

立法會

Legislative Council

LC Paper No. CB (2)1075/19-20

Ref: CB2/SC/G

Paper for the House Committee meeting on 29 May 2020

Matters for consideration in relation to establishment of investigation committees under Rule 49B(2A) of the Rules of Procedure

Purpose

This paper invites Members to consider and decide how to deal with the establishment of Investigation Committees ("ICs") in respect of four motions under Rule 49B(1A) of the Rules of Procedure ("RoP")¹ ("censure motions") which were moved at the Council meeting of 11 December 2019.

Background

2. At the Council meeting of 11 December 2019, four censure motions were moved under RoP 49B(1A) as follows:

- (a) Dr Hon KWOK Ka-ki moved a motion to censure Dr Hon Junius HO;
- (b) Hon Claudia MO moved a motion to censure Dr Hon Junius HO;
- (c) Hon YUNG Hoi-yan moved a motion to censure Dr Hon CHENG Chung-tai; and

¹ In accordance with RoP 49B(1A), a motion to censure a Member under Article 79(7) of the Basic Law ("BL") shall be moved in the form as stipulated therein. BL79(7) provides that the President of the Legislative Council ("LegCo") shall declare that a member of LegCo is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of LegCo present. The mechanism for disqualification of a Member from office under BL 79(7) consists of three stages: (i) moving of a censure motion, (ii) investigation by an investigation committee, and (iii) resumption of debate and voting on the censure motion. A flow chart showing the mechanism is provided in Appendix III to the paper entitled "Mechanism for the censure of a Member for misbehaviour under Article 79(7) of the Basic Law" for the House Committee meeting on 16 October 2009 (LC Paper No. CB(3)46/09-10).

- (d) Dr Hon Junius HO moved a motion to censure Hon LAM Cheuk-ting.

For the wording of these four censure motions, Members may wish to refer to Appendices 6 to 9 to the Agenda of the Council meeting of 11 December 2019. In accordance with RoP 49B(2A), the debates on these censure motions were each adjourned and the matter stated in these censure motions were each referred to an IC.²

Procedure in respect of establishment of investigation committees adopted by the House Committee in the Sixth Legislative Council

3. Under RoP 73A, an IC shall be responsible for establishing the facts stated in the censure motion, and giving its views on whether or not the facts as established constitute grounds for the censure. The IC shall consist of a chairman, a deputy chairman and five members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee ("HC"). The mover of the censure motion, the Members jointly signing the motion and the Member who is the subject of the motion shall not be appointed to the IC.

4. During the period between the 2016-2017 and 2017-2018 sessions, three censure motions were moved at the Council meetings of 14 December 2016, 7 June 2017 and 23 May 2018 respectively. On all these three occasions, HC agreed that there was no need to form a subcommittee to undertake the preparatory work for the establishment of the IC, and endorsed the same set of proposed procedure for the election of Members for appointment by the President to the IC (see **Appendix I**). The latest position of these three ICs is also set out in **Appendix II** for Members' reference.

Matters for consideration

5. Based on the past operational experience, since an IC is responsible for investigating serious allegations against a Member which could lead to the Member being disqualified from office, an IC cannot complete such demanding and complex work within 12 months. For instances,

² Two censure motions were put on the Agenda of the Council meeting of 20 May 2020, but the matters stated in these two censure motions have not yet been referred to ICs. These two motions are: (a) motion under RoP 49B(1A) moved by Hon YUNG Hoi-yan to censure Hon Claudia MO; and (b) motion under RoP 49B(1A) to be moved by Hon Alice MAK to censure Hon Dennis KWOK.

the two ICs which have completed their work (i.e. the IC established under RoP 49B(2A) in respect of the motion to censure Hon KAM Nai-wai³ and the IC established under RoP 49B(2A) in respect of the motion to censure Dr Hon CHENG Chung-tai⁴) respectively took about 26 months and 14 months from the first IC meeting to the tabling of the IC report in Council.

6. Furthermore, in accordance with the procedure previously endorsed by HC, the election of Members for appointment to the IC is held at the second HC meeting after the HC meeting at which the relevant election procedure⁵ is endorsed. Therefore, it is unlikely that the election can take place before 12 June 2020. Given that less than two months are left before the prorogation of the Sixth LegCo in mid July 2020, and that there are 10 Bills Committees, eight subcommittees under HC and six subcommittees on policy issues under Panels (and also Panels and other committees) in operation (as at 26 May 2020), together with the limited availability of meeting time slots and venues, members may consider whether it is practicable for the ICs established under RoP 49B(2A) in respect of the four censure motions referred to in paragraph 2 above to complete their work and table their reports in Council before the prorogation of the Sixth LegCo.

Advice sought

7. Members are invited to consider the issues set out in paragraphs 5 and 6 above and decide whether to take forward the nomination and election of Members for appointment to the new ICs in respect of the four censure motions.

Council Business Division 2
Legislative Council Secretariat
28 May 2020

³ Hon Miriam LAU moved a motion under RoP 49B(1A) to censure Hon KAM Nai-wai at the Council meeting of 9 December 2009. The election of Members for appointment to the IC was conducted at the HC meeting on 8 January 2010. The first meeting of this IC was held on 18 January 2010. The Report of this IC was tabled at the Council meeting of 28 March 2012.

⁴ Hon Paul TSE moved a motion under RoP 49B(1A) to censure Dr Hon CHENG Chung-tai at the Council meeting of 14 December 2016. The election of members for appointment to the IC was conducted at the HC meeting on 20 January 2017. The first meeting of this IC was held on 20 February 2017. The Report of this IC was tabled at the Council meeting of 11 April 2018.

⁵ According to the relevant procedure, there shall be at least seven clear days between the issuance of nomination form and the election date.

Proposed procedure for the election of Members for appointment by the President to the investigation committee endorsed by the House Committee in respect of the three investigation committees established between the 2016-2017 and 2017-2018 sessions

1. An election of Members shall be held at a meeting of the House Committee, the date of which ("election date") shall be appointed by the House Committee.
2. The Legislative Council Secretariat shall issue a circular and a nomination form to the Members of the Legislative Council at least seven clear days before election date, inviting nominations to be made.
3. Each nomination form shall be for the nomination of one Member and shall be signed by one Member as the proposer, one Member as the seconder, and by the nominee Member to signify his consent to the nomination.
4. Duly completed nomination forms shall be delivered to the Legislative Council Secretariat at least three clear days before the election date.
5. In cases where the number of nominations received by the Legislative Council Secretariat by the deadline for nomination is less than seven, further nominations may be proposed, at the House Committee meeting at which the election is conducted, by any Member and seconded by another, with the proposed nominee signifying his consent to the nomination.
6. In the case where the number of nominations received under paragraphs 4 and 5 is equal to seven, the Chairman of the House Committee shall declare the nominees duly elected.
7. In cases where the number of nominations received under paragraphs 4 and 5 is more than seven, a poll shall be taken at the House Committee meeting at which the election is conducted and Members should cast their votes by using the electronic voting system, whereby a Member may vote for not more than seven nominees. The nominees who get the highest numbers of votes will be declared elected.

8. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the manner of election provided in paragraph 7.

9. If, after a separate poll is held under paragraph 8, there is still a nominee who would have been elected but for there being one or more other nominees having been given the same number of votes, lots shall be drawn by the Chairman of the House Committee among such nominees to determine which of them will take up the remaining place/places.

10. Immediately after the election of Members for appointment to the investigation committee, the meeting of the House Committee shall be suspended for 10 minutes to enable the elected Members to elect amongst them the two Members to be nominated for appointment respectively as Chairman and Deputy Chairman of the investigation committee by the President.

11. The meeting of the House Committee will then resume and House Committee will be asked to endorse the results of the election of the Chairman and Deputy Chairman of the investigation committee.

Latest position of the three investigation committees established between the 2016-2017 and 2017-2018 sessions

Name of the investigation committee	Date of the House Committee meeting at which the election of Members for appointment to the investigation committee was held	Latest position
1. Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Dr Hon CHENG Chung-tai	20 January 2017	Completed its work and tabled its report in Council on 11 April 2018
2. Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Hon Holden CHOW Ho-ding	7 July 2017 20 October 2017*	In operation
3. Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Hon HUI Chi-fung	22 June 2018	In operation

* This election was held for the purpose of filling a vacancy in the membership of the investigation committee arising from the judgment of the Court of First Instance of the High Court on 14 July 2017 declaring that YIU Chung-yim had been disqualified from assuming the office of a member of the Legislative Council, and had vacated the same since 12 October 2016, and was not entitled to act as a member of the Legislative Council.