

**Part II Issues considered by the Select Committee in
concluding its work**

**Chapter 3 Conclusion of the Select Committee based on the
information obtained**

**Obtaining information/evidence from relevant parties/witnesses to
assist the Select Committee in its inquiry**

3.1 At the closed meeting on 17 July 2017, the Select Committee discussed and agreed on the information to be obtained as well as witnesses to be invited to appear before the Select Committee to give oral evidence (see **Appendices 14 and 15**).

3.2 Relevant parties were thereon requested in writing to provide information or to attend hearing(s) of the Select Committee to be scheduled. The responses from the parties invited are summarized below:

- (a) the information requested by the Select Committee (i.e. item I (a) to (h) in **Appendix 14**) have not been provided by Mr LEUNG Chun-ying. Instead, Mr LEUNG provided the Select Committee with a file containing 12 documents, which Mr LEUNG claimed would be sufficient in helping the Select Committee to reach the correct conclusions. Mr LEUNG also indicated that he would not attend any meetings of the Select Committee;

- (b) UGL declined to provide the information requested by the Select Committee (i.e. item II (a) to (k) in **Appendix 14**) and/or to authorize any representatives to attend any hearing(s) of the Select Committee;
- (c) the Judiciary Administration replied that the Chief Justice of the Court of Final Appeal ("Chief Justice") did not consider it appropriate to provide the Select Committee with the requested information (i.e. item III in **Appendix 14**) and/or for the Judiciary Administrator or her representative(s) to attend any hearing(s) of the Select Committee;
- (d) the Commissioner of Inland Revenue ("Commissioner") declined to provide the requested information (i.e. item V in **Appendix 14**) and in that connection referred to the official secrecy provision (i.e. section 4) under the Inland Revenue Ordinance (Cap. 112). The Commissioner also indicated that neither himself nor any other officer of the Inland Revenue Department would attend any hearing(s) of the Select Committee;
- (e) two letters were sent by registered post to the Royal Bank of Scotland plc, the secured creditor of DTZ Holdings plc ("DTZ"). No response has been received;

- (f) Ernst & Young LLP, Joint Administrators of DTZ, provided the Select Committee with a copy of a sale agreement dated 4 December 2011 relating to shares in certain companies and the trade marks owned by DTZ (in administration) and a copy of the Joint Administrators' Statement of Proposals of DTZ (in administration) issued on 23 December 2011; and
- (g) the Executive Council ("ExCo") Secretariat provided
- (i) general information on the system of declaration of interests by ExCo Members at the time when Mr LEUNG Chun-ying assumed the office of the Chief Executive of the Hong Kong Special Administrative Region ("CE") and during his term of office of CE as well as
 - (ii) records of "Annual Declaration of Registrable Interests of Members of the Executive Council" made by Mr LEUNG upon assumption of office and during his term of office of CE.
- However, in line with the principle of confidentiality of ExCo and/or to preserve the integrity of the ExCo system, the ExCo Secretariat declined to accede to the Select Committee's request for record(s) of declaration of interests made by Mr LEUNG at ExCo meeting(s). The ExCo Secretariat did not respond to the Select Committee's request for the Clerk to ExCo or representative(s) of the ExCo Secretariat to attend hearing(s) of the Select Committee.

3.3 In view of the Judiciary Administration's reply in paragraph 3.2(c), the Select Committee decided at the closed meeting on 8 November 2017 that the Judiciary Administration should be requested to provide information on the system of declaration under Article 47 of the Basic Law ("BL") in general (as opposed to specific information regarding the case of Mr LEUNG Chun-ying), including:

- (a) the requirements applicable to CE in relation to declaration of assets under BL 47;
- (b) whether the requirements had to be complied with only at the assumption of office or both at the assumption of office and throughout the term of the office;
- (c) the types of assets required to be declared by CE; and
- (d) whether CE was required to report any changes in the composition or amount of the declared assets during the term of his/her office and, if so, whether CE was required to report at regular intervals, regardless of whether such change had taken place (and if so, how long each interval was), or to report only when there had been a change.

3.4 This apart, taking into account the Commissioner's reply in paragraph 3.2(d) above, the Select Committee decided to approach the Commissioner again to request the provision of general information, as opposed to specific information regarding the case of Mr LEUNG

Chun-ying, on the policy adopted and the applicable taxation principles (including any relevant statutory provisions):

- (a) in the case of payment received by a Hong Kong resident from (i) his employer or former employer and (ii) a non-employer entity, pursuant to a contract or other forms of arrangement imposing restrictive covenants that sought to, for example, prohibit the person from having any business dealings in competition with his former employer, or prohibit the person from soliciting employees of his former employer; and
- (b) in the case where the Hong Kong resident was required under the contract (or other forms of arrangement) to provide assistance in the promotion of the former employer, regardless of whether assistance had in fact been rendered.

3.5 In reply to the Select Committee's request for information mentioned in paragraph 3.3 above, the Judiciary Administration advised that the requirements for the declaration of assets by CE under BL 47 were as set out in BL 47, and that CE was obliged to provide a declaration of his or her assets to the Chief Justice on assuming office in accordance with BL 47. Such declaration was then kept by the Chief Justice. As regards the Select Committee's request for information addressed to the Commissioner mentioned in paragraph 3.4 above, the Commissioner furnished information on the relevant taxation principles (including relevant statutory provisions and case law) applicable to the

cases of payment received by a Hong Kong resident specified in paragraph 3.4(a) and (b). A table summarizing the information provided to the Select Committee by various parties is in **Appendix 16**.

Actions considered to be taken by the Select Committee for the purposes of the inquiry

3.6 Members had considered seeking specialist advice on specific issues which are technical in nature relating to the inquiry of the Select Committee. On Mr Kenneth LEUNG's recommendations, three experts were approached on the possibility of providing the Select Committee with specialist advice on the following issues respectively:

- (a) taxation matters, with particular emphasis on possible tax liability in respect of the "Payments" as referred to in the terms of reference of the Select Committee;
- (b) employment law, with particular emphasis on the structure of incentive payment and "golden handshake" in a merger and acquisition transaction; and
- (c) corporate law and fiduciary duties owed by a director, with particular emphasis on the role of a director in a merger and acquisition transaction.

While one of the experts was willing to render specialist advice to the Select Committee by way of a talk on a complimentary basis, the other two experts declined the Select Committee's invitation having regard to the perceived conflict of interest arising from their employment and/or work. After discussion, members agreed to revisit the matter as and when members were able to obtain additional response/information from the relevant parties. The Select Committee ultimately did not follow up on the proposal to seek specialist advice, given the difficulties encountered by the Select Committee in gathering information/evidence and its decision to bring the inquiry work to an end (to be explained in paragraphs 3.10 and 3.11 below).

3.7 Some members took the view that the Select Committee should obtain further information needed for the purposes of the inquiry. They proposed to (a) seek the Council's authorization for the Select Committee to exercise the powers under section 9(1) of Cap. 382 to order concerned parties to attend before the Select Committee to give evidence, or to produce all relevant papers, books, records or documents in their possession or under their control; and (b) invite the Department of Justice to provide any information in its possession that could assist the Select Committee's inquiry. Other members, however, were of the view that the Select Committee should not embark on a fishing expedition to obtain more information, and that any further attempt to obtain information for the purposes of facilitating the Select Committee's work would unlikely yield any results, and therefore would be a waste of time and resources.

3.8 As members had divergent views on the two proposals as mentioned above in paragraph 3.7, a voting was conducted and both proposals were negated. The voting results are in **Appendix 17**.

3.9 The Select Committee subsequently decided that its next course of action would be examination of and deliberation on the information obtained. The Clerk to the Select Committee should then prepare the draft report of the Select Committee on the basis of members' observations and conclusions drawn from the information available to the Select Committee.

Difficulties encountered by the Select Committee

3.10 The Select Committee had agreed to divide its inquiry into four major areas of study.⁴ To facilitate members to analyse and deliberate on the information received from various parties, the LegCo Secretariat prepared a summary table of information relevant to the matters to be inquired by the Select Committee under its terms of reference (**Appendix 18**).

3.11 At the closed meeting on 7 May 2020, the Select Committee discussed whether to make use of the summary table at **Appendix 18** to proceed to conducting a detailed examination of the information obtained under each of the four major areas of study. The Select Committee,

⁴ Please refer to **Appendix 9** for the endorsed major areas of study.

having regard to the following considerations, decided to bring the inquiry work to an end:

- (a) the Select Committee had encountered difficulties in obtaining relevant, sufficient and comprehensive information/evidence⁵ for the purposes of its inquiry. Relevant parties also refused to attend hearing(s) of the Select Committee, which prevented the Select Committee from obtaining more information/evidence from witnesses. Members were concerned whether it would be appropriate to attach weight to no more than self-serving statements produced by various parties without the opportunity to ask relevant witnesses to clarify the issues involved; and
- (b) members noted that the information available were general in nature. They agreed that with the limited amount of relevant/useful information on hand, it would not be possible for the Select Committee to arrive at any substantiated findings, observations and conclusions as regards the matters under inquiry in a fair and objective manner, and it would not be appropriate to either implicate or exonerate any person/party in connection with any or all of the allegations forming the subject matter of the inquiry on that basis.

⁵ Please refer to paragraphs 3.1 to 3.5 of this Report for details.

Concluding the work of the Select Committee

3.12 Given the difficult circumstances under which the Select Committee had been operating, members found it difficult to further proceed to inquire into the matters pursuant to its terms of reference and, specifically, to progress to the fact-finding and deliberative stages.

3.13 The Select Committee decided to draw its work to a close and report to the Council in accordance with RoP 78(4).