

Chapter 2 Investigation process

Work plan of the Investigation Committee

2.1 When IC commenced its work, it decided to conduct its investigation in three stages and agreed that the timeframe of the work plan might be adjusted in the light of actual progress of IC's work and the complexity of the issues involved. While it was IC's objective to complete its work by end-December 2019 according to its original work plan, owing to the serious damage caused by the storming of the LegCo Complex by some protesters on 1 July 2019 and due to safety and security reasons, IC did not hold any meeting or conduct any hearing in the ensuing few months. In view of this and some other circumstances, IC agreed in December 2019 to revise the timeframe of the work plan as set out in the ensuing paragraphs. Furthermore, due to the outbreak of the coronavirus disease-2019 in Hong Kong in early 2020, IC's work was also affected from February to April 2020.

Stage I — Preparatory work (mid-July 2018 to end-January 2019)

2.2 The main activities at this stage were to:

- (a) gather information relevant to the censure motion in accordance with paragraph 2 of the Practice and Procedure, and analyse the information obtained; and
- (b) in accordance with paragraph 5 of the Practice and Procedure, decide whether to conduct hearings for the purpose of establishing the facts stated in the censure motion; and if so, identify the witnesses to attend hearings; decide whether to invite or summon³ the witnesses to give evidence; and decide on the main areas of evidence to be obtained from them.

³ Not being a standing committee, IC must seek authorization from the Council before it may exercise the power to order the attendance of witnesses and production of papers provided in section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

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2.3 The information relevant to the censure motion gathered by IC is set out in detail in paragraphs 2.8 to 2.13 below. On the basis of the information gathered by and responses provided to IC, IC considered it necessary to conduct hearings for the purpose of establishing the facts stated in the censure motion.

Stage II ——— Obtaining and deliberation on evidence from witnesses
(early February 2019 to early January 2020)

2.4 The main activities at this stage were to obtain evidence from witnesses in respect of the areas of investigation and consider the evidence obtained. Details about the persons invited to attend IC's hearings to give evidence and their responses are set out in detail in paragraphs 2.19 to 2.23 below.

2.5 As regards whether the persons to give evidence at IC's hearing(s) should be invited or summoned through seeking authorization from the Council to exercise the power to order the attendance of witnesses and production of papers provided in section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) ("the Council's authorization"), IC had agreed at the commencement of its work that the persons concerned should first be invited to give evidence, and whether to seek the Council's authorization should be decided at a later stage having regard to the progress of the hearing(s).

2.6 It was during this stage that IC decided, having regard to the various considerations as detailed in paragraphs 2.24 to 2.26 below, that the Council's authorization would not be sought.

Stage III ——— Preparation, discussion and finalization of the report
(mid-December 2019 to July 2020)

2.7 The main activities at this stage were to:

- (a) deliberate on the evidence obtained;
- (b) discuss the approach in drafting the report;
- (c) prepare and discuss the draft report;

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- (d) in accordance with paragraph 25 of the Practice and Procedure, seek comments from the Member under investigation and witnesses on the relevant parts of the draft report; and
- (e) finalize the report.

Information relevant to the censure motion

Information requested from Members who initiated the censure motion and Hon HUI Chi-fung before hearings

2.8 In accordance with paragraph 2(a) of the Practice and Procedure, Hon Mrs Regina IP LAU Suk-ye, the mover of the censure motion, and the three other Members who jointly signed the notice of the motion as mentioned in paragraph 1.5 above, were invited to provide in writing information in support of the particulars of misbehaviour set out in the Schedule to the censure motion and any information which might assist IC in carrying out its work. The abovementioned Members provided the information as requested by IC in August 2018.

2.9 In accordance with paragraph 2(b) of the Practice and Procedure, Hon HUI Chi-fung was then invited to respond in writing to the censure motion and the information provided by the Members who initiated the censure motion, and to provide any information which he considered might assist IC in carrying out its work. Mr HUI did not respond and, though a further letter was issued to invite him again to provide the information, there was no response from Mr HUI after the deadline.

2.10 In accordance with paragraph 3 of the Practice and Procedure, the Clerk to IC, on the instructions of IC, has gathered information relevant to the censure motion, including those items as set out in the ensuing paragraphs.

Closed-circuit television footage requested from The Legislative Council Commission

2.11 For the purpose of IC's investigation in relation to the censure motion, IC considered it necessary to request for the closed-circuit

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television footage covering the alleged incident stated in the censure motion and that covering Conference Room 1 on the second floor of the LegCo Complex ("Conference Room 1") at the material time on 24 April 2018 ("the CCTV footage") which was kept by The Legislative Council Commission. In response to IC's request, The Legislative Council Commission furnished IC with the CCTV footage, which was viewed by IC at its closed meetings and hearings.

Hon HUI Chi-fung's media interviews on the alleged incident related to the censure motion

2.12 IC notes that Hon HUI Chi-fung had two media interviews in the LegCo Complex on 25 and 26 April 2018 on the alleged incident related to the censure motion, and the relevant video footage was available for public access on the website of i-CABLE.com ("i-CABLE's footage").⁴ To facilitate its investigation, IC has also made reference to the verbatim transcript on i-CABLE's footage prepared by the LegCo Secretariat (**Appendices 4 and 5**).

2.13 IC also notes that in a radio programme of the Radio Television Hong Kong ("RTHK") "Open Line Open View"⁵ broadcast on 25 April 2018 on RTHK Radio 1, Hon HUI Chi-fung was interviewed regarding the alleged incident related to the censure motion ("RTHK's interview"), and RTHK's interview was available for public access on the website of RTHK.⁶ To facilitate its investigation, IC has also made reference to the verbatim transcript on RTHK's interview prepared by the LegCo Secretariat (**Appendix 6**).

⁴ After viewing i-CABLE's footage on the website of i-CABLE.com at its closed meeting, IC instructed the Clerk to IC to make a backup copy of i-CABLE's footage from its official website to facilitate IC's investigation.

⁵ The other name of the radio programme is "自由風自由PHONE".

⁶ After listening to RTHK's interview on the website of RTHK at its closed meeting, IC instructed the Clerk to IC to make a backup copy of RTHK's interview from its official website to facilitate IC's investigation.

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Criminal proceedings against Hon HUI Chi-fung

2.14 Soon after it was established, IC requested the Department of Justice ("DoJ") to keep it informed of the development of any pending legal proceedings related to the subject of its inquiry in accordance with paragraph 19(a) of the Practice and Procedure, which is one of the measures to avoid possible prejudice to a person's interest in pending legal proceedings.

2.15 In November 2019, DoJ advised IC that Hon HUI Chi-fung was convicted of the following offences in the case of *Hong Kong Special Administrative Region v HUI Chi-fung* (ESCC 2544/2018) ("ESCC 2544/2018") after trial:

- (a) "obtaining access to computer with a view to dishonest gain for oneself or another", contrary to section 161(1)(c) of the Crimes Ordinance (Cap. 200) (Charge 1);
- (b) "common assault", contrary to Common Law and punishable under section 40 of the Offences against the Person Ordinance (Cap. 212) (Charge 2); and
- (c) "obstructing a public officer in the performance of a public duty", contrary to section 23 of the Summary Offences Ordinance (Cap. 228) (Charge 3).

2.16 DoJ also advised that Hon HUI Chi-fung was sentenced to 240 hours of community service for Charge 1, a fine of \$3,000 for Charge 2, and a fine of \$800 for Charge 3. DoJ further informed IC that Mr HUI lodged an appeal against conviction (case number of the appeal: HCMA 306/2019 ("HCMA 306/2019")) and the hearing had been scheduled for 24 March 2020. IC notes that, owing to the outbreak of the coronavirus disease-2019 in Hong Kong in early 2020, all court hearings (except urgent and essential ones) originally scheduled from 29 January to 3 May 2020 had been generally adjourned.⁷

⁷ Announcement by the Judiciary on 22 April 2020 is available at:
<https://www.info.gov.hk/gia/general/202004/22/P2020042200413.htm>.

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2.17 In the course of its investigation, IC is mindful that the court is responsible for adjudicating on the criminal liability of Hon HUI Chi-fung, whereas IC's investigation is to ascertain whether Mr HUI's relevant conduct amounted to misbehaviour under BL 79(7). IC considers it not necessary to put on hold its work in view of the above legal proceedings. Nevertheless, IC did not reach any conclusion on the matter stated in the censure motion until after the criminal trial in ESCC 2544/2018. In May 2020, DoJ informed IC that the hearing for HCMA 306/2019 was rescheduled for 13 October 2020. In view of this change, IC decided to provide DoJ with a copy of draft Chapter 4 of this Report containing the draft findings and observations of IC and requested DoJ to comment whether the contents of the draft might prejudice the pending criminal proceedings of HCMA 306/2019, pursuant to paragraph 19(d) of the Practice and Procedure. Having considered DoJ's reply, IC considered that this Report would not prejudice the pending criminal proceedings of HCMA 306/2019. IC has decided to complete the investigation of the matter referred to it and report to the Council thereon pursuant to RoP 73A(12) without the need to wait for the outcome of the criminal proceedings of HCMA 306/2019.

2.18 A member of IC requested that the transcript of the testimony of Ms LEUNG Ngok-size in the trial of ESCC 2544/2018 be obtained for IC's consideration. The transcript was subsequently received in January 2020, after IC had already deliberated on its initial findings in December 2019. Having considered that the information and evidence obtained so far were sufficient for establishing the facts as stated in the censure motion, IC eventually decided that it would not consider the transcript of the testimony of Ms LEUNG in the trial of ESCC 2544/2018.

Conduct of hearings

Persons invited to attend the Investigation Committee's hearings

2.19 In accordance with paragraph 5 of the Practice and Procedure, IC considered it necessary to conduct hearings for the purpose of establishing the facts stated in the censure motion on the basis of the information and responses provided to IC under paragraphs 2 and 3 of the Practice and Procedure.

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2.20 In accordance with paragraph 5 of the Practice and Procedure, IC had first decided that the following seven persons were to be invited to attend its hearings to give evidence to assist it in establishing the facts in relation to the censure motion:⁸

- (a) Hon HUI Chi-fung (the Member under investigation);
- (b) Ms LEUNG Ngok-sze (the female officer of the Security Bureau as stated in the Schedule to the censure motion);
- (c) Hon WU Chi-wai;
- (d) Mr Cassius LAU Fu-sang, Political Assistant to Secretary for Security;
- (e) Mr Mark FU Chuen-fu, Political Assistant to Secretary for Transport and Housing;
- (f) Mr Daniel LIU, Security Officer 1 of the LegCo Secretariat; and
- (g) Mr Sonny CHOW, Chief Security Officer of the LegCo Secretariat.⁹

2.21 In response to IC's invitation, Mr Mark FU Chuen-fu, Mr Sonny CHOW and Mr Daniel LIU agreed to be witnesses and did attend IC's hearings (**Appendix 7**). In accordance with paragraph 13 of the Practice and Procedure, Hon HUI Chi-fung was informed in writing of the above witnesses whom IC had decided to invite, and that he might propose additional witnesses for IC's consideration. In that regard, IC did not receive any response from Mr HUI.

⁸ The post titles of the persons invited to attend IC's hearings, where applicable, are based on the posts they held when the alleged incident in relation to the censure motion took place on 24 April 2018.

⁹ IC had also invited Mr Kenny KWAN, Senior Security Assistant 7 of the LegCo Secretariat, to attend its hearing but Mr KWAN could not attend the hearing on the scheduled date. After considering the information gathered by IC and the evidence obtained from other witnesses, IC subsequently agreed that it was not necessary to conduct a hearing for Mr KWAN to give evidence. Hon HUI Chi-fung was informed accordingly in January 2020.

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Hon HUI Chi-fung's responses to the Investigation Committee's invitation

2.22 IC considers that it must be fair to Hon HUI Chi-fung and observe the due process, including the principles of natural justice. Therefore, it invited Mr HUI in March 2019 to attend its hearing to give evidence. Mr HUI replied that he would not attend the hearing (Appendix 7). IC sent another letter to Mr HUI in May 2019, inviting him to reconsider IC's invitation. No response was received from Mr HUI.

Ms LEUNG Ngok-sze, Hon WU Chi-wai and Mr Cassius LAU Fu-sang

2.23 Ms LEUNG Ngok-sze, Hon WU Chi-wai and Mr Cassius LAU Fu-sang were first invited to attend IC's hearing(s) as witnesses to give evidence in late February or early March 2019. They disagreed to be witnesses. They were invited to reconsider IC's invitation in April 2019 after all witnesses had testified in the trial relating to ESCC 2544/2018, but they still disagreed to be witnesses. Subsequently, IC decided to issue a third invitation letter to each of them in June 2019 respectively. Ms LEUNG and Mr LAU still did not agree to be IC's witnesses (Appendix 7) while Mr WU did not provide any response to IC on the third occasion.

Whether to seek authorization from the Council to exercise the power to order the attendance of witnesses provided in section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382)

2.24 As mentioned in paragraph 2.5 above, after gathering information relevant to the censure motion and obtaining evidence from the three witnesses attending its hearings (i.e. Mr Mark FU Chuen-fu, Mr Sonny CHOW and Mr Daniel LIU), IC had considered whether to seek the Council's authorization regarding Ms LEUNG Ngok-sze.

2.25 IC understood that the exercise of the powers under section 9(1) of Cap. 382 would facilitate the work of IC while it was also mindful that the Council's authorization to exercise such powers should be sought only when it was necessary to do so. In this connection, in considering whether the Council's authorization should be sought, IC had considered whether the information gathered so far (e.g. the CCTV footage and Hon HUI Chi-fung's media interviews) and the evidence obtained from

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the three witnesses attending its hearings were sufficient for establishing the facts stated in the censure motion.

2.26 As Ms LEUNG Ngok-sze was an important potential witness who did not agree to attend its hearing(s) to give evidence, IC had made reference to the factors considered by the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai ("IC-KNW") in handling a similar situation. IC had considered whether the information believed to be held by a person was so essential to the completeness of the investigation that IC had to order his or her attendance by summons, having regard to factors including the views of the person concerned, whether the relevant hearings would be held in private or public, and whether sufficient protection was accorded to the person concerned. IC was of the view that the information and evidence obtained so far were sufficient for establishing the facts as stated in the censure motion. After considering all the relevant factors, IC decided that there was no need to seek the Council's authorization to order Ms LEUNG to give evidence to IC.

Meetings and hearings

2.27 In accordance with paragraphs 6 and 7 of the Practice and Procedure, which are modelled on RoP 73A(4) and (5), all meetings of IC, including hearings at which the Member under investigation or a witness or witnesses appear, are held in private. Only the Member under investigation may elect for hearings to be held in public, and the election must be made before the first hearing. Where the Member under investigation makes such an election, all hearings shall be held in public throughout the entire investigation unless, upon an application by a witness or a request from a member of IC, IC on sufficient reason decides otherwise. In IC's letter sent to Hon HUI Chi-fung on 19 March 2019 (**Appendix 8**), IC drew his attention to the above provisions. Given Mr HUI's decision that he did not elect for hearings to be held in public as stated in his reply to IC (**Appendix 9**), all hearings of IC were held in private in accordance with RoP 73A(4).

2.28 IC conducted a total of 10 closed meetings, including two hearings (three sessions) in private. Mr Daniel LIU attended IC's hearing held on 25 June 2019, and Mr Sonny CHOW and Mr Mark FU Chuen-fu on 6 November 2019. The relevant minutes of evidence given

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by three witnesses at IC's hearings in the form of verbatim transcripts in the original language used at IC's hearings are in **Appendices 10 to 12**.

2.29 IC decided that witnesses who would attend hearings to give evidence to IC would be invited to choose to be examined on oath pursuant to section 11 of Cap. 382. IC considers that witnesses examined on oath would be conducive to IC's assessment of their credibility and the weight of their evidence. All the three witnesses (Mr Daniel LIU, Mr Sonny CHOW and Mr Mark FU Chuen-fu) elected to give evidence on oath, which was administered by the Chairman of IC.

Standard of proof

2.30 IC notes that RoP do not prescribe any standard of proof that an investigation committee should adopt or how the evidence obtained should be assessed and weighed. IC is mindful that it is not a court and therefore not subject to the respective standards of proof applied by courts in criminal proceedings (i.e. "proof beyond reasonable doubt") and civil proceedings (i.e. "proof on a balance of probabilities"). As IC's investigation may lead to the Member under investigation being disqualified from the office as mentioned in paragraph 1.1 above, in determining its standard of proof, IC has considered the standard of proof adopted in disciplinary proceedings in Hong Kong as well as the practice adopted by IC-KNW as well as the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai ("IC-CCT"). IC eventually decided that the standard of proof in line with that of the two investigation committees be adopted: the more serious the allegation, the more compelling the evidence is required to establish the allegation.¹⁰

¹⁰ Please refer to paragraphs 113 and 116, *A Solicitor v The Law Society of Hong Kong* (2008), page 117, 11 HKCFAR, the Court of Final Appeal. Paragraph 116 of the judgment stated that "*...The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability. If that is properly appreciated and applied in a fair-minded manner, it will provide an appropriate approach to proof in disciplinary proceedings. Such an approach will be duly conducive to serving the public interest by maintaining standards within the professions and the services while, at the same time, protecting their members from unjust condemnation*".

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Assessment of evidence

2.31 IC is fully aware that it itself is not a court and its function is not to investigate whether Hon HUI Chi-fung's alleged misbehaviour violated the law or to adjudicate on his legal liability. Under RoP 73A(2), it is responsible for establishing the facts stated in the censure motion and giving its views on whether or not the facts as established constitute grounds for the censure of Mr HUI. It is incumbent upon IC to establish and consider the relevant facts and form its own views on whether Mr HUI's alleged misbehaviour constitutes "misbehaviour" under BL 79(7) by taking into account the evidence and information obtained by IC and the relevant provisions in the Basic Law.

2.32 Although IC is not a court and is not subject to the normal rules of evidence in civil or criminal proceedings, it has taken into consideration the following factors, which were first considered by IC-KNW, when assessing the quality and evaluating the weight of information gathered and evidence it has obtained in forming its views:

- (a) *relevance of evidence* – IC has only considered those items of information and evidence relevant to its investigation, i.e. information and evidence which bear on the facts stated in the censure motion which are required to be established. Irrelevant and immaterial evidence provided by the witnesses has not been considered;
- (b) *directness of evidence* – IC has considered whether the information and evidence it had received are first-hand evidence or evidence from secondary sources and has given proper weight to the evidence having regard to its nature. In assessing the directness of evidence, IC has considered whether the evidence given by the witnesses was based on their direct participation or being eye-witnesses, or based on accounts given by other persons. If IC is satisfied that a piece of evidence is relevant and reliable, it would be taken into consideration even if it is not first-hand; and

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- (c) *reliability of evidence* – the more reliable an item of information or evidence, the greater significance IC has attached to it. As such, witnesses have been requested to appear before IC at its hearings to be examined on oath under section 11 of Cap. 382 so that IC members could observe the witnesses' demeanour while giving evidence. In examining the reliability of evidence, IC has considered whether each witness had an in-depth, comprehensive and balanced understanding of the matter.

2.33 The guiding principles and relevant factors as stated in paragraphs 2.30 to 2.32 above are applicable to the analysis of the evidence of the three witnesses who testified at IC's hearings with respect to what was said by Ms LEUNG Ngok-sze, who did not attend IC's hearings to give evidence.

2.34 Those guiding principles and relevant factors are also applicable to what Hon HUI Chi-fung said in i-CABLE's footage and RTHK's interview. As will be illustrated in Chapters 3 and 4 below, IC considers that Mr HUI's statements in i-CABLE's footage and RTHK's interview were voluntarily made and some of them could amount to confession/admission. IC is of the view that they are relevant to IC's investigation and are reliable. Proper evidential value would be given to those statements even though Mr HUI did not attend IC's hearings to give evidence.

Confidentiality requirement

2.35 IC has strictly complied with the confidentiality requirement in the course of its investigation process. In accordance with paragraph 33 of the Practice and Procedure, IC has required all IC members, the Member under investigation (i.e. Hon HUI Chi-fung) and witnesses attending its hearings to give evidence to sign a confidentiality undertaking that they will not publish, without the prior written authorization of IC, any matter relating to the proceedings of meetings or hearings of IC held in private, including evidence taken before IC, documents produced to it, its deliberations and decisions, except such matter that has already been published or contained in any report presented by IC to the Council. They are also required to take the

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necessary steps to prevent publication of such matter either before or after IC presents its report to the Council, unless the confidential classification has been removed by IC. All IC members and witnesses attending the hearings have signed a confidentiality undertaking. Mr HUI did not.

2.36 In response to IC's letter issued to Hon HUI Chi-fung in March 2019 (Appendix 8), Mr HUI replied in April 2019 that he was still considering whether to sign the confidentiality undertaking, and he would provide IC with a written reply later (**Appendix 13**).

2.37 Subsequently, IC wrote to Hon HUI Chi-fung in May, June, August 2019 and in January 2020, reminding him to sign the confidentiality undertaking and informing him that, if he did not do so, IC would not forward to him any information/evidence obtained by IC to establish the facts in relation to the censure motion. IC wrote to Mr HUI in January 2020, informing him of a list of information/evidence which IC had obtained, as set out in **Appendix 14**. However, no response was received from Mr HUI. As the confidentiality undertaking was not signed, IC decided that the abovementioned information would not be forwarded to Mr HUI.

Draft findings

2.38 IC strives to ensure that its investigation and relevant procedure are fair and seen to be fair to parties whose interests or reputation may be affected by its proceedings. In accordance with paragraph 25 of the Practice and Procedure, those parts of this Report which set out the evidence, on the basis of which IC has established the facts stated in the censure motion, had been forwarded to the witnesses concerned (as detailed in paragraph 2.21 above) for comment. All of them had indicated that they had no comments.

2.39 Nevertheless, noting that Hon HUI Chi-fung did not sign the confidentiality undertaking as mentioned in paragraphs 2.35 to 2.37 above, IC decided that he would not be given the relevant parts of this Report for his written response and would not be provided with an advance copy of this Report shortly before it is tabled in the Council. Mr HUI was informed in writing accordingly in July 2020.