



By hand and email (tcheung@legco.gov.hk)

7 May 2020

Hon Starry LEE Wai-king, SBS, JP  
The Legislative Council  
1 Legislative Council Road  
Central, Hong Kong

立法會CB(2)940/19-20(01)號文件  
(只備英文本)  
LC Paper No. CB(2)940/19-20(01)  
(English only)

Dear Ms Lee,

We hereby enclose a Joint Advice prepared by Mr. Philip Dykes SC, Johannes Chan SC (Hon), Mr. Jeffrey Tam, Mr. Jason Lee and Mr. Andrew Lau in relation to Issues arising from the Election of the Chairman of the House Committee of the Council for the 2019-2020 Session, which has been jointly sought by the undersigned (PD's Legal Opinion). We should be grateful for you to circulate PD's Legal Opinion to all members of the House Committee.

We hereby also confirm that we have waived all privilege and confidentiality regarding PD's Legal Opinion and should be grateful if such could be included in the official record of the House Committee and the Legislative Council, and be uploaded to the Legislative Council website.

As PD's Legal Opinion is directly related to the determination of the manner of any House Committee proceedings going forward, we also ask you to include PD's Legal Opinion and other relevant documents (if any) for the discussion in the House Committee meeting to be held on 8th May 2020 at 10am.

Yours sincerely,

James TO	LEUNG Yiu-chung	Joseph LEE	Claudia MO
WU Chi-wai	Charles MOK	CHAN Chi-chuen	Kenneth LEUNG
KWOK Ka-ki	Dennis KWOK	Fernando CHEUNG	Helena WONG
IP Kin-yuen	Alvin YEUNG	Andrew WAN	CHU Hoi-dick
LAM Cheuk-ting	SHIU Ka-chun	Tanya CHAN	HUI Chi-fung
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Encls.

CC: Hon Andrew LEUNG Kwan-yuen, President of the Legislative Council  
(Email: plc@legco.gov.hk)  
All members of House Committee

**Issues arising from the Election of Chairman of the House Committee  
("HC") of the Legislative Council ("LegCo") for the 2019-2020 Session**  
**Joint Advice**

**A. Introduction**

1. We are instructed to advise 22 HC members on issues arising from the election of the HC chairman for the 2019-2020 session, as addressed in the joint advice of Mr Benjamin YU SC and Mr Jenkin SUEN SC dated 24 April 2020 ("**Joint Advice**").

**B. Brief factual background**

2. The current LegCo term began on 1 October 2016. The HC for the 2019-2020 session commenced on 16 October 2019.
3. Election for the posts of the Chairman and Deputy Chairman of the HC for the 2019-2020 session was the last item on the agenda of the regular HC meeting on 11 October 2019. This meeting was the last regular meeting for the 2018-2019 session. However, the agenda item could not be reached before that meeting ended.
4. On 15 October 2019, the incumbent HC Chairman scheduled a special HC meeting to conduct the election with a view to completing the election before the 2019-2020 session began on 16 October 2019. As the incumbent HC Chairman had accepted nomination for the chairmanship of HC for the 2019-2020 session, the incumbent HC Deputy Chairman became the Presiding Member of the meeting for the purposes of §2(b) of Appendix IV of the House Rules ("**HR**") (see below).

5. From 15 October 2019 to 24 April 2020, the HC held 16 meetings. The incumbent HC Deputy Chairman presided over 14 of those meetings.<sup>1</sup> At the time of writing this advice, the HC had yet to elect the Chairman and Deputy Chairman for its 2019-2020 session.
6. On 4 May 2020, on the basis of the Joint Advice, the President of LegCo (who is not an HC member) said that the incumbent HC Chairman had the power to convene meetings on urgent matters, and that she has the duty and power to deal with legislative issues that have accumulated since the start of the new session.

### **C. Issues to be addressed**

7. We are asked to advise on an urgent basis on the following matters:
  - (1) Whether the incumbent HC Chairman can perform all the powers and functions of that position pending the election, which includes, *inter alia*, calling meetings to transact or deal with HC's business, especially urgent or essential business ("**Question 1**");
  - (2) If the incumbent HC Chairman can convene meetings on urgent or essential business, to what extent should a matter be considered urgent or essential, and who should make that determination ("**Question 2**");
  - (3) Whether the incumbent HC Chairman can postpone the election for the 2019-2020 session and/or convene any HC meeting(s) or special meeting(s) in parallel with meeting(s) dealing with the election of

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<sup>1</sup> The two meetings on 29 November 2019 and 6 December 2019 were presided over by the member present who had the highest precedence.

the HC Chairman and Deputy Chairman of the 2019-2020 session, so that the HC can deal with the backlog of HC's business (**"Question 3"**);

(4) Whether the incumbent HC Deputy Chairman as Presiding Member has acted *ultra vires* when presiding at the election of the HC Chairman and Deputy Chairman of the 2019-2020 session (**"Question 4"**).

#### **D. Relevant provisions in the RoP and HR**

8. RoP are the rules of procedure of LegCo made by the Council on its own in pursuance of Article 75(2) of the Basic Law. They are supplemented by the House Rules (**"HR"**). These rules are operational guidance made by the HC that members are expected to respect and observe.
9. For present purposes, the relevant part of RoP 75 provides as follows:

*"75. House Committee*

*...*

*(2) The chairman and deputy chairman of the committee shall be elected by the committee from among its members and shall hold office until the chairman and deputy chairman of the committee for the next session are respectively elected in that next session or, in case that election is held before that next session commences, until that commencement. In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.*

*(2A) The election of the chairman and deputy chairman of the committee for the first session of a term shall take place at the first*



*meeting of the committee in the session. For the second or each subsequent session of the term, the election may take place at a meeting held before that session commences.*” (emphasis added)

10. The provisions in RoP 75(2) and (2A) are reflected in HR 20(a)-(d), which go into further detail as follows:

“20. *House Committee*

*(a) The chairman and deputy chairman of the House Committee shall be elected from among its members at an open meeting and shall hold office until the chairman and deputy chairman of the committee for the next session are respectively elected in that next session or, in the case that election is held before the next session commences, until that commencement.*

*(b) The election of the chairman and deputy chairman of the House Committee for the first session of a term shall take place at the first meeting of the committee in the session. The Member who has the highest precedence in the Council is responsible for calling the first meeting of a term of the House Committee.*

*(c) For the second or each subsequent session of a term, the election of the chairman and deputy chairman of the House Committee may take place at a meeting held before that session commences. The meeting shall be called by the chairman in office. If both the chairman and deputy chairman in office before the election are being nominated for the office of the chairman, the member present who has the highest precedence shall preside at the election.*

*(d) The procedure for the election of the chairman and deputy chairman of the House Committee is in Appendix IV ...” (emphasis added)*

11. Appendix IV to HR sets out the procedure for the election of the HC Chairman and Deputy Chairman. For present purposes, it relevantly provides as follows:

*“Election of chairman*

*Presiding member*

*2. For the House Committee and Panels —*

*(a) Where the election takes place at the first meeting of the House Committee or a Panel in a term of the Legislative Council, the member present who has the highest precedence shall preside at the election. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside;*

*(b) At any other election of the chairman, the member who was the chairman of the House Committee or the Panel before the election shall preside at the election. If he is absent or is being nominated for the office, the member who was deputy chairman of the House Committee or the Panel before the election shall preside. If both members who were chairman and deputy chairman before the election are absent or are being nominated for the office, the member present who has the highest precedence shall preside. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside.” (emphasis added)*

**E. Questions 1 and 3: Role and powers of the incumbent HC Chairman**

12. Questions 1 and 3 may conveniently be dealt with together as they both concern the role and powers of the incumbent HC Chairman before the

Chairman for the next session is elected. The answer turns on the proper construction of the relevant RoP and HR provisions.

13. It is well established that a purposive approach is to be adopted in the construction of any legal instrument so that context and purpose are to be considered in the first instance: see e.g. ***HKSAR v Lam Kwong Wai & Others*** (2006) 9 HKCFAR 574 at §63.

14. On the other hand, context and purpose are not to be seen in isolation, as Ma CJ emphasized in ***Yung Chi Keung v Protection of Wages on Insolvency Board and Another*** (2016) 19 HKCFAR 469 at §22:

*“Just as it would be wrong to construe words in a statute without regard to context and purpose, it is equally impermissible to ignore the actual words used in a statute in order to construe its effect... While the plain or natural meaning of the relevant text may not always be clear cut... the actual words used cannot be ignored.”*

15. Similarly, Fok PJ held in ***HKSAR v Fugro Geotechnical Services Ltd*** (2014) 17 HKCFAR 755 at §22:

*“When it is said that context is the starting point, together with purpose, in statutory interpretation, that is not to say that one puts the words being construed to one side. On the contrary, since contextual and purposive construction is a tool or aid to assist a court in arriving at an interpretation that gives effect to the legislative intention, one must always have regard to the particular words used by the legislature in expressing its will...”*

16. In the more recent case of *Secretary for Justice v Cheng Ka Yee* (2019) 22 HKCFAR 97 at §34, French NPJ summarized the proper approach as follows:

*“This Court has stated in numerous judgments the principles which it applies to the task of statutory construction. It looks to the text of the provision to be construed, its context, including the statute of which it is part and its legislative history, and its purpose.”*

17. We have set out the text of RoP 75 and HR 20 above. A proper reading of RoP 75 and HR 20 shows that the only power of the incumbent Chairman in the new session is to conduct the election of the new Chairman:

(1) The term of the HC Chairman is intended to be for one session only.

Thus, the RoP provides for an election at the beginning of every new session.

(2) RoP 75 and HR 20 provide for the election of the HC Chairman and Deputy Chairman either at the *first meeting* of the first session during a term, or in subsequent sessions, a meeting *before* the session commences. In the latter case, the term of the HC Chairman expires, not upon the election of the new HC Chairman, but until the commencement of the next session. Likewise, in this situation, there will be two Chairmen at the same time, but the new Chairman does not enjoy any power of the Chairman until the new session begins. A logical deduction is that the terms and powers of the HC Chairman expire at the end of the session.

(3) The normal situation is that an election for the HC Chairman is to take place at the new session. If the election is to be held at the

beginning of the next session, an express rule is provided to allow the HC Chairman's term to end upon the election of the new HC Chairman. The purpose of the rule is for convenience only, i.e. there is no need to find another member to preside over the election process. The purpose of the arrangement is not to allow the HC Chairman to hold on to his or her power until the new HC Chairman is elected, but rather to facilitate the election of the new HC Chairman only. Once the session has come to an end, the HC Chairman's power should also come to an end, except those relating to the holding of the election at the beginning of the next session.

(4) This is reinforced by the requirement that the election of the new HC Chairman has to be the first item of business of a new session. "The first" means what it means: other business should not be dealt with until this first business is completed. A reason for this is that the new business should be transacted under the new HC Chairman; it is not intended that the incumbent HC Chairman is to have any further power save for the election of the new HC Chairman.

(5) The purpose of RoP 75 is clear. The term of the Chairman is for one session only. Some flexibility is allowed to extend the term of the Chairman to the next session, but this is allowed only for the purpose of facilitating the election of the new Chairman. Any power of the incumbent Chairman in the new session is confined to that for conducting the election. The rule is designed to avoid a perpetuation of a Chairman for more than one session unless the Chairman is re-elected. The business of each session of LegCo shall be decided by the Chairman of that session, and not by the incumbent Chairman from the last session.

18. This intention is reflected in and confirmed by the legislative history of RoP 75(2), as summarized by the LegCo Secretariat in LC Paper No. LS 67/19-20 (the “**LS Paper**”) as follows:

*“The chairmen and deputy chairmen of some committees of the Legislative Council ... are appointed by the President of LegCo ...*

*2. For other committees of LegCo whose chairmen and deputy chairmen are elected to office, the arrangements for the calling and convening of the first meetings of committees for the purpose of electing the chairmen and deputy chairmen of these committees had been considered by Members-elect of the First LegCo during the drafting of the Rules of Procedure in June 1998. In the absence of a most “senior” Member in the first term of the new legislature, it was decided that the only practical arrangement was for the clerks of committees to call the first meeting of a term and preside over the election of the Member to preside over the elections of the chairmen and deputy chairmen. Hence, when RoP were adopted by the First LegCo in July 1998, the relevant rules applicable to the House Committee and Finance Committee provided that the clerk to the committee concerned shall be responsible for calling the first meeting of a term of the committee, and shall preside at the beginning of that meeting for the purpose of electing the presiding Member for the election of the chairman of the committee. The calling of meetings for the purpose of electing committee chairmen and deputy chairmen was subsequently reviewed by the CRoP [i.e. Committee on Rules of Procedure] of the First LegCo. While CRoP considered that there was a need to simplify the procedure for the election of committee chairmen at the beginning of a new term, it had come to the view that no question should arise for calling and convening meetings for the purpose of electing the chairmen in the*

*second or subsequent sessions as RoP already provided for chairmen of FC, HC and Panels to hold office until the election of chairmen of the respective committees in the session next following that for which they were elected. In such case, the first meetings in the second and subsequent sessions for electing the chairmen were called by the respective chairmen. ...*

3. *While the election of chairman is normally held at the first meeting of committees of the Council in a new session, RoP were amended in 2002 to allow the election to be held before a new session commences. The purpose of this arrangement, as set out in LC Paper No. CROP 23/01-02, is to enable the newly elected chairman to decide on the agenda for the first HC meeting which is usually held shortly after a new session commences ..."*

19. As a matter of practice, it has been the consistent practice of various LegCo committees (including the HC) to elect its chairman before transacting any business, thus confirming the intention that the power of the Chairman is not to be extended beyond his or her session save for the purpose of conducting the election of the new Chairman. In the LS Paper, the LegCo Secretariat concluded that this is the "*spirit and legislative intent*" of the relevant provisions in the RoP. We agree.

20. We note the assertion in §35 of the Joint Advice that "*RoP 75 manifests an intention that there will, during the term, always be a chairman of the HC*". We do not dispute this. However it does not follow that the HC Chairman from the previous session remaining in office pending the election of a Chairman for the new session should have "*all the usual powers which may be exercised by a HC chairman*" (§36 of the Joint Advice).

21. On the contrary, we take the view that the HC Chairman from the previous session does not have the usual powers that comes with the office pending the election of the new HC Chairman. Any other conclusion would run against the intention expressed in RoP 75 and HR 20 that a new Chairman and Deputy Chairman should be elected before proceeding with any other business.

22. If the incumbent HC Chairman were entitled to exercise all the powers she has as Chairman of the HC pending the election, this would enable the incumbent HC Chairman to take advantage of the situation. As rightly observed in §45 of the Joint Advice, an incumbent HC Chairman may seek to abuse his/her powers by prolonging or delaying the process of election such that he/she remains in office as the HC Chairman, most notably by presiding at the election and delaying the election process. Given the detailed provisions in RoP 75(2), HR 20 and §2 of Appendix IV to HR as to who should preside over the election, the purpose of which is plainly to avoid any possibility of conflict or even abuse, it cannot possibly be the intention of the RoP to leave open such room for such potential abuse by the incumbent HC Chairman.

23. In this connection, we note the observation in §45 of the Joint Advice that there are two evils in this situation. One is the potential abuse of powers by the incumbent HC Chairman and the potential frustration of operation of HC and LegCo in the absence of such powers. The other is that “*it appears*” to the authors of the Joint Advice that the “*lesser of the evil*” lies in the potential abuse of powers by the incumbent HC Chairman. We strongly disagree with such an argument:



- (1) Identifying the lesser of two evils is not the proper approach for construing a legal provision. That is making a value judgement. The purpose of an exercise in construction of a formal legal instrument is to determine the meaning of a provision as intended by the drafters. Even if a Court were able to identify any deficiencies in the effect of a provision as intended by the drafters, it is not for the Court to construe the provision in order to achieve a result which the Court considers desirable: see *China Field Ltd v Appeal Tribunal (Buildings) (No 2)* (2009) 12 HKCFAR 342 at §36 (Lord Millett NPJ).
- (2) As is plain from the text of the RoP and HR (particularly the provisions concerning who should preside at the election as mentioned above), the drafters were clearly more concerned with avoiding potential conflict and abuse than avoiding any potential frustration of the normal operation of HC.
- (3) In any event, the argument is unsound. The potential abuse of powers by the incumbent HC Chairman is plain for all to see. Indeed, this is why the authors of the Joint Advice went to such lengths in setting out various caveats to their proposition that the HC Chairman from the previous session enjoys all the powers she has as Chairman of the HC even in the new session (§§39-46 of the Joint Advice). Using the present situation as an example, there would be an obvious issue of conflict and potential abuse if the incumbent HC Chairman were allowed to preside over a HC meeting to discuss and determine the extent of her powers as the incumbent HC Chairman.

(4) We understand that the incumbent HC Chairman has scheduled two HC meetings on 8 May 2020, one in the morning regarding the election of a chairperson, and another in the afternoon to discuss contradictory legal opinions regarding her powers. In light of the foregoing analysis, we have serious doubts as to whether she can and should chair the meeting in the afternoon due to the potential conflict of interests.

24. Indeed, the authors of the Joint Advice accept that the power of incumbent HC Chairman in the new session is only limited. She can only exercise power as Chairman pending the election of the new Chairman. If the new Chairman is not elected within one meeting, one would not expect the incumbent Chairman to exercise any power other than the power to call the meeting for and facilitate the process of election (§43 of Joint Advice). This is a clear acknowledgement of a distinction between chairmanship and power of the Chairman. Even in their own argument, they have to accept that she could not enjoy all the powers of the Chairman in the second session. This has to be the case, for otherwise it would be contrary to the plain intention of the requirement of holding the election of a new Chairman as the first item of business of each session. Secondly, their suggestion would not work, as it would not be possible to tell whether a new Chairman would be elected in the next meeting. How could the incumbent Chairman make any decision as to whether a new Chairman would not be elected in the next meeting (save with hindsight) and adjust her power accordingly?

25. Our interpretation is also supported by the practice and procedure of overseas parliaments which operate by way of using a committee system similar to LegCo. The first proceeding of a committee is the election of the

chairman. Committee chairs and vice-chairs are elected at the beginning of a session and, as necessary, during the course of a session. Since the election of a committee chair is the first order of a committee's business, until this item of business is completed with the election of the chair, no other business can be transacted. In the event of the resignation or removal of the chair from the committee, a new chair must be elected before the committee can take up other business. See: *Erskine May Parliamentary Practice* (25<sup>th</sup> edn, 2019), §38.17 and *House of Commons Procedure and Practice, Canada* (2000), pp.829-830, cited at §3 of LC Paper No. LS11/19-20.

26. The rationale behind RoP 75(2), which provides for the incumbent HC Chairman to continue to hold office pending the election of the Chairman of the new session, is clearly to facilitate the holding of the election at a HC meeting:

(1) RoP 75(2) would allow the incumbent HC Chairman to call and/or preside at meetings for the election of HC Chairman and deputy Chairman for the new session without the need to appoint another HC member to do so.

(2) At common law, a meeting will only be properly constituted when at an adequate venue, sufficient members are present to form a quorum and there is someone to control the meeting, i.e. a chairman: *Shackleton on the Law and Practice of Meetings* (14<sup>th</sup> ed), Sweet and Maxwell, p.51.

27. For all the above reasons, we are of the view that the powers of the incumbent HC Chairman in the new session are limited to those necessary

for the conduct of the election of a new HC Chairman and Deputy Chairman. In the present case, the incumbent HC Chairman has called meetings for the purpose of the election. In our view, this falls within the ambit of the incumbent HC Chairman's powers. We disagree with the suggestion in §§44 and 64 of the Joint Advice that the incumbent HC Chairman has all the powers and functions of the Chairman of the HC, including the power to call meetings to transact or deal with any business other than the election of a new Chairman. It has been suggested that the incumbent HC Chairman has the power to postpone the election for the 2019-2020 session and/or convene any HC meeting(s) or special meeting(s) in parallel with meeting(s) dealing with the election of the HC Chairman and Deputy Chairman of the 2019-2020 session, so that the HC can deal with the backlog of HC's business. Not only does this suggested power fly in the face of the express requirement of holding an election at the beginning of each session, such power would also be clearly contrary to the object and purpose of RoP 75 and the HR and will give rise to serious systemic conflict of interests which is what these rules are designed to avoid.

28. It is worth noting that the current impasse arises because the incumbent HC Chairman decides to run for another term. If she withdraws her nomination, she will then resume the power to hold the election, and the problem will go away immediately. Thus, the problem is not as formidable as it appears to be and could be easily resolved. While the incumbent HC Chairman has the right to run for the chairmanship, but if she insists on standing for the chairmanship and claims that she has all the powers of a chairman *qua* her position as an incumbent Chairman (which is likely to be the case at the meeting on 8 May 2020) without an election and yet she is still running an

election, the conflict of interest is obvious and it will make a mockery of the relevant RoP and HR provisions.

**F. Question 2: To what extent would a matter consider urgent or essential and who should make that determination?**

29. For the reasons given in Section E above, we take the view that while the incumbent HC Chairman remains in office pending the election of a new chairman for the new session, she does not have the usual powers of a chairman of the HC, including calling meetings to transact HC's business, whether urgent, essential or otherwise. As such, Question 2 does not arise. Even if the incumbent HC Chairman had the power to deal with urgent or essential business (which is not accepted), the absence of any objective criteria for determining what constitutes "urgent or essential business" shows that this formulation is simply unworkable and self-serving.

**G. Better Way Forward than a Lesser of Two Evils**

30. In the circumstances, a possible way forward is a procedural motion to end the debate and get on with the election process. Whilst the Presiding Member had previously set a deadline of 7 January 2020 for motions to be filed, we understand that there is a similar motion in the queue. This will be a much better and simpler solution than the tortuous and counter-intuitive route of allowing an incumbent chairman to exercise all her usual powers without an election, especially since she is seeking to be re-elected. Permitting such conflict of interests to arise could not have been the intention of the ROP. We have also pointed out above another simple solution. The presence of these options militates against the tortuous and artificial arguments of extending the power of the incumbent Chairman, which will give rise to many long term problems of conflicts of interests.

**H. Question 4: Whether the incumbent HC Deputy Chairman as Presiding Member has acted *ultra vires* when presiding at the election of the HC Chairman and Deputy Chairman of the 2019-2020 session**

31. There is no dispute that the incumbent HC Deputy Chairman has been presiding over meetings of the HC (only) in his capacity as the “Presiding Member” to preside at the election of the chairman and deputy chairman of the HC under §2(b) of Appendix IV to the HR. The real question lies in the *scope* of the incumbent HC Deputy Chairman’s powers when acting in that capacity.

32. In this regard, we note the CFA’s decision in *Leung Kwok Hung v President of the Legislative Council (No 1)* (2014) 17 HKCFAR 689 in relation to the power of the President of LegCo to preside over meetings under Article 72 of the Basic Law. At §22, the CFA stated that the President is to exercise such power so as ensure the orderly, efficient and fair disposition of LegCo’s business. Significantly, the CFA observed at §46 that the President has power to set limits to a debate, being a power inherent in, or incidental to, his power to preside over meetings. The CFA nevertheless held, pursuant to the principle of non-intervention, that it is not for the Courts to consider whether or not the power was properly exercised.

33. Similarly, in *Wong Yuk Man v Ng Leung Sing* [2015] 5 HKLRD 606, the Court confirmed that the FC Chairman (like the President) has the same presiding power to control and regulate the process of the FC. This reasoning should equally apply to the incumbent HC Deputy Chairman who presides at the election.

34. Given that the role of the Presiding Member is also to preside over meetings of the HC for the limited purpose of electing a chairman and deputy chairman of the HC for the new session, we consider the CFA's observations as to the scope of the President's power to preside over meetings under Article 72 of the Basic Law to be similarly applicable to the scope of the Presiding Member's when presiding at election meetings. In particular, we are of the firm view that in his capacity as the Presiding Member, the incumbent HC Deputy Chairman has the power to set the limits of any debate which forms part of the election process. It is for him to decide where these limits should lie so as to ensure the orderly, efficient and fair disposition of HC business concerned with the election and all matters that are incidental to it.

35. Although the proposition that the Presiding Member must have the power to set the limits of any debate which forms part of the election process is not specifically addressed in the Joint Advice, it appears to be implicitly accepted. The stated basis for the conclusion in the Joint Advice that the incumbent HC Deputy Chairman has acted *ultra vires* is it could not be seen how discussions over security arrangements for the Council meetings and non-binding motions to request the LCC to provide all documents, information and records ("**Discussions**") could be relevant to the election of the chairman and deputy chairman of the HC (§§23-25 of the Joint Advice).

36. Whether the Discussions are indeed relevant to the election of the chairman and deputy chairman of the HC, as it appears from the summaries of the meetings in the Chronology of Events provided by the President of LegCo ("**President's Chronology**"). The explanation given by the incumbent HC Deputy Chairman for allowing the Discussions is that the chairman of the

HC would be deputy chairman of The Legislative Council Commission (“LCC”) and that the security of the LegCo Complex is within the purview of the LCC.

37. We also understand that in circumstances which make it impracticable to convene a LCC meeting, e.g. when a swift decision about calling for police help needs to be made to prevent crime in the LegCo Complex, it is the practice of the general secretary of the LegCo Secretariat to inform the LCC Chairman, the LCC Deputy Chairman, and the HC Deputy Chairman of HC before a decision to call police is made. This was confirmed by former LegCo President Jasper TSANG when he was questioned in Court about the powers he can wield in situations where the security of LegCo is under threat. A copy of the news report is included in **Appendix I** hereto.<sup>2</sup> Accordingly, the HC Chairman (in his/her capacity as the LCC Deputy Chairman) has an important role in the security arrangement of the LegCo Complex.

38. We agree with the opinion of the Legal Adviser present at the HC meeting held on 15 October 2019. Her view was that with the HC Chairman being an ex-officio member of the LCC,<sup>3</sup> and since that body would make decisions concerning the security arrangements for the LegCo Complex, there might be reasonable basis for the incumbent HC Chairman ruling that issues relating to the security arrangements for the LegCo Complex were directly related to the election of the HC Chairman. A copy of minutes

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<sup>2</sup> <https://www.scmp.com/news/hong-kong/law-crime/article/1860904/police-called-brink-legco-chaos-legislative-council>

<sup>3</sup> Section 4(1)(b) of The Legislative Council Commission Ordinance (Cap. 443) provides that: “The Commission shall consist of the following members...(b) the Chairman of the House Committee of the Council, who shall be the Deputy Chairman of the Commission...”



prepared by LegCo Secretariat of this HC meeting is included in **Appendix II** hereto.

39. In this regard, the HC Chairman is not just any member of the LCC. There is an increasing number of incidents of violent demonstrations outside the LegCo Complex. Given the volatile nature of these demonstrations, it is unlikely that the deputy Chairman of LCC will have sufficient time to consult all LegCo Members before deciding, together with the Chairman of LCC and deputy chairman of HC, whether to call the police. It is important to know the considerations of making this decision in advance. We are given to understand that the only ex-officio position held by the HC Chairman is the position at LCC and she is by convention the Vice Chairman of the LCC. It is therefore wrong to suggest that members could “*discuss virtually any matter that is within the purview of the HC or the LCC*” (§24 of the Joint Advice). There is no basis in the allegation that he has acted *ultra vires* his powers as Presiding Member.

40. Bearing in mind that the Presiding Member should have certain discretion in hosting a meeting, we are of the view that it is important to give significant weight to the incumbent HC Deputy Chairman’s explanation for allowing the Discussions to go beyond the above. His explanation also includes the following:

“... The incumbent HC Deputy Chairman responded that to ensure that the election of the HC Chairman would be held on a fair, equal and open basis, he considered it necessary for all candidates to have equal access to the relevant information and it was on this ground that information relating to the security arrangements for the LegCo Complex was sought” (emphasis added).

In our view, it is reasonably arguable that it is within the power of the incumbent HC Deputy Chairman as Presiding Member to decide to allow the Discussions so as to ensure the fair disposition of the election.

41. Also, in handling the motions filed by HC members, we are instructed that the incumbent HC Deputy Chairman, apart from considering their relevance, followed the usual practice of putting it to the whole HC to consider whether to deal with the motions in question. This is consistent with the practice in LegCo Panels as set out in HR 22(p). The notion that the incumbent HC Deputy Chairman “*allowed*” members to move motions is misconceived (§25 of Joint Advice).

42. The authors of the Joint Advice also noted a comment made by the incumbent HC Deputy Chairman at the HC meeting held on 13 March 2020 as recorded in the President’s Chronology to constitute “*a clear admission*” that he was deliberately delaying the election for political reasons (§26 of the Joint Advice). We are instructed that the incumbent HC Deputy Chairman does not accept the accuracy of the President’s Chronology in summarizing what he had said and that he notes that the minutes of the said HC meeting prepared by the LegCo Secretariat (“**Secretariat’s Minutes**”), which contains a materially different account as to what he had said. He believes this record to be more accurate. A copy of the Secretariat’s Minutes is included in **Appendix III** hereto.

43. §13 of the Secretariat’s Minutes records the following:

“13.. Mr Dennis KWOK responded to Ms Starry LEE's questions and criticisms and stated that the public would make their own judgements on what was going on in HC. He trusted that the public would understand the situation. He said that some members of the

public had asked him to "withstand" ("頂住" in Chinese) HC although he had no idea about what that meant. Mr KWOK further said that he had also provided ample time for Members of the pro-establishment camp to speak on the letter from Mr HO Kai-ming at the last special HC meeting despite the fact that issues raised in Mr HO's letter were not directly related to the said election. In his view, the joint letter from four Members was more directly related to the said election. Mr KWOK also said that while he had endeavoured to complete the said election as soon as possible, however, he had no control over the progress of the said election and it was up to Members who did have such collective control. If Members wished to complete the election process as soon as possible, then they could stop sending in letters to HC."

44.Regardless of which account is correct, we fail to see the basis of the conclusion drawn in the Joint Advice:

- (1)As recorded in the Secretariat's Minutes, the incumbent HC Chairman suggested at the meeting on 13 March 2020 that the incumbent HC Deputy Chairman had not fulfilled his responsibilities as the Presiding Member and had allowed members to speak without drawing a line. It was in response to this suggestion (recorded in the President's Chronology as the incumbent HC Chairman suggesting that the HC Deputy Chairman should "*get on with the election without further delay*"), as opposed to any allegation of deliberately delaying the election, that the incumbent HC Deputy Chairman was recorded in the President's Chronology to have made the comment referred to in the Joint Advice.

(2) Understood in this context, a response from the incumbent HC Deputy Chairman that *“he had received support from members of the public for what he had been doing in the HC or to resist the pressure from the pro-establishment camp to get on with the election”* (as recorded in the President’s Chronology but not in the Secretariat’s Minutes), even if it were made, was clearly a reference to public support for the manner in which he has been exercising his power as Presiding Member, including his decision to allow the Discussions without imposing more stringent deadlines. It cannot possibly constitute an admission to deliberately delaying the election.

(3) In order to control the number of motions filed, we are instructed as a matter of fact that the incumbent HC Deputy Chairman set a deadline which expired on 7 January 2020. In the meeting on 24 April 2020, the incumbent HC Deputy Chairman also limited the time for members to speak on a motion to three minutes and ordered similar motions to be jointly debated in order to save time.

## **I. Conclusion**

45. In summary, it is our view that whilst the incumbent HC Chairman remains in office pending the election of a new chairman in the new session, her powers are limited to those necessary for the conduct of the election of a new HC chairman and deputy chairman. It is plainly within the power of the incumbent HC Deputy Chairman as Presiding Member to decide to allow the Discussions so as to ensure the fair disposition of the election. There is no basis in the allegation that he has acted outside his powers as Presiding Member.

46. This advice is drafted against the background that what was said by the incumbent Deputy Chairman in the HC meetings. We should point out that his statements are protected by immunities provided under Article 77 of the Basic Law and sections 3 and 4 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Dated the 7<sup>th</sup> day of May 2020

Philip Dykes SC

Johannes Chan SC (Hon)

Jeffrey Tam

Jason Lee

Andrew Lau

**Dated the 7<sup>th</sup> day of May 2020**

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**JOINT ADVICE**

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**Ref: 03-CL-25488-20(27)**

## Appendix I

SCMP.COM

**South China Morning Post**


Hong Kong / Law and Crime

# Police called 'on brink of Legco chaos', Legislative Council President tells courts

Legislature's president says decision to call for protection a 'careful' one

**Chris Lau**

Published: 4:30am, 24 Sep, 2015 ▾

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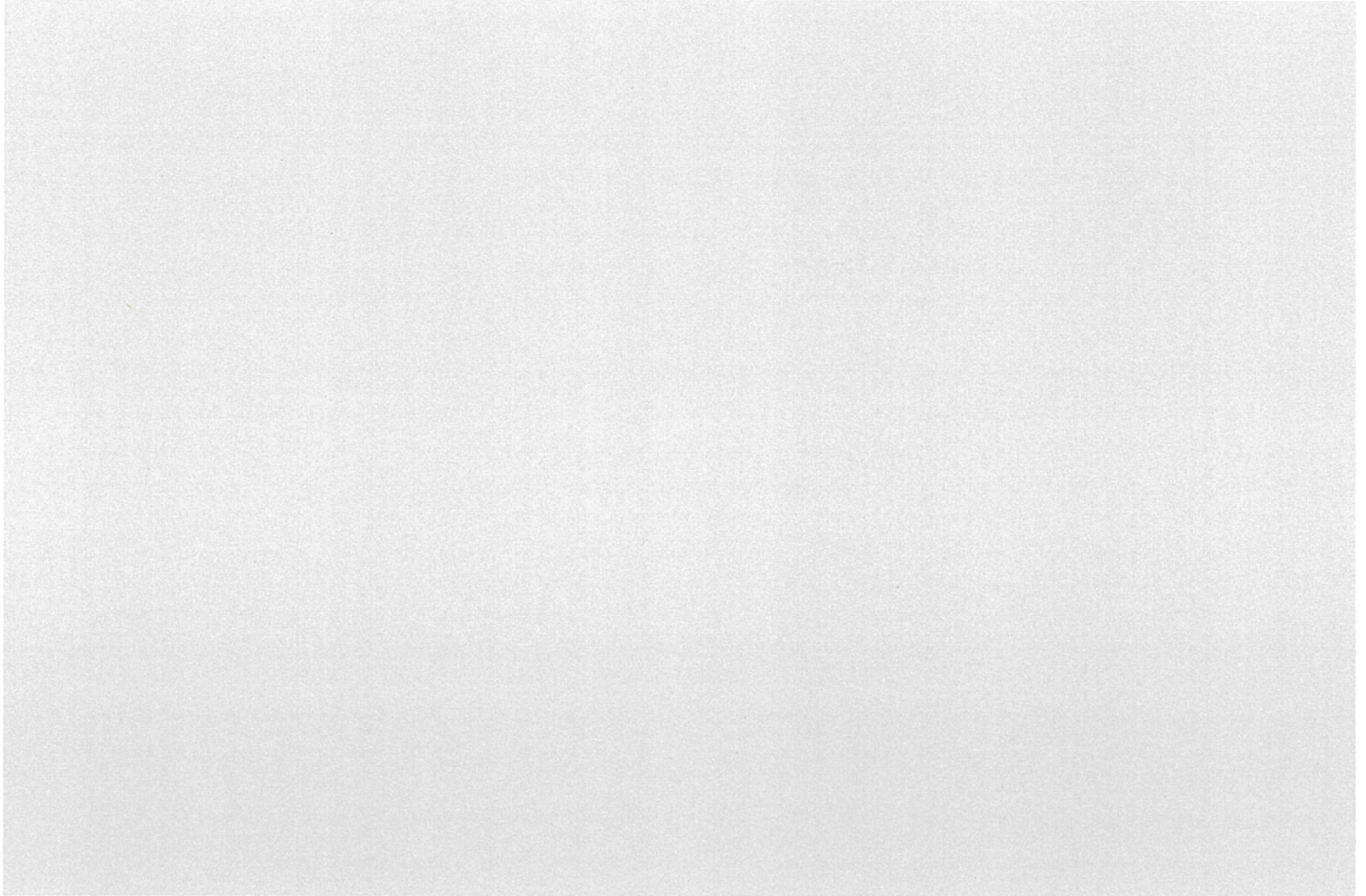
Legislative Council president Jasper Tsang Yok-sing yesterday took the witness stand at Eastern Court to be questioned on the constitutional powers he can wield in calling in police in situations where the security of the chamber is under threat.

He was summoned as a defence witness by lawyer Douglas Kwok Hin-king on behalf of 12 protesters accused of taking part in an unlawful assembly and forcibly entering the legislature on June 13 last year.

They were allegedly taking part in a demonstration against the government's plan to build new towns in the New Territories. Two protesters face a charge of obstructing a Legco officer.

Kwok asked Tsang to explain why police were called to the Legco complex that day. During the 1 and 1/2 hours he was on the stand, Tsang described Legco's decision to call police as always a "careful" one. Typically, he said, the general secretary of the Legco secretariat would inform him, the deputy chairman of the Legislative Council Commission and the deputy chairman of the House Committee before a decision to call police would be made.

He said the commission – a legal body tasked with managing Legco – would not summon police until they saw protesters yelling and the situation on the brink of chaos – what he called a level-two response. Police would not offer to lend a hand unless anybody was under threat, he said.



Protesters were allegedly taking part in a demonstration against the government's plan to build new towns in the New Territories on June 13, 2014. Photo: Felix Wong

Tsang also revealed he met with Chief Secretary Carrie Lam Cheng Yuet-ngor, then police commissioner Andy Tsang Wai-hung and security chief Lai Tung-kwok the morning after the protests. They discussed how Legco could acquire help from police more effectively in view of the storming that day.

The protest zone in the following week was shifted from Legco's public entrance to a space off Tim Mei Avenue to give police more time to prepare, should things get out of hand, Tsang said.

Kwok, aware of his client being charged with forcible entry, also asked how Tsang defined public space at Legco.

Tsang conceded the building was open to the public but repeatedly stressed that a "simple registration" was required prior to admission. He added that visitors were allowed into places such as the library and lobby of the complex in Admiralty.

"Normally, visitors would make an appointment with Legco members before their visits. But they can also do a simple registration at the entrance and tell us where they would go," he said.

Tsang will continue with his testimony today.

**Source URL:** <https://scmp.com/news/hong-kong/law-crime/article/1860904/police-called-brink-legco-chaos-legislative-council>

### **Links**

This article appeared in the South China Morning Post print edition as: Police called 'on brink of Legco chaos'

## **Appendix II**

**立法會**  
***Legislative Council***

LC Paper No. CB(2)XXX/19-20

Ref : CB2/H/5/18

**House Committee of the Legislative Council**

**Minutes of the Special House Committee meeting  
held in Conference Room 1 of the Legislative Council Complex  
at 9:00 am on Tuesday, 15 October 2019**

**Members present :**

Hon Starry LEE Wai-king, SBS, JP (Chairman)  
Hon Dennis KWOK Wing-hang (Deputy Chairman)  
Hon James TO Kun-sun  
Hon LEUNG Yiu-chung  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon CHAN Hak-kan, BBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon CHAN Han-pan, BBS, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Kenneth LEUNG  
Dr Hon KWOK Ka-ki



Hon KWOK Wai-keung, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Elizabeth QUAT, BBS, JP  
Hon Martin LIAO Cheung-kong, GBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, SBS, JP  
Ir Dr Hon LO Wai-kiwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai, JP  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan, JP  
Dr Hon Pierre CHAN  
Hon CHAN Chun-ying, JP  
Hon Tanya CHAN  
Hon CHEUNG Kwok-kwan, JP  
Hon LUK Chung-hung, JP  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho  
Hon Gary FAN Kwok-wai  
Hon AU Nok-hin  
Hon Vincent CHENG Wing-shun, MH, JP  
Hon Tony TSE Wai-chuen, BBS  
Hon CHAN Hoi-yan

**Members absent :**

Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon HUI Chi-fung

**Clerk in attendance :**

Miss Flora TAI

Clerk to the House Committee

**Staff in attendance :**

Ms Connie FUNG

Legal Adviser

Ms Alice LEUNG

Chief Council Secretary (2)6

Miss Connie AU

Senior Council Secretary (2)6

Mr Richard WONG

Senior Council Secretary (2)8

Miss Michelle TANG

Council Secretary (2)6

Ms Anna CHEUNG

Senior Legislative Assistant (2)3

Mr Arthur KAN

Legislative Assistant (2)7

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**I. Election of the Chairman and Deputy Chairman of the House Committee for the 2019-2020 session**

In response to Mr Charles MOK's enquiry about the meeting arrangements and Mr Gary FAN's query as to whether the Chairman had communicated with Mr CHAN Kin-por, the Chairman of the Finance Committee ("FC") before scheduling this meeting, the Chairman said that the last House Committee ("HC") meeting held on 11 October 2019 had not proceeded to the election of the Chairman and Deputy Chairman of HC for the 2019-2020 session due to time constraints. Therefore, she had, in consultation with the Deputy Chairman, decided to schedule a special meeting on Tuesday (i.e. today) to conduct the election. While this meeting was scheduled for 9:00 am to 6:00 pm, it was her plan to have a lunch break between 12:30 pm and 2:30 pm. The Chairman added that if she was subsequently validly nominated for the chairmanship of HC, it would be for the presiding Member to decide on the matter.

Election of Chairman

2. The Chairman called for nominations for the chairmanship of HC for the 2019-2020 session. Ms Starry LEE was nominated by Mr SHIU Ka-fai and the nomination was seconded by Mr Christopher CHEUNG. Ms Starry LEE accepted the nomination. The Deputy Chairman then took over from Ms Starry LEE to preside over the meeting.

3. In response to enquiries raised by Mr James TO and Mr CHAN Chi-chuen concerning the meeting arrangements, the Deputy Chairman said that it was also his plan to have a lunch break between 12:30 pm and 2:30 pm. However, if he was subsequently validly nominated for the election of the chairmanship of HC, the Member who took over from him to preside over the meeting would decide on the matter then.

4. The Deputy Chairman then invited other nominations for the chairmanship. In response to Members' enquiries, the Clerk said that at the FC meeting on 11 October 2019, Members had been advised that a Member who had been validly nominated could no longer second the nominations of other Members. However, Appendix IV to the House Rules ("HR") did not have provisions restricting on a Member nominating multiple candidates. More than 30 nominations were made by Members, but some of these were not accepted by the Members being nominated and/or not seconded by another Member. After the nomination process was completed, there were a total of 23 valid nominations as follows:

<u>Nominees</u>	<u>Nominated by</u>	<u>Seconded by</u>
1. Ms Starry LEE	Mr SHIU Ka-fai	Mr Christopher



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CHEUNG

2. Mr Andrew WAN	Mr Alvin YEUNG	Ms Tanya CHAN
3. Mr AU Nok-hin	Mr Charles MOK	Ms Tanya CHAN
4. Mr James TO	Mr CHAN Chi-chuen	Ms Tanya CHAN
5. Mr HUI Chi-fung	Mr Gary FAN	Ms Tanya CHAN
6. Mr CHAN Chi-chuen	Mr James TO	Ms Tanya CHAN
7. Mr CHU Hoi-dick	Prof Joseph LEE	Ms Tanya CHAN
8. Mr LAM Cheuk-ting	Mr Gary FAN	Ms Tanya CHAN
9. Ms Claudia MO	Mr SHIU Ka-chun	Ms Tanya CHAN
10. Dr CHENG Chung-tai	Mr CHAN Chi-chuen	Ms Tanya CHAN
11. Prof Joseph LEE	Mr Gary FAN	Ms Tanya CHAN
12. Mr IP Kin-yuen	Mr LEUNG Yiu-chung	Ms Tanya CHAN
13. Mr Jeremy TAM	Mr Gary FAN	Mr Charles MOK
14. Mr Kenneth LEUNG	Mr Alvin YEUNG	Mr Charles MOK
15. Mr KWONG Chun-yu	Mr Charles MOK	Ms Tanya CHAN
16. Mr WU Chi-wai	Mr Charles MOK	Ms Tanya CHAN
17. Dr Helena WONG	Mr Gary FAN	Ms Tanya CHAN
18. Mr SHIU Ka-chun	Mr Gary FAN	Ms Tanya CHAN
19. Mr Gary FAN	Mr LEUNG Yiu-chung	Ms Tanya CHAN
20. Mr LEUNG Yiu-chung	Mr CHU Hoi-dick	Ms Tanya CHAN
21. Dr KWOK Ka-ki	Ms Claudia MO	Ms Tanya CHAN
22. Mr Alvin YEUNG	Ms Claudia MO	Ms Tanya CHAN
23. Mr Charles MOK	Mr Gary FAN	Ms Tanya CHAN

(Post-meeting note: Mr LEUNG Yiu-chung and Mr James TO had subsequently written to the Deputy Chairman on 14 and 15 November

2019 respectively advising that they would withdraw from the election.)

Other issues dealt with during the nomination process

*The manner in which the proceedings of this meeting should be recorded*

5. Mr CHU Hoi-dick and Ms Tanya CHAN enquired whether verbatim record would be made for the proceedings of this meeting. At the invitation of the Deputy Chairman, the Clerk advised that it was the practice of HC to prepare verbatim record for the proceedings of the election forum, if held. However, for the remaining proceedings of this meeting, the minutes would be prepared in the same manner as other regular meetings.

6. Mr KWONG Chun-yu suggested that the nomination process should be recorded in a more detailed way such that those Members who had not accepted nomination could be put on record in the minutes of this meeting. Mr AU Nok-hin, however, did not agree with Mr KWONG, and he considered that the minutes of this meeting should be kept in a simplified manner. Mr Alvin YEUNG enquired about the workload involved if adopting Mr KWONG's suggestion. The Clerk advised that there would not be a significant increase in the workload, but that would deviate from the normal practice (i.e. details of Members not accepting nomination would not be recorded in the minutes). After discussion, Mr KWONG and Mr AU agreed that the minutes of this meeting should be prepared according to the normal practice. No Members raised other views.

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*Arrangements to be made in the event that the HC Chairman for the 2012-2020 session could not be elected at this meeting*

7. Mr CHU Hoi-dick enquired about the arrangements to be made in the event that the Chairman and/or the Deputy Chairman for the 2019-2020 session could not be elected at this meeting, particularly whether or not normal business could be transacted. Mr AU Nok-hin wondered who would be in the position to call the next meeting if the Chairman for the 2019-2020 session could not be elected.

8. At the invitation of the Deputy Chairman, the Clerk advised that if the Chairman for the 2019-2020 session was elected at this meeting but the Deputy Chairman for the 2019-2020 session was not, the newly elected Chairman would call the next meeting which might be a regular meeting or a special meeting, but in any case, the election of the Deputy Chairman should be dealt with by HC before HC transacted other business. If the Chairman could not be elected at this meeting, the Chairman in office (i.e. Ms Starry LEE) would be responsible for calling another meeting for conducting the election of the Chairman and the Deputy Chairman.

*Security arrangements for the Legislative Council Complex on 16 and 17 October 2019*

9. Ms Tanya CHAN said that at the last HC meeting held on 11 October 2019, various Members had raised concerns about the security arrangements for the Council meetings to be held for the Chief Executive's Policy Address on 16 October 2019 and the Chief Executive's



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Question and Answer Session on 17 October 2019, particularly about whether police officers would be permitted to perform duties in the Legislative Council ("LegCo") Complex, and if so, whether they would do so according to the requests made by some Members at the last HC meeting on 11 October 2019. She considered it necessary for the Secretary General ("SG") to provide detailed information on the way he had followed up the matter with the Administration, preferably in a written document.

10. Mr Gary FAN and Ms Claudia MO concurred with Ms Tanya CHAN. Mr FAN said that in addition to security arrangements in the LegCo Complex, he was also concerned about the recent installation of water-filled barriers by the Police in the vicinity of the LegCo Complex. He enquired whether SG and/or the President had previously been informed of the matter. Ms MO considered that as the Chief Executive would deliver the Policy Address on the day after this HC meeting, it was necessary for Members to seek more relevant information at this meeting.

11. Ms Starry LEE, the Chairman for the 2018-2019 session, said that while it was understandable for Members to be concerned about the security arrangements to be made for the Council meetings of 16 and 17 October 2019, she queried whether it was appropriate to raise such issues during the election of the HC Chairman. She considered that Members should instead ask the Secretariat to follow up the matter, or directly communicate with the President.

12. The Deputy Chairman said that issues relating to the security arrangements for the LegCo Complex on 16 and 17 October 2019 had

been discussed at length at the last HC meeting. While he had learnt from the Clerk that SG had relayed Members' concerns to the Administration and the President respectively, the Administration's response had not yet been received. The Deputy Chairman further said that it was of paramount importance for the election to be held on a fair, equal and open basis, and therefore, all candidates should have equal access to information that would be relevant to the election of the HC Chairman. Given that the Chairman and Deputy Chairman of HC would be ex-officio members of The Legislative Council Commission ("LCC"), he considered it necessary for all candidates to be kept informed of issues relating to the security arrangements for the LegCo Complex before the conduct of the election forum, particularly in light of the many security incidents that took place in the vicinity of the LegCo Complex in the past few months.

13. Ms Starry LEE, Mr Martin LIAO, Mr CHEUNG Kwok-kwan and Mr Paul TSE were unconvinced of the Deputy Chairman's view. Ms LEE considered that as the election forum would cover a wide range of issues, it would be impracticable to provide Members with all the relevant information. Mr LIAO said that decisions on security arrangements for the LegCo Complex were made by LCC which consisted of 13 Members including the Chairman and Deputy Chairman of LCC, and there should not be any role for HC to perform in that regard. Mr CHEUNG queried whether such issues were directly related to the election of the HC Chairman, and considered that the Deputy Chairman should focus on dealing with the election of the HC Chairman. He requested the Legal Adviser ("LA") to advise on the relevant issues. Mr TSE considered that security arrangements for the LegCo Complex were not related to the

election of the HC Chairman, and also queried whether security arrangements for the LegCo Complex should be regarded as a critical issue for the election of the HC Chairman.

14. Ms Elizabeth QUAT, Ms CHAN Hoi-yan and Mr CHAN Hak-kan expressed a similar view that the election of the HC Chairman had been side-tracked to other irrelevant issues. Mr CHAN also considered that decisions concerning security arrangements for the LegCo Complex were made by LCC in accordance with established mechanism. Therefore, it would be more appropriate if the mechanism was discussed at a future meeting of LCC, or Members put questions to candidates concerning how the Chairman and Deputy Chairman of HC should perform their duties as LCC members during the election forum.

15. Mr KWONG Chun-yu considered it reasonable to seek more information on the security arrangements to be made for the Council meetings on 16 and 17 October 2019, as some Members would need such information when considering whether to nominate and/or vote for certain candidates.

16. Mr CHU Hoi-dick noted that the election might be presided by the Deputy Chairman or the Member with the highest precedence. He enquired whether issues that could be dealt with during the election would be different if it was the Member with the highest precedence presiding instead of the Deputy Chairman.

17. Regarding Members' views on the security arrangements for the LegCo Complex, the Deputy Chairman reiterated that all candidates



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should have equal access to information that would be relevant to the election, including the decisions made by LCC on the security arrangements for the LegCo Complex. He further said that it was the practice that before giving permission for the deployment of police officers in the LegCo Complex, SG would inform the President, and the Chairman and the Deputy Chairman of HC. Upon receiving information on the security arrangements for the LegCo Complex, he would inform Members of the pro-democracy camp about such arrangements. Therefore, he considered such issues to be directly relevant to the election. Nevertheless, he would suspend the meeting and invite LA and SG to clarify issues relating to the security arrangements and other procedural issues raised by Members.

*(The meeting was suspended at 10:44 am and resumed at 11:08 am.)*

18. After the meeting was resumed, the Deputy Chairman informed Members that SG had told him that SG had relayed to the Administration the concerns raised by some Members about the deployment of police officers in the LegCo Complex, and there was still no written reply from the Administration concerning the security arrangements to be made in the LegCo Complex on 16 and 17 October 2019.

19. At the invitation of the Deputy Chairman, LA advised that at the election of the HC Chairman, the Deputy Chairman or any Member presiding should enjoy all those powers conferred by the Rules of Procedures ("RoP") on the HC Chairman in respect of the election. LA noted that the Deputy Chairman took the view that security arrangements for the LegCo Complex would be issues of concern by many Members

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during the election forum to be held. Against the background that the HC Chairman would be an ex-officio member of LCC and LCC would make decisions concerning the security arrangements for the LegCo Complex, there might be reasonable grounds for the Deputy Chairman to rule that issues relating to the security arrangements for the LegCo Complex were directly related to the election of the HC Chairman.

20. Mr CHEUNG Kwok-kwan considered that even if issues relating to the security arrangements for the LegCo Complex were to be dealt with during the election of the HC Chairman, it would be more appropriate to raise such issues during the election forum rather than the nomination process.

21. Mr Kenneth LEUNG considered that not only should issues relating to security arrangements for Council meetings be raised by Members during the election forum, all candidates nominated for the chairmanship of HC should also clearly indicate their position on the matter for Members' consideration.

Proposed arrangements for the election forum

22. Upon completion of the nomination, the Deputy Chairman said that in light of the unprecedented situation that 23 candidates were validly nominated, he would like to consult Members on the arrangements for the election forum. At the invitation of the Deputy Chairman, the Clerk advised that the past practice of election forum, if held, was that following each candidate presenting his/her election platform within a specified period of time (e.g. one minute), Members would put forward



their questions and each candidate would respond to each question within a specified period of time. However, should Members decide not to adopt the past practice for this election, Members might wish to make reference to the election forum adopted by FC for the election of its chairman and deputy chairman for the 2019-2020 session.

23. Mr Gary FAN, Mr Kenneth LEUNG, Ms Tanya CHAN and Mr AU Nok-hin considered that the arrangements adopted by FC for its election forum in the 2019-2020 session was far from ideal, and therefore, HC should not adopt the same arrangements. In the view of these Members, it was undesirable for each candidate to give a consolidated response to the questions put by Members, and instead, more time should be allocated to the election forum so that each candidate would have sufficient time to answer the questions put by Members. Ms CHAN also considered that Members should be given an opportunity to discuss the way HC should conduct its election forum, based on the three options put forward for Members' consideration at the FC meeting on 11 October 2019. Mr AU considered that modifications should be made to the option of the election forum arrangements adopted by FC, so as to avoid an undesirable situation that irrespective of the number of questions put by Members, each candidate would be given the same amount of time to answer these questions.

24. Mr Steven HO considered that the election forum conducted by FC for the election of its chairman for the 2019-2020 session was efficient, and it was appropriate for HC to adopt the same arrangements. In his view, an election forum should be completed within a reasonable period of time, and if not, Members should be given the opportunity to consider

not conducting an election forum at all.

25. Mr LAM Cheuk-ting, Mr CHU Hoi-dick and Mr CHAN Chi-chuen raised objection to adopting the same election forum arrangements as FC, and they expressed a similar view that the election forum should be conducted in such a way that candidates would need to directly respond to the questions put by Members. Mr LAM considered that if candidates were asked to give a consolidated response to Members' questions, candidates might easily avoid addressing certain critical issues. Mr CHU considered it more desirable to follow the past practice that Members would put forward their questions and each candidate would respond to each question within a specified period of time. Mr CHAN suggested that Members should be given an opportunity to have a thorough discussion on various possibilities concerning the election forum arrangements.

26. Dr Junius HO considered that instead of conducting a lengthy discussion on the arrangements for election forum, the Deputy Chairman should immediately set out a few options and put to vote these options. He also said that the Deputy Chairman, who had been trained as a legal practitioner, should be able to deal with the relevant proceedings in an organized manner.

Point of order concerning Rule 41(4) of the Rules of Procedure

27. Ms Claudia MO raised a point of order. She queried whether Dr Junius HO's remark had discriminated against those Members who were not legal practitioners. In response, Dr Junius HO said that he wondered

whether only those who "habitually eat foreign sausage" ("食慣洋腸" in Chinese") would see his earlier remark as discrimination. Ms MO and Ms Tanya CHAN were outraged about the remark just made by Dr HO, which in their view were of sexist and racist nature and amounted to sexual harassment. They considered that Dr HO had already breached RoP 41(4) concerning the use of offensive/insulting language and requested the Deputy Chairman to rule on the matter.

28. The Deputy Chairman responded that Dr Junius HO should not use expressions which were of sexist nature and that he would ask Dr HO to withdraw his remark. Noting that Dr HO had just left the meeting room, he decided to suspend the meeting and asked Dr HO back to the meeting so that he could deal with the matter.

*(The meeting was suspended at 11:52 am and resumed at 12:03 pm.)*

29. After the meeting was resumed, Dr Junius HO explained that his earlier remark had not meant to be anything offensive or insulting. Mr LAM Cheuk-ting, Mr Andrew WAN and Dr CHENG Chung-tai expressed a strong view that the earlier remark made by Dr Junius HO was utterly unacceptable. Mr LAM said that only "scum" would made such a remark, and given that Dr HO refused to withdraw that remark, he considered Dr HO to be "scum".

30. The Deputy Chairman disapproved of Dr Junius HO's explanation and ruled that his earlier remark was of sexist nature and was offensive and insulting language. The Deputy Chairman requested Dr HO to withdraw his remark, but Dr HO refused to do so. The Deputy



Chairman then ordered Dr HO to withdraw from the meeting.

*(Dr Junius HO then left the conference room.)*

31. Dr Junius HO raised a point of order before withdrawing from the meeting. He considered that the remark just made by Mr LAM Chuek-ting on him amounted to offensive/insulting language. The Deputy Chairman requested Mr LAM to withdraw his earlier remark, but Mr LAM made clear that he would not do so, and then withdrew from the meeting himself.

32. Before suspending the meeting for the lunch break, the Deputy Chairman concluded that having regard to Members' views and concerns raised at this meeting, he would come up with a few options of the election forum arrangements for Members' consideration after the lunch break.

*(The meeting was suspended at 12:30 pm and resumed at 2:40 pm.)*

33. After the meeting was resumed, the Deputy Chairman said that having regard to Members' earlier views, he had amended the three options of election forum arrangements which Members had considered at the FC meeting on 11 October 2019. These options were set out in the document tabled at the meeting (see **Appendix I** for details), and it was estimated that Options A, B and C would respectively take 1 726 minutes, 346 minutes and 253 minutes to complete.

34. Ms Tanya CHAN reiterated her request that the Administration

should provide a written response to issues relating to whether the Administration would deploy police officers in the LegCo Complex on 16 and 17 October 2019, and if so, whether these police officers would be deployed in accordance with the requests raised by some Members at the last HC meeting on 11 October 2019. The Deputy Chairman informed Members that there was no further update in that regard, and he would first consult Members on the three options of election forum arrangements.

Three options of election forum arrangements

35. Dr KWOK Ka-ki considered that the three options each had their merits and demerits, and therefore, it was desirable if Members would be given the opportunity to further amend these options by combining various components of these options. For example, Option A should also allow each candidate to make concluding remarks.

36. Mr CHEUNG Kwok-kwan, Mr Vincent CHENG, Mr Steven HO, Ms Elizabeth QUAT and Mr CHAN Han-pan expressed dissatisfaction with the way the Deputy Chairman consulted Members on the election forum arrangements. These Members took the view that conducting the election forum in accordance with any of the three options would be too time consuming, and that the Deputy Chairman should also include the option adopted by FC (i.e. the election forum could be completed in 132 minutes) for Members' consideration. Mr HO indicated that while it was desirable to conduct an election forum, the election forum should be completed within a reasonable period of time. He reiterated that if the option of the election forum arrangements adopted by FC was not made

available for Members' consideration, Members should be given an option that no election forum be held. Ms QUAT considered it absurd for the Deputy Chairman to put forward for Members' consideration an option which might last for more than 28 hours (i.e. Option A).

37. Mr CHAN Chi-chuen and Mr AU Nok hin reiterated their views that Members should have a thorough discussion on the election forum arrangements. Mr CHAN added that even though he did not find any of the three options ideal, he considered that it was desirable if Members could make compromise, and in any case, Members should be given ample time for discussion before making a decision concerning whether and how the election forum should be conducted.

38. Ms Tanya CHAN and Mr Andrew WAN considered that sufficient time should be allocated to the conduct of the election forum, and they expressed preference for Option A over the other two options. Ms CHAN considered Option A to be a fair arrangement as each candidate would be given the same amount of time. Besides, even if Option A was to be adopted by HC for conducting the election forum, the actual duration would be much shorter than the expected time as it was likely that the number of Members putting questions to candidates would be much smaller than expected. Mr WAN considered that it was of the utmost importance for the election forum to be conducted held in a manner that each candidate would be given sufficient time to answer the questions put by Members.

39. Mr CHAN Kin-por and Ms Starry LEE took the view that any of the three options of election forum arrangements put forward by the



Deputy Chairman for Members' consideration would take unreasonably long time to complete, and therefore, it was questionable whether the election of the HC Chairman could be conducted in an efficient manner. Mr CHAN, referring to a ruling previously made by the Court of First Instance, said that any presiding Member should ensure the orderly, efficient and fair disposition of business. Ms Starry LEE said that in considering the time required for conducting the election, the presiding Member should be aware that if an election forum was held for the election of the Chairman, it was likely that an election forum would also be required for the election of the Deputy Chairman. Given that normal business of HC would only be transacted after the Chairman and the Deputy Chairman for the 2019-2020 session were both elected, she was worried that the business of HC could not be dealt with in a timely manner.

40. Mr Kenneth LEUNG and Mr CHAN Chi-chuen took the view that the way the Deputy Chairman presided at the election was in order. Mr LEUNG considered that the Deputy Chairman could exercise the powers conferred on him by RoP in respect of presiding at the election. Mr CHAN considered it appropriate for the Deputy Chairman to put forward three options for Members' consideration. In Mr CHAN's view, it would be unmanageable if Members could each propose their options of the election forum arrangement as they saw fit. However, if further amendments could be made to these options, he suggested that all candidates should each be given a specified period of time (say, 10 minutes) which they could determine how to use, e.g. to put questions to other candidates or to express their own views.

41. Mr CHU Hoi-dick said that based on his observation, the way the Deputy Chairman consulted Members on the election forum arrangements was the same as that of Mr CHAN Chun-ying, the Member presiding at the election of the FC Chairman for the 2019-2020 session. In gist, the presiding Member put forward three options of the election forum arrangements having regard to Members' views, and Members would decide which option to be adopted by voting. Mr Andrew WAN concurred with Mr CHU, and he added that Members could cast their votes in accordance with their own preferences for these options.

42. The Deputy Chairman said that given the different functions between HC and FC and the different roles between the Chairmen of HC and FC, the option of the election forum arrangements suitable for FC might not be so for HC. Having regard to Members' views raised before the lunch break, he had made amendments to the three options put forward for Members' consideration at the FC meeting on 11 October 2019. The Deputy Chairman affirmed that the way he consulted Members on the election forum arrangements was modelled after Mr CHAN Chun-ying, the Member presiding at the election of the FC Chairman for the 2019-2020 session.

43. Mr CHAN Kin-por said that he was one of the candidates for the FC chairmanship for the 2019-2020 session, and during that election forum, a large number of Members put questions to him and he did not have sufficient time to answer all those questions. He considered it more appropriate if the election forum could be conducted in a more flexible manner such that those candidates to whom many Members had put questions would be allocated more time to answer the questions. Ms



Starry LEE said that she, as the only Member of the pro-establishment camp who had been validly nominated for the chairmanship of HC, supported Mr CHAN's proposal.

44. Regarding the situation in which certain candidates might not have sufficient time to answer all the questions put to them, Mr Alvin YEUNG, Mr AU Nok-hin and Mr CHAN Chi-chuen considered that the presiding Member could exercise discretion as appropriate. Ms Claudia MO, however, considered it important to uphold the fairness principle that each candidate should be given the same amount of speaking time in the election forum. Mr CHU Hoi-dick considered it unnecessary to make any favourable arrangements for those candidates to whom many Members had put questions, as a situation like that could be an opportunity for those candidates to rise to the challenge.

45. Mr LEUNG Che-cheung considered that Members should be allowed to propose alternative options of the election forum arrangements if they found none of the three options put forward by the Deputy Chairman acceptable. Noting that 21 out of the 24 candidates nominated for the FC Chairmanship for the 2019-2020 session eventually received zero vote, Mr LEUNG considered that these Members had participated in the election as "con artists" ("做媒" in Chinese) for the purpose of prolonging the election process.

46. Mr CHAN Chi-chuen, Dr KWOK Ka-ki, Mr James TO, Mr AU Nok-hin, Mr Andrew WAN and Ms Claudia MO expressed a strong view that it was unacceptable for Mr LEUNG Che-cheung to make such a serious allegation against other Members. In the view of these Members,

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Mr LEUNG's remark was offensive and insulting, and the remark had already breached RoP 41(5). They requested the Deputy Chairman to rule on the matter.

47. Mr Abraham SHEK, however, considered that Mr LEUNG Che-cheung's remark was not directed at any Member, and that the remark was a fair comment.

48. The Deputy Chairman decided to suspend the meeting and review the video record in order to make a ruling on the point of order.

*(The meeting was suspended at 3:24 pm and resumed at 3:39 pm.)*

49. After reviewing the video record, the Deputy Chairman said that he noticed that Mr LEUNG Che-cheung had more than once alleged other Members to be acting as "con artists" ("做媒" in Chinese). To his understanding, such an expression meant that those Members had some ulterior motive for participating in the election. The Deputy Chairman referred to RoP 41(5) which stipulated that "A Member shall not impute improper motives to another Member", and ruled that Mr LEUNG Che-cheung had breached that Rule in his earlier remark. The Deputy Chairman requested Mr LEUNG to withdraw that remark but Mr LEUNG refused to do so. The Deputy Chairman then ordered Mr LEUNG to withdraw from the meeting.

*(Mr LEUNG Che-cheung then left the Conference room.)*

50. Ms Starry LEE expressed disapproval of the ruling made by the Deputy Chairman. She considered that the standard applied by the

Deputy Chairman in Mr LEUNG Che-cheung's case was overly strict. She also wondered whether or not the same strict standard was to be applied at future meetings of HC, and if so, it would be much more often for Members to be requested to withdraw their remarks and/or be ordered to withdraw from a meeting.

51. Regarding the election forum arrangements, Mr Gary FAN, Mr WU Chi-wai and Mr AU Nok-hin took the view that it was of the utmost importance and urgency for the Administration to respond to the five demands put forward by members of the public participating in the protests against the Administration's proposed legislative amendments concerning the surrender of fugitive offenders. Mr FAN considered that the election forum would provide Members with an opportunity to express their views on relevant issues and put pressure on the Administration to respond. Mr WU considered that Members of the pro-establishment camp should not put too much emphasis on expeditiously completing the election of the HC Chairman. Instead, during the election forum, Members should take the opportunity to deliberate on ways to solve the current political impasse. Mr AU considered that given the importance of the duties to be performed by the HC Chairman, Members should be given ample time to put questions to candidates during the election forum, particularly about what and how these candidates would do to make the Administration respond to those five demands.

52. Ms CHAN Hoi-yan and Dr CHIANG Lai-wan took the view that it was inappropriate to conduct the election forum in a lengthy manner. Ms CHAN considered it more desirable if the meeting time would be



spent on monitoring the Administration's work instead of Members putting questions to one another. Dr CHIANG considered that HC should adopt the same option as FC so that the election forum could be completed in about two hours. Besides, Dr CHIANG commented that Mr Gary FAN should be held responsible for a large number of youngsters getting arrested as he had incited them to take to the streets to protest, and she also criticized Mr FAN for having "acted impudently and shamelessly" ("厚顏無耻" in Chinese).

53. Mr Kenneth LEUNG and Mr AU Nok-hin raised a point of order. They considered that the remark just made by Dr CHIANG Lai-wan on Mr Gary FAN had breached RoP 41(4) concerning the use of offensive/insulting language. Mr LEUNG also pointed out that the expression "has acted impudently and shamelessly" ("厚顏無耻" in Chinese) had been ruled at the Council meeting of 13 October 2004 to be offensive and insulting language about Members. In response, the Deputy Chairman said that Dr CHIANG had left the meeting, and he could only deal with the matter when Dr CHIANG got back to the conference room.

54. Dr KWOK Ka-ki, referring to the remark made earlier by Ms Starry LEE regarding the standard to be applied for ruling on RoP 41(4) and (5), considered that Ms Starry LEE had threatened other Members. Ms Starry LEE raised a point of order and said that the remark just made by Dr KWOK had breached RoP 41(5). She requested the Deputy Chairman to rule on the matter.

55. The Deputy Chairman decided to suspend the meeting to review

the video record in order to make a ruling on the point of order.

*(The meeting was suspended at 4:47 pm and resumed at 5:01 pm.)*

56. After the meeting was resumed, at the request of the Deputy Chairman, Dr KWOK Ka-ki made clear that he would withdraw his earlier remark on Ms Starry LEE. He then reiterated his views on the three options of the election forum arrangements that it was desirable if Members would be given the opportunity to further amend these options by combining various components of these options. Dr KWOK, however, considered it acceptable for the Deputy Chairman to put forward the existing three options for Members' consideration.

57. At 5:09 pm, Mr Alvin YEUNG raised a point of order. He said that it was unlikely that the election of the HC Chairman could be completed at this meeting, and he enquired whether or not the 23 candidates would be consulted on the date and time of the next meeting.

58. At the invitation of the Deputy Chairman, the Clerk advised that in accordance with the relevant rules of HR, the Chairman in office (i.e. Ms Starry LEE) would be responsible for calling the next meeting to continue the proceedings of the election of the HC Chairman for the 2019-2020 session. While it was advisable for the presiding Member (i.e. the Deputy Chairman) to be consulted on the date and time of the next meeting, it would be up to the Chairman for the 2018-2019 session to consider whether to also consult all the candidates.

59. At the invitation of the Deputy Chairman, Ms Starry LEE said that

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in the capacity as the Chairman for the 2018-2019 session, she would, in consultation with the Deputy Chairman, schedule the next meeting. Having regard to the availability of Members, particularly the 23 candidates, it was her preliminary thinking that the next meeting would be held on 2:30 pm on next Friday (i.e. the time slot where the regular meeting of HC would usually be held).

60. Before closing the meeting, the Deputy Chairman said that having regard to various views raised by Members at this meeting, he would consider how to further amend the three options of the election forum arrangements, and the proceedings of the election of the HC Chairman would continue at the next meeting.

61. The meeting ended at 5:21 pm.

### **Appendix III**

**立法會**  
***Legislative Council***

LC Paper No. CB(2)928/19-20(01)

Ref : CB2/H/5/19

**House Committee of the Legislative Council**

**Minutes of the Special House Committee meeting  
held in Conference Room 1 of the Legislative Council Complex  
at 2:30 pm on Friday, 13 March 2020**

**Members present :**

Hon Starry LEE Wai-king, SBS, JP (Chairman for the 2018-2019 session)  
Hon Dennis KWOK Wing-hang (Deputy Chairman for the 2018-2019 session)  
Hon James TO Kun-sun  
Hon LEUNG Yiu-chung  
Hon Abraham SHEK Lai-him, GBS, JP  
Hon Tommy CHEUNG Yu-yan, GBS, JP  
Prof Hon Joseph LEE Kok-long, SBS, JP  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon CHAN Hak-kan, BBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK, JP  
Hon CHAN Chi-chuen  
Hon LEUNG Che-cheung, SBS, MH, JP  
Hon Kenneth LEUNG  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki



Hon KWOK Wai-keung, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Hon Elizabeth QUAT, BBS, JP  
Hon Martin LIAO Cheung-kong, GBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, SBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon CHUNG Kwok-pan  
Hon Alvin YEUNG  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon HO Kai-ming  
Hon LAM Cheuk-ting  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai, JP  
Hon SHIU Ka-chun  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan, JP  
Dr Hon Pierre CHAN  
Hon CHAN Chun-ying, JP  
Hon Tanya CHAN  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LUK Chung-hung, JP  
Hon LAU Kwok-fan, MH  
Hon Kenneth LAU Ip-keung, BBS, MH, JP  
Dr Hon CHENG Chung-tai  
Hon KWONG Chun-yu  
Hon Jeremy TAM Man-ho  
Hon Vincent CHENG Wing-shun, MH, JP  
Hon Tony TSE Wai-chuen, BBS  
Hon CHAN Hoi-yan

**Member absent :**

Hon CHAN Han-pan, BBS, JP

**Clerk in attendance :**

Miss Flora TAI

Clerk to the House Committee

**Staff in attendance :**

Ms Alice LEUNG

Chief Council Secretary (2)6

Mr Richard WONG

Senior Council Secretary (2)8

Miss Michelle TANG

Council Secretary (2)6

Ms Anna CHEUNG

Senior Legislative Assistant (2)3

Miss Meisy KWOK

Legislative Assistant (2)6

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**I. Election of the Chairman and Deputy Chairman of the House Committee for the 2019-2020 session**

Mr Dennis KWOK, Deputy Chairman for the 2018-2019 session and Member presiding at the election of the Chairman of the House Committee ("HC") for the 2019-2020 session ("the said election"), invited Members to note that a joint letter dated 11 March 2020 ("the joint letter") from four Members, namely Dr KWOK Ka-ki, Mr Alvin YEUNG, Ms Tanya CHAN and Mr Jeremy TAM, and the reply dated 13 March 2020 by Ms Starry LEE, Chairman for the 2018-2019 session, were tabled at the meeting. Mr KWOK said that in the joint letter, these four Members had expressed their views regarding the holding of this special HC meeting under the circumstances that Wuhan pneumonia ("武漢肺炎" in Chinese) outbreak persisted in Hong Kong. He said that he would allow Members to speak on the joint letter if they wished to do so before continuing with the remaining proceedings in respect of the non-binding motions proposed by Mr Jeremy TAM at the previous special HC meeting.

*(Post-meeting note: The joint letter from four Members and the reply by Ms Starry LEE were circulated to Members vide LC Paper Nos. CB(2)716/19-20(01) and (02) on 16 March 2020.)*

Joint letter from four Members

*Name of the disease used in the joint letter*

2. Mr Steven HO and Ms Elizabeth QUAT expressed strong disapproval that Wuhan pneumonia was used in the joint letter to refer to the disease. Mr HO commented that Mr Dennis KWOK should be mindful of using the proper name of the disease as this was an open meeting of the Legislative Council ("LegCo"), and suggested that novel coronavirus pneumonia ("新型冠狀病毒肺炎" in Chinese) be used to refer to the disease. Echoing the view of Mr HO, Ms QUAT said that an internationally recognized disease name should be used. Mr Dennis KWOK responded that he did not see any problem with using the name of Wuhan pneumonia to refer to the disease.

3. Mr Jeremy TAM and Dr Fernando CHEUNG shared a similar view that the disease was commonly called Wuhan pneumonia as it was first emerged in Wuhan, China. Mr TAM saw no problem for Mr Dennis KWOK to refer to the disease as Wuhan pneumonia since this was the name used in the joint letter. Mr CHAN Chi-chuen expressed strong dissatisfaction that some Members were attempting to pressurize other Members to call the disease in the way these Members considered to be appropriate. Mr CHAN further said that he preferred to use the name Wuhan pneumonia and considered that different names of the disease could be used as long as Members could get their message across and did not use any expressions that were offensive, unparliamentary or in breach of the relevant rules of the Rules of Procedure ("RoP"). Mr TAM, Dr CHEUNG and Mr CHAN considered that some Members of the pro-establishment camp had overreacted and their criticisms were unnecessary and disproportionate.

4. Mr Steven HO said that to his understanding, the World Health Organization ("WHO") was of the view that specific geographic locations should be avoided in the naming of diseases as this might stigmatize a place negatively and that names such as the Middle East Respiratory Syndrome should be avoided. Mr HO added that in certain cases, the geographic location forming part of the disease name might not reflect where the disease concerned had originated (e.g. the Spanish flu). Mr LUK Chung-hung said that a lot of people in Wuhan were still suffering from this epidemic and to name the disease after Wuhan was tantamount to rubbing salt into the wounds of these people. Mr HO and Mr LUK regretted that some Members had continued to use the name Wuhan



pneumonia which, in their view, was discriminatory. Mr LUK hoped that Members of the opposition camp could respect themselves and use the proper name of the disease so as to uphold the dignity of LegCo.

5. Echoing the views of Mr Jeremy TAM and Dr Fernando CHEUNG, Ms Claudia MO said that it was commonly known that Wuhan pneumonia was first emerged in Wuhan. Ms MO also pointed out that the name novel coronavirus pneumonia as mentioned by some Members in their earlier remarks was not the official name of the disease adopted by WHO and the disease was officially called COVID-19 ("2019 冠狀病毒病" in Chinese). Mr CHU Hoi-dick said that although novel coronavirus pneumonia was a name commonly used by the media on the Mainland, it was not the official name adopted by WHO. Quoting German measles ("德國麻疹" in Chinese) and athlete's foot ("香港腳" in Chinese) as examples, Ms MO and Dr KWOK Ka-ki shared a similar view that to include the geographic location in the name of a disease would not give rise to any issue of discrimination. Dr KWOK said that Wuhan pneumonia was first emerged in Wuhan and the local government authorities in Wuhan had initially withheld information concerning the outbreak. He wondered whether this was the reason why China did not want others to call the disease as Wuhan pneumonia. Mr CHU considered that the naming of the disease was an issue worthy of discussion. He was of the strong view that Wuhan pneumonia should be used when calling the disease so as to show empathy for what the people of Wuhan had experienced in the past few months since December 2019.

6. Mr SHIU Ka-chun said that whether the use of geographic location in naming a disease would amount to discriminatory against certain group of people was worthy of consideration. He added that Down syndrome was commonly called "蒙古症" in Chinese several decades ago but this Chinese name was no longer used by the social welfare sector and the disease was now referred to as "唐氏綜合症" in Chinese.

7. Mr Dennis KWOK considered that Members could use either Wuhan pneumonia or novel coronavirus pneumonia to call the disease and neither of the expressions was offensive.

*Members' views on the holding of this special HC meeting*

8. Referring to the joint letter, Mr Alvin YEUNG and Ms Claudia MO said that as Wuhan pneumonia was still raging, they did not consider it appropriate to hold this special HC meeting. They pointed out that WHO had already declared the outbreak of the disease a pandemic and had advised people to maintain appropriate social distancing. Mr YEUNG saw no urgency in holding a meeting for the said election as there was no business that would require the urgent consideration and decision of HC. He added that the Appropriation Bill 2020 which was first read at the Council meeting of 26 February 2020 would not require the consideration and decision of HC. To prevent the spread of the epidemic, Mr YEUNG considered that LegCo should not hold any meetings with no urgency.

9. Echoing the view of Mr Alvin YEUNG, Mr Jeremy TAM said that the Employment (Amendment) Bill 2019, which was of concern to many Members, had already been referred to the Panel on Manpower instead of HC pursuant to a motion moved under RoP 54(4) and passed by the Council. He considered that there was no need and no urgency in holding this special HC meeting, and he hoped that Mr Dennis KWOK could consider whether or not this meeting should be continued. Mr TAM also expressed concern about the Secretariat's decision to resume its business gradually starting from 2 March 2020. Mr CHU Hoi-dick shared a similar view with Mr TAM and considered that in the light of the current circumstances, only meetings relating to issues concerning the epidemic should be held.

10. Mr CHAN Chi-chuen asked whether or not the presiding Member was vested with the power to end this meeting before its appointed ending time. Mr CHAN also wondered why some Panel meetings originally scheduled to be held this week were cancelled due to the epidemic while some other committees had held or would hold their meetings as scheduled. Mr CHAN and Mr SHIU Ka-chun shared a similar view that there should be guidelines setting out the circumstances under which meetings of LegCo and its committees would not be held. Mr CHAN considered that members of the committees concerned should be consulted on whether meetings of the committees should be held. Mr SHIU suggested that the latest infection situation, including the number of new confirmed cases/rate of infection and the number of daily new deaths/fatality rate, should be taken into account in considering whether to hold a meeting.



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11. Responding to Mr CHAN Chi-chuen's enquiry regarding the presiding Member's power to end this meeting, Mr Dennis KWOK said that he had sought the advice of the Legal Adviser ("LA") on this matter following Mr CHAN's enquiry. As advised by LA, HC should meet at the time and the place determined by Ms Starry LEE, the Chairman in office, and given his duty as the Member presiding at the said election, it would not be open to him to order that a meeting called by the Chairman in office for the purpose of the said election would not be held, nor could he decide to adjourn or end such a meeting lightly. That said, the presiding Member could suspend the meeting or end the meeting under reasonable situations before the appointed ending time of the meeting.

12. Ms Starry LEE said that although this was a special HC meeting, it was held at a time when a regular HC meeting would usually be scheduled (i.e. at a Friday afternoon immediately preceding the week on which a Council meeting would be held). She was gravely concerned that five months had already passed since the commencement of the current legislative session in October 2019 but the HC Chairman had yet to be elected after some 25 hours of meeting time. She said that 12 bills were awaiting the consideration of HC as at the day of this meeting. In addition, there were more than 80 items of subsidiary legislation the period for amendment of which had already expired/would expire shortly, and HC had not considered whether to form subcommittees for scrutiny. Ms LEE commented that Mr Dennis KWOK had not fulfilled his responsibilities as the Member presiding at the said election and had allowed Members to speak on the joint letter without drawing a line. She hoped that Mr KWOK could tell the public how he was going to take forward the proceedings of the said election and duly perform his duties as the presiding Member. She added that HC was the most appropriate platform for Members to put questions to the Chief Secretary for Administration ("CS") and Bureaux Secretaries on issues concerning the epidemic, and a special HC meeting could have been held for such purpose very soon once the election of the Chairman and Deputy Chairman of HC had completed.

13. Mr Dennis KWOK responded to Ms Starry LEE's questions and criticisms and stated that the public would make their own judgements on what was going on in HC. He trusted that the public would understand the situation. He said that some members of the public had asked him to "withstand" ("頂住" in Chinese) HC although he had no idea about what that meant. Mr KWOK further said that he had also provided ample time for Members of the pro-establishment camp to speak on the

letter from Mr HO Kai-ming at the last special HC meeting despite the fact that issues raised in Mr HO's letter were not directly related to the said election. In his view, the joint letter from four Members was more directly related to the said election. Mr KWOK also said that while he had endeavoured to complete the said election as soon as possible, however, he had no control over the progress of the said election and it was up to Members who did have such collective control. If Members wished to complete the election process as soon as possible, then they could stop sending in letters to HC.

14. On the remarks of Mr Dennis KWOK that some people had asked him to "withstand" HC, Mr LUK Chung-hung said that this had implicitly reflected that Mr Kwok had abused his powers as the presiding Member to unduly prolong the said election. He wondered if Members of the opposition camp truly wished to hinder the progress of Hong Kong at all cost. Mr LUK expressed concern that the said election had dragged on for some 25 hours of meeting time and a number of bills which were related to people's livelihood, such as the Rating (Amendment) Bill 2019, were still awaiting the consideration of HC pending the election of its Chairman and Deputy Chairman. Mr LUK further said that for many years, the Hong Kong Federation of Trade Unions ("FTU") had fought for the proposed introduction of special rates chargeable on private domestic premises that were unsold for some time. Mr LUK and Mr KWOK Wai-keung considered that as the outbreak of the disease had eased to a certain extent recently and the Government had begun to resume its services, it was reasonable for LegCo to gradually resume its operation. Mr KWOK said that if sufficient preventive measures and good personal hygiene were maintained, the risk of infection should be relatively low. Mr KWOK added that a down-to-earth attitude was the core value of Hong Kong people and he believed that with sustained effort, Hong Kong could overcome the difficulties it encountered.

15. Dr KWOK Ka-ki said that the number of confirmed cases was rising sharply in a number of foreign countries and he considered that a second wave of outbreak in Hong Kong was imminent. He said that LegCo should cut down on non-essential meetings under the current circumstances. Dr KWOK criticized that the quarantine measures taken by the Government to contain the spread of the disease were too lax. He was dissatisfied that the compulsory 14-day quarantine arrangement was only applicable to people coming from selected countries/places. On Mr LUK Chung-hung's concern regarding the consideration of the Rating (Amendment) Bill 2019 by HC, Dr KWOK commented that the "high



land price policy" adopted by the Government was the crux of the local housing problems and the Executive Council, with members coming from both FTU and the Democratic Alliance for the Betterment and Progress of Hong Kong, was responsible for formulating such a policy.

16. Dr Fernando CHEUNG said that this special HC meeting should not be held as the epidemic was not yet under control. The close contact with each other at meetings might facilitate the spread of the disease. That said, Members of the pro-democracy camp were not requesting LegCo not to hold any meetings at all. Meetings relating to issues about the epidemic, such as measures to prevent and control the epidemic, and financial proposals to provide relief to those hard-hit by the epidemic, could and should continue to be held.

17. At 4:01 pm, Mr Dennis KWOK invited Mr Andrew WAN to speak. Mr WAN said that he would not speak long.

18. Mr CHAN Kin-por spoke in his seat, Mr Dennis KWOK ordered him not to interrupt another Member who was speaking. Mr CHAN said that he would like to raise a point of order. He said that as the meeting had already reached its appointed ending time (i.e. 4:00 pm), Mr KWOK should end the meeting. Mr KWOK responded that as Mr Andrew WAN had waited for a long time, he would allow Mr WAN to finish his speech and then end the meeting. Mr CHAN continued to speak loudly in his seat despite Mr KWOK had ordered him to stop again. Mr KWOK ordered Mr CHAN kin-por to withdraw from the meeting immediately.

*(Security staff entered the conference room intending to escort Mr CHAN Kin-por to leave the conference room. Mr CHAN withdrew from the meeting on his own at this juncture.)*

19. At the invitation of Mr Dennis KWOK, Mr Andrew WAN continued to speak. While Mr WAN was speaking, Dr Junius HO spoke loudly in his seat. Mr Dennis KWOK ordered Dr Junius HO to stop speaking, but Dr HO ignored Mr KWOK's order. Mr KWOK ordered Dr Junius HO to withdraw from the meeting immediately.

20. Mr WONG Ting-kwong raised a point of order. He said that the appointed ending time of this meeting was 4:00 pm and Mr Dennis KWOK should end the meeting as the time had already reached. Mr Dennis KWOK responded that as the Member presiding at this meeting,



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he could extend the meeting for not more than 15 minutes beyond the appointed ending time of the meeting. Expressing disagreement, Mr WONG said that Mr KWOK could not extend this meeting as a meeting of the Finance Committee was scheduled to commence at 4:00 pm. Mr Martin LIAO also raised a point of order and said that Mr Dennis KWOK should have made an announcement before the appointed ending time of the meeting if he wished to extend the meeting by 15 minutes.

*(Security staff gathered around Dr Junius HO asking him to leave the conference room on the order of Mr Dennis KWOK.)*

21. Noting that Dr Junius HO had not withdrawn from the meeting and continued to speak loudly in his seat, Mr Dennis KWOK again ordered Dr HO to withdraw from the meeting immediately. Dr Helena WONG raised a point of order and said that in her view, the behaviour of Dr Junius HO and the expressions Dr HO used were offensive to Mr Dennis KWOK. Mr Dennis KWOK advised that as he had said earlier, he only intended to extend the meeting for a few minutes so as to allow Mr Andrew WAN to finish his speech. Mr KWOK was dissatisfied that the security staff had not escorted Dr Junius HO to leave the conference room.

*(Dr Junius HO rose from his seat, crossed the floor, spoke aloud and tried to approach the Chairman's bench. Security staff escorted Dr Junius HO away from the Chairman's bench)*

*(Some Members spoke loudly in their seats.)*

22. Mr Dennis KWOK once again ordered Dr Junius HO to withdraw from the meeting immediately. Mr Holden CHOW and Mr WONG Ting-kwong spoke loudly in their seats to protest against Mr KWOK. Mr KWOK ordered Mr CHOW and Mr WONG to withdraw from the meeting immediately.

*(Dr Junius HO continued to speak loudly in his seat in protest of the orders of Mr Dennis KWOK. A few more security staff entered the conference room trying to escort Dr Junius HO to leave the conference room)*

23. Mr Dennis KWOK ordered Dr Junius HO to withdraw from the meeting immediately again and he expressed grave dissatisfaction that his order had not been acted on effectively.

Action

*(Some Members shouted in their seats, saying that Mr CHAN Kin-por returned to the conference room. Mr CHAN Kin-por left the conference room a moment later.)*

24. Mr Dennis KWOK invited Mr Andrew WAN to continue his speech. Mr Andrew WAN considered that there was no urgency in holding this special HC meeting, and that it was neither discriminatory nor offensive to call the disease as Wuhan pneumonia.

25. Mr Dennis KWOK ended the meeting after Mr Andrew WAN spoke.

26. The meeting ended at 4:13 pm.