

**Extract from the minutes of the
meeting of the House Committee on 17 October 2014**

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IX. Proposals to seek the Council's authorization for the appointment of a select committee to inquire into the alleged receipt of secret payments by Mr LEUNG Chun-ying from an Australian firm and related issues

(a) Letter from Hon SIN Chung-kai

(Letter dated 9 October 2014 from Hon SIN Chung-kai (LC Paper No. CB(2)71/14-15(01)))

(b) Joint letter from Hon Claudia MO and Hon Dennis KWOK

(Joint letter dated 13 October 2014 from Hon Claudia MO and Hon Dennis KWOK (LC Paper No. CB(2)71/14-15(02)))

20. Mr SIN Chung-kai said that he put forward the proposal to appoint a select committee to inquire into UGL Limited ("UGL")'s payments to Mr LEUNG Chun-ying for a number of reasons. First, under Article 47 of the Basic Law ("BL"), the Chief Executive ("CE"), on assuming office, should declare his assets to the Chief Justice ("CJ") of the Court of Final Appeal and the declaration should be put on record. Queries had been raised as to whether Mr LEUNG had complied with the requirement under BL 47 in not disclosing the payments from UGL when he assumed the office of CE. Apart from the payments of GBP 4 million and GBP 1.5 million which Mr LEUNG had already received, it was reported that he had also sought an additional GBP 3 million from UGL. Second, there were doubts on why Mr LEUNG did not pay any tax in Hong Kong for the GBP 4 million payment he had received. Third, it was alleged that the payments Mr LEUNG had received from UGL were illicit kickbacks. Fourth, Mr LEUNG had agreed under the terms of the contract to provide such assistance as UGL might reasonably require. This had raised concern as to whether Mr LEUNG had engaged in a part-time job after he had become CE. Mr SIN considered it important for LegCo to conduct the proposed inquiry to clear these doubts and provide a platform for CE to explain the matter to the public.

21. Ms Claudia MO explained the proposal she had put forward jointly with Mr Dennis KWOK. She said that UGL had agreed, in a secret contract, to pay sums of money to Mr LEUNG Chun-ying in return for his support of UGL's acquisition of the subsidiaries of DTZ Holdings plc ("DTZ"). According to news reports, DTZ's main creditor and the then

chairman of DTZ at the time of its sale to UGL were unaware of the deal between Mr LEUNG and UGL; and the amount of the payments made to Mr LEUNG had been deducted from the purchase price of DTZ. Ms MO remarked that Mr LEUNG's secret deal with UGL was grossly unfair to the small shareholders of DTZ and involved suspected breach of bribery laws. Given the severity of the allegations which had called into question the probity and integrity of CE, she considered it necessary for LegCo to inquire into the matter.

22. The Deputy Chairman expressed support for conducting the proposed inquiry. He pointed out that the huge sums of payments that UGL had offered to Mr LEUNG Chun-ying could not be regarded as a golden handshake. A golden handshake was offered to an employee by the employer, and not a third party without the consent of the employer as alleged in the present case. The Deputy Chairman further said that under the relevant common law principle, a director could accept personal interests only upon obtaining authorization by way of a resolution passed unanimously at a shareholders' general meeting. He queried whether Mr LEUNG, in making the secret deal with UGL, had breached his fiduciary duty as director of DTZ. If the relevant act took place in Hong Kong, it might also constitute a breach of section 9 of the Prevention of Bribery Ordinance (Cap. 201) ("POBO"). Given the gravity of the matter, he considered that LegCo was duty bound to conduct an inquiry to find out the truth for the public.

23. Mr WONG Kwok-hing opined that the proposals were raised by the pan-democratic camp as part of their attempt to remove Mr LEUNG Chun-ying from office. He also criticized Members belonging to the pan-democratic camp for adopting a double standard in putting forward requests for invoking the powers under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the P&P Ordinance") to inquire into the receipt of payments by CE while some Members from their own camp had received payments from foreign powers.

24. Mr Abraham SHEK said that he did not see the need for Mr LEUNG Chun-ying to declare the payments from UGL under BL 47 as such payments related to an agreement which was concluded before Mr LEUNG Chun-ying was elected CE. Mr SHEK further said that LegCo should not exercise the powers under the P&P Ordinance to investigate private establishments. In his view, it was for the Independent Commission Against Corruption ("ICAC"), and not LegCo, to investigate into the allegations made against CE. He therefore opposed the proposals.

25. Mr LEUNG Kwok-hung considered that LegCo should invoke the powers under the P&P Ordinance to investigate the matter, given the huge

powers that Mr LEUNG Chun-ying wielded as CE and the severity of the allegations made against him including possible breach of criminal law.

26. Mr Kenneth LEUNG said that he definitely could not subscribe to the view that the matter concerned only past dealings of Mr LEUNG Chun-ying which took place before he assumed the office of CE. He pointed out that Mr LEUNG Chun-ying was still benefitting from the agreement with UGL under which he could exercise a put option for the sale of his shares in DTZ Japan to UGL within seven years from completion of the acquisition of DTZ by UGL, i.e. until December 2018, and could receive potentially significant sums of payments from UGL arising from such sale. He also considered it totally unacceptable that Mr LEUNG Chun-ying had been engaging in part-time work with a commercial organization after he had become CE.

27. Referring to Mr Abraham SHEK's earlier remark, Mr IP Kin-yuen clarified that the subject of the proposed inquiry was CE, instead of private establishments. He considered that given the severity of the allegations, LegCo was duty bound to conduct a full inquiry into the matter.

28. Mr NG Leung-sing said that the allegations made in the joint letter from Ms Claudia MO and Mr Dennis KWOK against CE, including his engagement in a part-time job concurrently during his appointment as CE and the obtaining of advantages without lawful authority, were not substantiated by concrete evidence and hence did not warrant the exercise of the powers under the P&P Ordinance to conduct an inquiry. He stressed that it was for ICAC, and not LegCo, to investigate whether CE was in breach of section 9 of POBO and LegCo should not take over the former's responsibilities.

29. Ms Starry LEE said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong opposed the proposed inquiry on several grounds. First, the agreement was a common commercial arrangement for protecting the acquirer's interest when a business was being acquired. Second, UGL had clearly indicated in its recent statement that it had not requested Mr LEUNG Chun-ying to undertake any task whatsoever on its behalf, nor had Mr LEUNG offered to perform any such task. Third, it was inappropriate for LegCo to invoke the powers under the P&P Ordinance to inquire into commercial conducts. She cautioned that such powers should not be used as a political tool to discredit Mr LEUNG. Ms LEE further said that as complaints had already been lodged with ICAC against Mr LEUNG regarding his receipt of UGL's payments, Members should have confidence that ICAC would follow up the complaints in a fair and impartial manner.

30. Mr WONG Kwok-kin did not consider the proposals of invoking the powers under the P&P Ordinance to inquire into the matter justifiable in the absence of concrete evidence. In his view, it was merely an attempt of some Members to smear and discredit CE. He added that Members belonging to the Hong Kong Federation of Trade Unions did not support the proposals.

31. Mr Alan LEONG said that under BL 73(9), LegCo could move a motion of impeachment against CE if there was evidence to substantiate charges against CE of serious breach of law or dereliction of duty. He pointed out that the confidential agreement between Mr LEUNG Chun-ying and UGL had resulted in significant loss to DTZ's shareholders. Apart from deduction of the GBP 4 million paid to Mr LEUNG Chun-ying from the purchase price of DTZ, it was also reported that a Mainland company had offered a much higher bid than that of UGL for acquiring DTZ but the higher bid was rejected by DTZ's board of directors. In Mr Alan LEONG's view, Mr LEUNG Chun-ying's breach of his fiduciary duty to DTZ's shareholders had constituted a serious breach of law. Furthermore, the fact that the agreement between Mr LEUNG Chun-ying and UGL was still in force after he had assumed the office of CE had pointed to a possible dereliction of duty on the part of Mr LEUNG. In the light of the above considerations, Mr Alan LEONG supported the proposed appointment of a select committee to inquire into the matter.

32. Mr LEE Cheuk-yan said that in his confidential agreement with UGL, Mr LEUNG Chun-ying had committed to providing such assistance as UGL might require, which implied that Mr LEUNG had to stand ready to provide services to UGL at any time even after his assumption of office as CE. Mr LEE queried whether Mr LEUNG's conduct was in compliance with BL 47 which stipulated that CE must be a person of integrity, dedicated to his duties. In Mr LEE's view, the matter warranted investigation by LegCo.

33. Dr Helena WONG expressed support for Mr SIN Chung-kai's proposal. She pointed out that while the agreement was entered into before Mr LEUNG Chun-ying had assumed the office of CE, it was still in force after he had become CE. Mr LEUNG's undertaking under the agreement to provide assistance as UGL might require had raised questions about possible conflict of interests, given UGL's business dealings with MTR Corporation Limited ("MTRCL") and the power of the Government, being the largest shareholder of MTRCL, to appoint the Chairman and members of the Board of Directors of MTRCL. Dr WONG considered it necessary to invoke the powers under the P&P Ordinance to conduct an inquiry into the matter to find out whether any conflict of interests and bribery were involved.

34. Ms Cyd HO said that Mr LEUNG Chun-ying should have severed all his business connections and terminated his agreement with UGL once he was elected CE. Mr LEUNG, however, had not done so but instead had continued to receive payments under the agreement with UGL. While CE had indicated that he had not provided any service for UGL, the significant sums of payments he had received from UGL had raised queries on possible transfer of benefits and any inaction on his part could also cause serious concern. In view of the public interests involved, she considered it incumbent upon LegCo to conduct an inquiry into the matter.

35. Mr CHAN Chi-chuen indicated support for the proposed inquiry into the alleged receipt of secret payments by Mr LEUNG Chun-ying from UGL. Mr CHAN opined that it was immaterial whether or not Mr LEUNG had performed any task for UGL, as refraining from taking any action could also constitute a form of assistance to UGL. Mr CHAN added that he saw no reason why Mr LEUNG did not declare the payments from UGL on assuming office as CE, when he was obliged to provide assistance as required by UGL under the agreement which remained in force after he had become CE.

36. Mr WU Chi-wai expressed support for Mr SIN Chung-kai's proposal. He considered that as the information available had revealed that Mr LEUNG Chun-ying had accepted advantages from a foreign firm in return for helping it to buy DTZ and bring about the rejection by DTZ's board of directors of a better offer made by a state-owned enterprise in China, which was to the detriment of the national interest, it was vital for LegCo to conduct an inquiry into the matter. In his view, the proposed inquiry would help clarify the definition of the requirement that CE should be patriotic and love Hong Kong, which was relevant to the ongoing discussion on the constitutional reform of Hong Kong.

37. Dr Fernando CHEUNG stressed that the agreement between Mr LEUNG Chun-ying and UGL remained valid after he had assumed the office of CE. Given UGL's business dealings with MTRCL, the power of the Government to appoint members and the Chairman of the Board of MTRCL and the fact that the incumbent Chairman of MTRCL who was reappointed by Mr LEUNG Chun-ying's Government was also a director of UGL, he considered it incumbent upon LegCo to inquire into the matter to find out whether there was any conflict of interests or transfer of benefits on the part of Mr LEUNG at the expense of the interests of the shareholders of DTZ as well as the public.

38. Mr Charles MOK said that given that Members belonging to the pro-establishment camp had supported the proposal for the appointment of a select committee by the Fourth LegCo to inquire into the

involvement of Mr LEUNG Chun-ying, who was a CE candidate back then, as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition, he considered it unreasonable for them not to support the present proposals for the appointment of a select committee to inquire into the allegations involving CE which were much more serious in nature. He expressed support for both proposals.

39. Mr Paul TSE said that the proposals under discussion concerned the invocation of the powers under the P&P Ordinance by LegCo, and not the powers of LegCo under BL 73(9) to move a motion of impeachment in the event of serious breach of law or dereliction of duty by CE as cited by Mr Alan LEONG. Mr TSE considered that as the powers under the P&P Ordinance should be invoked to inquire into the conduct of the Government or public bodies involving significant public interests, it was important for Members to consider the timing and nature of the agreement entered into between Mr LEUNG Chun-ying and UGL. On the queries raised by Mr SIN Chung-kai in his proposal, Mr TSE said that cash was not among the interests that were required to be declared by individual Members of the Executive Council ("ExCo"), including CE. In addition, while BL 47 provided that CE, on assuming office, should declare his assets to CJ, it did not specify the nature of assets that were required to be declared. It was also a matter for the Inland Revenue Department to follow up whether Mr LEUNG should pay tax for the payments received from UGL which, he considered, had nothing to do with the discharge of Mr LEUNG's official duties. In Mr TSE's view, there was insufficient prima-facie evidence at this stage to support the invocation of the powers under the P&P Ordinance to inquire into the matter.

40. On the point made by some Members that the allegations of acceptance of bribes against CE could be dealt with under POBO, the Deputy Chairman said that the alleged receipt of secret payments in question by Mr LEUNG Chun-ying might not constitute an offence under POBO given that the relevant conducts did not take place in Hong Kong. This notwithstanding, the matter had called into question the integrity of CE, and there was a need for LegCo to conduct an inquiry into the matter.

41. Mr SIN Chung-kai said that the fact that ICAC was responsible for investigating into alleged bribery cases should not prevent LegCo from conducting the proposed inquiry. He added that according to the Register of Interests of Members of ExCo, Mr LEUNG Chun-ying was still having beneficial interest in Wintrack Worldwide (BVI) which was holding shares of DTZ Japan, and the clients of DTZ Japan included corporations in Hong Kong. He stressed the need for LegCo conduct an inquiry to clear the doubts surrounding the matter, which involved significant public interests.

42. Ms Claudia MO said that she could not subscribe to the view that Mr LEUNG Chun-ying was only required to declare his interests at the time he assumed the office of CE, as it was clearly inconsistent with the principle under BL 47 that CE must be a person of integrity. She stressed that given the gravity of the allegations against Mr LEUNG, it was incumbent upon LegCo to inquire into the matter to find out the truth for the public.

43. The Chairman said that he would put to vote the proposal of Mr SIN Chung Kai and that of Ms Claudia Mo and Dennis KWOK respectively.

44. Mr Abraham SHEK declared that he was a non-executive director of MTRCL.

45. In response to Mr Charles MOK and Dr Helena WONG, the Chairman said that it was for individual Members to decide whether they should disclose interests in and vote on a particular matter, having regard to the relevant provisions of the Rules of Procedure. He also advised that the question he put to Members would be whether they supported him as the HC Chairman to move the relevant motion in Council and not whether they supported the appointment of the proposed select committee.

46. The Chairman first put to vote the proposal of Mr SIN Chung-kai for the HC Chairman to move a motion in Council to seek the Council's authorization for the appointment of a select committee to inquire into the alleged receipt of secret payments by Mr LEUNG Chun-ying from an Australian firm and related issues. Mr SIN Chung-kai requested a division.

The following Members voted in favour of the proposal:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Frederick FUNG, Prof Joseph LEE, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG and Mr IP Kin-yuen.
(22 Members)

The following Members voted against the proposal:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr

Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr James TIEN, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr CHAN Han-pan, Miss CHAN Yuen-han, Mr LEUNG Che-cheung, Miss Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Mr Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Christopher CHUNG and Mr Tony TSE.

(38 Members)

47. The Chairman declared that 22 Members voted for and 38 Members voted against the proposal, and no Member abstained from voting. The Chairman declared that the proposal was not supported.

48. The Chairman then put to vote the proposal of Ms Claudia MO and Mr Dennis KWOK for the HC Chairman to move a motion in Council to seek the Council's authorization for the appointment of a select committee to inquire into the alleged receipt of secret payments by Mr LEUNG Chun-ying from an Australian firm and related issues. Ms Claudia MO requested a division.

The following Members voted in favour of the proposal:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Frederick FUNG, Prof Joseph LEE, Mr Ronny TONG, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN, Mr WONG Yuk-man, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN, Mr Charles MOK, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr Kenneth LEUNG, Dr Fernando CHEUNG, Mr SIN Chung-kai, Dr Helena WONG and Mr IP Kin-yuen.

(22 Members)

The following Members voted against the proposal:

Mr CHAN Kam-lam, Dr LAU Wong-fat, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr WONG Ting-kwong, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Mr Michael TIEN, Mr James TIEN, Mr NG Leung-sing, Mr Steven HO, Mr Frankie YICK, Mr YIU Si-wing, Mr MA Fung-kwok, Mr CHAN Han-pan, Miss CHAN Yuen-han, Mr LEUNG Che-cheung, Miss Alice MAK, Mr KWOK Wai-keung, Mr Christopher CHEUNG, Dr Elizabeth QUAT, Mr Martin LIAO, Mr POON Siu-ping, Mr TANG Ka-piu, Dr CHIANG Lai-wan, Mr

Dr LO Wai-kwok, Mr CHUNG Kwok-pan, Mr Christopher CHUNG and Mr Tony TSE.
(38 Members)

49. The Chairman declared that 22 Members voted for and 38 Members voted against the proposal, and no Member abstained from voting. The Chairman declared that the proposal was not supported.

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