

Part I Establishment of the Select Committee and its work

Chapter 2 Matters relating to the Select Committee

Membership of the Select Committee at the inception stage

2.1 The election of Members for appointment to the Select Committee was held at the HC meeting on 3 February 2017. On the recommendation of HC, on 6 February 2017, the President of LegCo appointed the Chairman, the Deputy Chairman and members of the Select Committee in accordance with RoP 78(2) (wording of the provision is shown in **Appendix 1**). The Select Committee comprised the following 11 members²:

Hon Paul TSE Wai-chun, JP (Chairman)

Hon Holden CHOW Ho-ding (Deputy Chairman)

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Hon WONG Kwok-kin, SBS, JP

Hon MA Fung-kwok, SBS, JP

Hon Kenneth LEUNG

Hon Alvin YEUNG

Hon Andrew WAN Siu-kin

Dr Hon Junius HO Kwan-yiu, JP

Hon LAM Cheuk-ting

Hon YUNG Hoi-yan, JP

² Please refer to paragraphs 2.10 to 2.12 of this Report for subsequent development and changes to the membership of the Select Committee.

Terms of reference

2.2 At the open meeting on 3 March 2017, the Select Committee confirmed its terms of reference 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."

Practice and procedure

2.3 At the open meeting on 3 March 2017, the Select Committee endorsed its practice and procedure, which was governed by RoP and the relevant provisions of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) insofar as applicable. The Select Committee's practice and procedure was modelled on the sets of practice and procedure adopted by previous select committees and committees which carried out inquiries, with necessary modifications, taking into account that the Select Committee was established pursuant to the referral of the petition by the Council and not authorized by the Council to exercise the powers under section 9(1) of Cap. 382. A copy of the practice and procedure of the Select Committee is in **Appendix 4**.

2.4 In determining its own practice and procedure, the Select Committee adopted 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 on 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.

Work plan

2.5 At the open meeting on 29 March 2017, the Select Committee decided to conduct its inquiry in three main stages³:

- (a) Stage I for undertaking preparatory work, including drawing up and determining the practice and procedure for the Select Committee; working out the major areas of study; deciding on the information to be obtained from relevant parties and identifying the witnesses to be invited; deciding on the order of the witnesses and the main areas of evidence to be obtained;

³ Initially, the Select Committee's target was to complete the inquiry by April 2018 (The work plan of the Select Committee is set out in SC(2)(UA) Paper No.: L4). However, due to various reasons, including the difficulty in scheduling meetings of the Select Committee owing to members' unavailability for meetings at time slots proposed by the LegCo Secretariat, the storming of the LegCo Complex by some protesters on 1 July 2019 and the outbreak of the coronavirus disease 2019 (COVID-19), the Select Committee was unable to adhere to the target schedule as set out in the work plan.

- (b) Stage II for conducting hearings to obtain evidence from witnesses and for deliberating on the evidence obtained; and
- (c) Stage III for holding internal deliberations for preparing, discussing and finalizing the report of the Select Committee.

Areas of study and issues arising therefrom

Proposed major areas of study prepared by the LegCo Secretariat and members' proposed amendments

2.6 Based on the Select Committee's terms of reference, the LegCo Secretariat drew up the proposed major areas of study in order to facilitate the Select Committee to proceed with its inquiry in a structured manner. **Appendix 5** shows the proposed major areas of study prepared by the LegCo Secretariat for the Select Committee's consideration at the open meeting on 3 March 2017.

2.7 After examining the proposed major areas of study at that meeting, some members indicated their wish that the proposed major areas of study be revised having regard to the views and comments expressed at the meeting. Subsequently, the LegCo Secretariat circulated the revised proposed major areas of study (**Appendix 6**) for the Select Committee's consideration at the next open meeting held on 29 March 2017. Since members continued to have different views on

whether to adopt the revised proposed major areas of study and the way in which the document should be further revised, the Select Committee agreed that individual members should provide their respective proposed amendments to the proposed major areas of study for consideration at a future meeting.

2.8 The Select Committee held its third open meeting on 25 April 2017 to discuss the amendments proposed by Mr Holden CHOW to the revised proposed major areas of study (**Appendix 7**). After discussion, Mr CHOW suggested amending items I(d) and I(e) of the revised proposed major areas of study and adding a new item II(c) (**Appendix 8**). Given members' divergent views on whether to add a new item II(c), the Select Committee, as a result, could not come to any conclusion on the matter at the open meeting held on 25 April 2017.

2.9 On 15 May 2017, the Select Committee held a closed meeting to discuss matters relating to the proposed amendments provided by Mr Holden CHOW. Some members suspected that Mr LEUNG Chun-ying was involved in amending the proposed major areas of study as provided by Mr CHOW and expressed concern over the credibility of the Select Committee. On that day, no decision was reached on the matters discussed.

2.10 The Select Committee scheduled another closed meeting on 19 May 2017 to continue its discussion on the matter as mentioned above in paragraph 2.9. In the morning of 19 May 2017, Mr Holden

CHOW gave notice to the Select Committee in writing of his decision to resign from the Select Committee.

2.11 In view of the resignation of Mr Holden CHOW, who was also the Deputy Chairman, the Select Committee agreed at the closed meeting held on 19 May 2017 to keep the membership size at 11 and to fill the vacancy in the membership and in the office of Deputy Chairman.

2.12 The Select Committee made recommendations to HC on 26 May 2017 to fill the vacancy in the membership and in the office of Deputy Chairman. With HC's endorsement of the recommendations, the nomination and election of a Member for appointment to the Select Committee to fill the vacancy was conducted at the HC meeting on 2 June 2017. With Mr Steven HO elected for appointment to the Select Committee, members of the Select Committee then elected amongst themselves a new Deputy Chairman. Mr MA Fung-kwok was subsequently elected to that office. The above election results were endorsed by HC and submitted to the President of LegCo for appointment on the same day. Since 2 June 2017, the membership of the Select Committee is as follows:

Hon Paul TSE Wai-chun, JP (Chairman)

Hon MA Fung-kwok, SBS, JP (Deputy Chairman)

Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Hon WONG Kwok-kin, SBS, JP

Hon Steven HO Chun-yin, BBS

Hon Kenneth LEUNG

Hon Alvin YEUNG

Hon Andrew WAN Siu-kin

Dr Hon Junius HO Kwan-yiu, JP

Hon LAM Cheuk-ting

Hon YUNG Hoi-yan, JP

Endorsed major areas of study of the Select Committee

2.13 The major areas of study endorsed by the Select Committee at the open meeting on 12 July 2017 are set out in **Appendix 9**.

Complaint about suspected disclosure of closed-door deliberations

2.14 Dr Junius HO complained that certain Select Committee members were in breach of the confidentiality requirement as set out in paragraph 26 of the Select Committee's practice and procedure by having disclosed the internal deliberations made at the closed meeting on 15 May 2017. There was a suggestion that sanction(s) for breach of confidentiality or unauthorized disclosure of closed-door deliberations should be imposed.

2.15 Members noted the following information:

- (a) as the Select Committee was not authorized by the Council to exercise the powers under section 9(1) of Cap. 382, RoP 80 and 81 (wording of the provisions is shown in **Appendix 1**) were not applicable;
- (b) there was no express provision in RoP or in the Select Committee's practice and procedure on sanction(s) for breach of confidentiality or unauthorized disclosure of closed-door deliberations in the present case;
- (c) the terms of reference of the Select Committee did not cover investigation or sanction(s) relating to unauthorized disclosure of closed-door deliberations; and
- (d) a former select committee which was formed pursuant to the referral by the Council of a petition under the then RoP 20(6) and was not authorized by the Council to exercise the powers under section 9(1) of Cap. 382 had issued a press release to express regret following a suspected case of unauthorized disclosure of confidential information.

The making of statutory declaration and signing of confidentiality undertaking

2.16 At the open meeting on 21 June 2017, the Select Committee discussed whether to adopt certain measures to prevent unauthorized disclosure of confidential information in the future.

2.17 In relation to the making of statutory declaration, Dr Junius HO and Dr Priscilla LEUNG jointly moved a motion (as set out in **Appendix 10**) suggesting that members who had attended the closed meeting on 15 May 2017 should each make a statutory declaration confirming that they did not disclose or divulge any confidential information to the press or any other person. As there was disagreement on whether to request members to make statutory declarations, the Chairman put the motion to vote. Six members voted in favour of the motion and four members voted against it. The motion was carried.

2.18 Notwithstanding the passage of the above motion, members recognized that LegCo committees had all along been operating under an honour system and there was no precedent where members were under a mandatory requirement to make statutory declarations. Even though a motion was passed by the Select Committee, it was not binding on members. As of the date of this Report, Dr Junius HO and Dr Priscilla LEUNG have each filed a statutory declaration with the LegCo Secretariat.

2.19 In relation to the issue of confidentiality undertaking, there was a suggestion that in considering the proposal of requesting members to sign a confidentiality undertaking, the Select Committee should draw reference from the practice of the Public Accounts Committee of LegCo

("PAC"). Given that the majority of the members of the Select Committee considered it necessary to reinforce the Select Committee's confidentiality requirement and that it was suggested that members should be required to sign a confidentiality undertaking, a proforma written confidentiality undertaking, which was based on PAC's practice, was provided to the Select Committee for consideration. As no members raised objection to the signing of a confidentiality undertaking and the adoption of the version of the undertaking to be signed jointly by all members of the Select Committee, the LegCo Secretariat made arrangements for individual members to sign the confidentiality undertaking. Seven members, including the Chairman, had signed the confidentiality undertaking (see **Appendix 11**).

Request for Mr Kenneth LEUNG to resign from the Select Committee

2.20 Some members were concerned whether the defamation suit brought by Mr LEUNG Chun-ying against Mr Kenneth LEUNG (HCA 533/2017) would give rise to any potential conflict of interest, thereby affecting Mr Kenneth LEUNG's suitability to serve as a member of the Select Committee. At the open meeting on 12 July 2017, Mr WONG Kwok-kin moved a motion (see **Appendix 12**) proposing that the Select Committee should request Mr Kenneth LEUNG to resign from the Select Committee. The motion was carried, with six members voting for and four members voting against it. The voting result is in **Appendix 13**. As of the date of this Report, Mr Kenneth LEUNG has not resigned and continues to serve as a member of the Select Committee.

Suggestion on dissolving and reconstituting the Select Committee

2.21 Some members were of the view that members of the Select Committee had lost mutual trust based on the series of events as mentioned above. There was a suggestion that the Select Committee should be dissolved and reconstituted. To facilitate members' consideration of issues relating to the proposal of dissolving and reconstituting the Select Committee, the LegCo Secretariat provided members with the following information:

- (a) regarding the appointment of members to the Select Committee, RoP 78(2) provided that "the President shall decide the size of every select committee and shall appoint the chairman, deputy chairman and members thereof, taking into account the recommendations of the House Committee". The President's appointment of the Chairman, the Deputy Chairman and members of the Select Committee was based on HC's recommendations;
- (b) regarding the dissolution of a select committee, RoP 78(4) provided that "a select committee shall, as soon as it has completed consideration of the matter or bill referred to it, report to the Council thereon and the committee shall thereupon be dissolved. If the committee is of the opinion that it will not be able to complete consideration of the matter or bill before the end of a term, it shall so report to the Council". RoP 78(5) also provided that "at

the end of a term every select committee of the Council shall be dissolved"; and

- (c) RoP 78(4) and 78(5) were the only existing rules that provided for the dissolution of select committees. At present, no mechanism was provided under RoP for the President to withdraw or revoke the appointment of any member of a select committee. It was up to individual members to decide whether they should resign from the Select Committee.

Divided views were expressed by members on the proposal to dissolve and reconstitute the Select Committee. No conclusion was reached.