (e) the report of the Select Committee should not contain any material which might prejudice a pending 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) above would include comment on, inquiry into and the making of findings on such matters;
- (c) "matters awaiting adjudication" referred to in (a) above 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) above might arise from an element of explicit or implicit prejudgment in the proceedings of the Select Committee 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.

*Handling of requests for classifying documents as confidential*

21. If requests are made by witnesses for classifying certain information or documents as confidential, the Select Committee shall consider carefully the circumstances of each case and the justifications provided.

*Handling of information contained in classified documents or obtained at closed hearings*

22. In fairness to persons who have provided classified documents to the Select Committee, if information contained in such documents is to be used at a public hearing, the source of the information will only be disclosed if it is necessary to do justice to the witness or to enable him to understand a question.

23. If closed hearings are held to obtain evidence from a witness who is a party to pending legal proceedings, information obtained in these closed hearings should be used with care, and the identity of the witness who has provided the information should not be disclosed if it is so decided by the Select Committee.

24. Where the Select Committee is inclined to refer to information obtained in closed hearings in the Select Committee's report, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be carefully considered by the Select Committee before its report is finalized.

25. Any information obtained by way of oral evidence or in the form of documents provided at closed hearings must not be disclosed.

*Internal deliberations*

26. Subject to RoP 79(2), the Select Committee may hold closed meetings to deliberate on procedural matters, progress of its work, the logistical arrangements for hearings, the evidence obtained, the draft report of the Select Committee and any other matters relevant to the Select Committee's work.

Members including the Chairman and the Deputy Chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. The Select Committee Chairman or the Deputy Chairman are the only persons authorized to handle media enquiries.

#### Handling of documents

27. All documents produced to the Select Committee will be given a document number and will be paginated. Each member of the Select Committee will be given a copy of the documents produced to the Select Committee, unless advised otherwise with the consent of the Select Committee. Where a document is classified as confidential, members should not make copy of it, in whole or in part.

#### Disclosure of interests

28. RoP 83A and 84 relating to Members' pecuniary interest shall apply to the proceedings of the Select Committee.

29. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, he/she should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature of interests so declared by individual members.

#### Participation of Non-Select Committee Members

30. Non-Select Committee Members may attend meetings or hearings held in public but may not speak at these meetings or hearings. If a non-Select Committee Member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not the Chairman will ask the questions.

31. Non-Select Committee Members are not allowed to be present at closed meetings or closed hearings of the Select Committee.

#### Minutes of proceedings of the Select Committee

32. All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of a fee.



33. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each hearing at which witnesses are examined. Relevant parts of the draft transcript are forwarded to the person or body giving evidence for sight and comment, if any, before being incorporated into the minutes of evidence, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The procedures in the **Annex**, which apply to witnesses, shall also apply to persons or bodies, other than the witnesses giving evidence, requesting copies of transcripts of evidence. Any person may obtain a copy of the finalized form of transcript for hearings held in public upon the payment of a fee.

34. For closed hearings, no transcripts will be provided to any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and comment. The undertaking they are required to sign includes an additional requirement that any part of the draft transcript in question must not be divulged.

35. For meetings not attended by any non-LegCo Members, the minutes of meetings are normally presented in a condensed form, recording the Select Committee's decisions, follow-up actions required, procedural matters and declarations of interests made by members. Verbatim record of such meetings may be prepared on the direction of the Select Committee.

#### Report of the Select Committee

36. The draft report of the Select Committee is considered by the Select Committee at closed meetings. In accordance with RoP 79(9), the minutes of proceedings of the Select Committee 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 Select Committee, showing the names of members voting in the division or declining to vote.

37. In order to ensure that the procedure is fair and is seen to be fair in particular to people whose interests or reputations may be affected by its proceedings, any party, person or organization against whom adverse comments are intended to be made in the Select Committee's report will be given an opportunity to comment on the relevant parts of the draft findings and observations of its report. The comments received will be carefully considered by the Select Committee before its report is finalized.

38. In accordance with RoP 79(10), a report of the Select Committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the Chairman of the Select Committee.

### Premature publication of evidence

39. The evidence taken before the Select Committee and documents presented to it shall not, except in the case of its meetings or hearings held in public, be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Council.

### **Provision of Transcripts of Evidence**

The following procedures shall apply to the provision of transcripts of evidence taken by the Select Committee to Inquire into Matters about the Agreement between Mr LEUNG Chun-ying and the Australian firm UGL Limited ("the Select Committee"):

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or draft status of the transcripts shall be stated clearly; and
- (c) provision of unpublished and/or draft transcripts of evidence taken in public to witnesses or prospective witnesses if appropriate should be made on the condition that they shall not make public use of the transcripts; that they shall not quote directly from the transcripts; and that they shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.