



立法會  
LEGISLATIVE COUNCIL

來函檔號 YOUR REF :  
本函檔號 OUR REF : **CB(3)/M/MR**  
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圖文傳真 FACSIMILE : 2810 1691

香港中區  
立法會道1號  
立法會綜合大樓809室  
毛孟靜議員

毛議員：

**根據《基本法》第七十三條第(五)項及第(十)項  
動議的議案**

你已作出預告，擬於2018年10月24日的立法會會議上，根據《基本法》第七十三條第(五)項及第(十)項動議議案，傳召行政長官及相關官員到立法會席前出示文件及作證(附件1)。政務司司長於10月12日晚上致函立法會主席，認為行政長官作為香港特別行政區的首長，不可被強制出席立法會，《基本法》第七十三條第(十)項並不適用於行政長官(附件2)。你於10月15日致函主席表示，鑒於司長的意見及得悉主席會就有關事宜尋求法律意見，你會刪去議案中有關行政長官的提述，希望立法會可如期於上述會議辯論此議案(附件3)。就此，立法會主席指示我代他回覆如下。

《基本法》第七十三條訂明立法會行使的各項職權，當中第(五)項訂明，立法會可對政府的工作提出質詢；第(十)項訂明，立法會在行使各項職權時，如有需要，可傳召有關人士出席作證和提供證據。就政府當局提出的上述憲制問題，主席察悉，早於2004年，政府當局已向立法會一專責委員會<sup>1</sup>提出相若問題。當時，該專責委員會認為本身已獲賦權傳召任何人(包括行政長官)到其席前作證，但同時認為需要時間詳細研究有關的憲制問題，而專責委員會未必是解決有關問題的最適當場合，因此建議立法會跟進此事。<sup>2</sup>立法會秘書處法律事務部曾於2012年12月7日，向內務委員會提交文件，闡述與立法會傳召證人的權力有關的事宜，當中提到立法會可否傳召行政長官的問題，不但懸而未決，在現行的法律框架下，亦沒有簡易答案。<sup>3</sup>主席注意到，**上述問題至今仍未定案。**

<sup>1</sup> 調查政府與醫院管理局對嚴重急性呼吸系統綜合症爆發的處理手法專責委員會。  
<sup>2</sup> 上述專責委員會報告第1.38、1.39及15.53段。報告的電子複本可於立法會網站閱覽，網址為[http://www.legco.gov.hk/yr03-04/chinese/sc/sc\\_sars/reports/sars\\_rpt.htm](http://www.legco.gov.hk/yr03-04/chinese/sc/sc_sars/reports/sars_rpt.htm)。  
<sup>3</sup> 立法會LS13/12-13號文件第10及15段。文件的電子複本可於立法會網站閱覽，網址為<https://www.legco.gov.hk/yr12-13/chinese/hc/papers/hc1207ls-13-c.pdf>。

鑒於你會刪去議案中有關行政長官的提述，主席認為經修改的議案措辭(附件4)合乎規程，可於10月24日的立法會會議上提出。與此同時，主席認同上述的憲制問題複雜、茲事體大，**必須跟進並審慎處理**。除考慮內部法律意見外，主席亦已指示秘書處，就有關問題尋求外間法律意見。

立法會秘書



(衛碧瑤代行)

2018年10月15日

副本送：立法會其他議員

**2018年10月24日的立法會會議  
毛孟靜議員根據《中華人民共和國香港特別行政區基本法》  
第七十三條第(五)項及第(十)項  
動議的議案**

**議案措辭**

本會根據《中華人民共和國香港特別行政區基本法》第七十三條第(五)項及第(十)項，傳召香港特別行政區行政長官林鄭月娥女士、保安局局長李家超先生及入境事務處處長曾國衛先生於2018年11月21日到立法會席前，就香港外國記者會副主席、英國《金融時報》亞洲新聞編輯馬凱先生(Mr Victor MALLET)，被香港特別行政區政府(“特區政府”)無故拒絕其工作簽證續期申請而引發本地及國際社會憂慮特區政府以政治手段打壓香港新聞自由及言論自由一事，出示所有相關的文據、簿冊、紀錄或文件，以及作證和提供證據。

**Motion under Article 73(5) and (10) of the Basic Law of  
the Hong Kong Special Administrative Region of  
the People's Republic of China  
to be moved by Hon Claudia MO  
at the Council meeting of 24 October 2018**

**Wording of the Motion**

That, pursuant to Article 73(5) and (10) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, this Council summons the Chief Executive of the Hong Kong Special Administrative Region ("HKSAR") Mrs Carrie LAM, the Secretary for Security Mr John LEE and the Director of Immigration Mr Erick TSANG to attend before the Council on 21 November 2018 to produce all relevant papers, books, records or documents and to testify or give evidence in relation to the incident of the HKSAR Government's refusal to renew, for no reason, the work visa of Mr Victor MALLET, Vice President of the Foreign Correspondents' Club, Hong Kong and Asia news editor of the Financial Times, thereby causing concerns locally and internationally that the HKSAR Government suppresses freedom of the press and freedom of speech through political means.

中華人民共和國  
香港特別行政區政府  
政務司司長辦公室



CHIEF SECRETARY  
FOR ADMINISTRATION'S OFFICE  
Government of the Hong Kong  
Special Administrative Region  
of the People's Republic of China

香港中區  
立法會道 1 號  
立法會綜合大樓  
立法會主席  
梁君彥議員，GBS，JP

主席：

### 根據《基本法》第七十三(五)及(十)條動議的議案

政府知悉毛孟靜議員預告根據《基本法》第七十三(五)及(十)條在 2018 年 10 月 24 日立法會上作出動議議案，以傳召行政長官、保安局局長和入境事務處處長，於 11 月 21 日到立法會席前，就政府拒絕為個別人士的工作簽證續期一事出示相關文件及出席作證或提供證據。我特此修函，表明政府基於憲制原則反對將該動議納入會議議程，並籲請你把該項動議裁定為不合乎規程。

就憲制角度而言，政府認為《基本法》第七十三(十)條賦予立法會傳召有關人士出席作證或提供證據的權力，並不適用於行政長官。政府的所有論據雖未能盡列於此，可概述如下。

根據《基本法》第四十三條，行政長官是香港特別行政區(香港特區)的首長。在《基本法》下，行政長官具有特別的憲制身分和地位。根據《基本法》第四十八條，行政長官具廣泛的憲制職權，有關職權並不止於處理香港特區行政機關的行政事務。行政長官須就此向中央人民政府和香港特區負責。


在符合《基本法》行政主導政治體制原則的情況下，由行政長官領導的政府與立法會的關係，按《基本法》第六十四條和第七十三條，屬互相制衡與配合。行政長官作為香港特區首長正是上述政治體制的關鍵。

這些原則和條文明確指出，按《基本法》原意，行政長官作為香港特區首長，不可被強制出席立法會。由此可見，立法會根據《基本法》第七十三(十)條的規定傳召有關人士的職權不適用於行政長官。

上述論證亦與立法會議事規則第八條有關行政長官與立法會的憲制關係吻合，該條訂明行政長官可“酌情”決定出席立法會會議。

總括而言，我再次強調，行政長官作為特區的首長，負有憲制責任，因此要求行政長官出席立法會會議以作證或提供證據並不恰當，亦與《基本法》的設計不一致。我懇切促請主席考慮上述論點，並裁定議案不合乎規程。

政務司司長張建宗



副本送：立法會秘書長

2018年10月12日



12 October 2018

The Hon Andrew LEUNG Kwan-yuen, GBS, JP  
President  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear President,

**Motion under Article 73(5) & (10) of the Basic Law**

The Government noted that Hon Claudia Mo has given notice to move a motion at the Council meeting of 24 October 2018 under Article 73(5) & (10) of the Basic Law to summon the Chief Executive ("CE"), Secretary for Security and Director of Immigration to attend before the Council on 21 November to produce relevant documents and to testify or give evidence in relation to an incident of the Government's refusal to renew the work visa of an individual. I write to register the Government's position against the inclusion of the motion in the Agenda on grounds of constitutional principles and appeal to you to rule the motion out of order.

From the constitutional perspective, the Government is of the view that the power of the Legislative Council ("LegCo") under Article 73(10) of the Basic Law to summon persons concerned to testify or give evidence does not apply to the CE. Our arguments, which are not exhaustive as such, are set out in the ensuing paragraphs.

The CE, as the head of the Hong Kong Special Administrative Region ("HKSAR") under Article 43 of the Basic Law, has a special constitutional position and status under the Basic Law. She has been given a wide range of constitutional powers and functions under Article 48, extending beyond what is mere administration of the executive authorities of the HKSAR, in respect of which she is accountable to the Central People's Government and the HKSAR.

The relationship between the Government, headed by the CE, and LegCo is one of regulation and coordination under Articles 64 and 73 of the Basic Law, subject to the principle of an executive-led political system with the CE, as head of the HKSAR, being the lynchpin of such a political system under the Basic Law.

These principles and provisions manifest an intention on the part of the Basic Law that the CE, as the head of the HKSAR, should not be subject to personal compulsion before LegCo. They point to the non-application to the CE of LegCo's power and function to summon under Articles 73(10) of the Basic Law.

The above reasoning is also in line with the constitutional relationship between the CE and LegCo as reflected in Rule 8 of the Rules of Procedure of LegCo, which recognises that the CE may attend meetings of LegCo "at [her] discretion".

To conclude, let me emphasise again that as the head of the HKSAR, the CE has constitutional responsibilities which make it inappropriate, and incongruent with the design of the Basic Law, for her to attend before the Council to testify or give evidence. I sincerely urge you to take into account the above and rule the motion out of order.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Cheung Kin-chung', with a long horizontal flourish extending to the right.

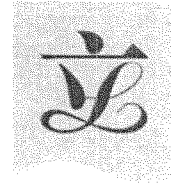
( Matthew Cheung Kin-chung )  
Chief Secretary for Administration

cc Secretary General, Legislative Council



# 毛孟靜立法會議員辦事處

LegCo Office of Claudia Mo



Andrew Leung,  
President,  
Legislative Council

附件 3  
(只備英文本  
English version only)

Oct 15, 2018

Dear Mr Leung,

Regarding the wording of my motion in question and in view of the government's political opinion on the matter, as well as the apparent fact that the President would as a result need to seek legal advice over the issue thus delaying the tabling of the motion, I, as the motion mover on behalf of the Legislature's pro-democracy camp, would hereby notify the President that I take out the reference to the Chief Executive in my original motion wording, in order to enable the motion debate to take place as scheduled on October 24, 2018.

Sincerely,

Claudia Mo  
Member

2018年10月24日的立法會會議  
毛孟靜議員根據《中華人民共和國香港特別行政區基本法》  
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