

**立法會**  
**Legislative Council**

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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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**Council meeting of 14 November 2018**

**Amendments to motion on  
“Legislating for the protection of whistle-blowers”**

Further to LC Paper Nos. CB(3) 41/18-19 and CB(3) 78/18-19 issued on 18 and 26 October 2018 respectively, three Members (Hon Claudia MO, Hon Kenneth LEUNG and Hon CHAN Hak-kan) have respectively given notice of their intention to move separate amendments to Hon Jeremy TAM’s motion on “Legislating for the protection of whistle-blowers”. As directed by the President, the respective amendments will be printed in the terms in which they were handed in.

2. The President will order a joint debate on the above motion and the three amendments. To assist Members in debating the motion and the amendments, I set out below the procedure to be followed during the debate:

- (a) the President calls upon Hon Jeremy TAM to speak and move his motion;
- (b) the President proposes the question on Hon Jeremy TAM’s motion;
- (c) the President calls upon the three Members who wish to move amendments to speak in the following order, but no amendment is to be moved at this stage:
  - (i) Hon Claudia MO;
  - (ii) Hon Kenneth LEUNG; and
  - (iii) Hon CHAN Hak-kan;

- (d) the President calls upon the public officer(s) to speak;
- (e) the President invites other Members to speak;
- (f) the President gives leave to Hon Jeremy TAM to speak for the second time on the amendments;
- (g) the President calls upon the public officer(s) to speak again;
- (h) in accordance with Rule 34(5) of the Rules of Procedure, the President has decided that he will call upon the three Members to move their respective amendments in the order set out in paragraph (c) above. The President invites Hon Claudia MO to move her amendment to the motion, and forthwith proposes and puts to vote the question on Hon Claudia MO's amendment;
- (i) after Hon Claudia MO's amendment has been voted upon, the President deals with the other two amendments; and
- (j) after all amendments have been dealt with, the President calls upon Hon Jeremy TAM to reply. Thereafter, the President puts to vote the question on Hon Jeremy TAM's motion, or his motion as amended, as the case may be.

3. For Members' reference, the terms of the original motion and the marked-up version of the amendments are set out in the **Appendix**.

(Dora WAI)  
for Clerk to the Legislative Council

Encl.

(Translation)

**Motion debate on  
“Legislating for the protection of whistle-blowers”  
to be held at the Council meeting of 14 November 2018**

**1. Hon Jeremy TAM’s original motion**

That, unless insiders of business organizations or government agencies (‘whistle-blowers’) divulge that acts endangering public interests have occurred in their organizations or agencies, it is invariably difficult for the public or the media to verify the occurrence of such incidents; many past incidents involving significant public interests in Hong Kong, such as the unlawful sewage discharge by the sewage treatment contractor of Tuen Mun Pillar Point Valley Landfill in contravention of the standard requirements of the Environmental Protection Department, the frequent glitches in the new Air Traffic Control System of the Civil Aviation Department after its launch, and the shortened steel bars of the diaphragm walls at Hung Hom Station of the Shatin to Central Link of the MTR Corporation Limited, would have gone unnoticed if no one had blown the whistle, and the public would not have known the truth; since there is no dedicated legislation in Hong Kong for protecting whistle-blowers and those who stand up for justice are often subjected to reprisals, including various retributive acts such as harassment, discriminatory actions, dismissal and litigation, many insiders are afraid to blow the whistle; since many countries in the world, including the United Kingdom, the United States and Japan, have already enacted dedicated legislation to protect whistle-blowers, this Council urges the SAR Government to expeditiously enact a whistle-blowing protection law to protect whistle-blowers and safeguard public interests; the areas of legislation should cover:

- (1) providing statutory protection to whistle-blowers if the incidents disclosed involve criminal offences, breach of legal obligation, miscarriage of justice, threat to public safety or health, environmental damage, abuse of powers, waste of public money, etc., so as to guard them against any unfair treatment, such as punitive actions like dismissal, pay reduction, demotion, transfer, suspension, financial penalty and denial of learning opportunities;
- (2) requiring all business organizations and government agencies to formulate their own internal measures on protecting whistle-blowers, including the setting up of a well-defined mechanism respectively for

reporting incidents and protecting whistle-blowers, so as to stamp out any possible retributive acts;

- (3) allowing whistle-blowers to disclose to the public incidents endangering public interests in ways they deem fit, including using the media or the Legislative Council as the channels, in addition to the internal reporting mechanism mentioned above;
- (4) requiring any persons or organizations responsible for handling the secrets divulged by a whistle-blower to maintain the strictest confidentiality of the whistle-blower's personal information; and
- (5) allowing whistle-blowers to apply for personal protection measures from the judicial authorities when they or their families feel their personal safety or freedom under threat.

## **2. Motion as amended by Hon Claudia MO**

That, ~~unless~~ *in many incidents involving significant public interests in recent years*, insiders of business organizations ~~or~~, government agencies (~~'whistle-blowers'~~) *or public bodies ('whistle-blowers')* **are invariably the ones who** divulge that acts endangering public interests have occurred in their organizations or agencies; *without whistle-blowers*, it is invariably difficult for the public or the media to verify the occurrence of such incidents; many past incidents involving significant public interests in Hong Kong, such as the unlawful sewage discharge by the sewage treatment contractor of Tuen Mun Pillar Point Valley Landfill in contravention of the standard requirements of the Environmental Protection Department, the frequent glitches in the new Air Traffic Control System of the Civil Aviation Department after its launch, and the shortened steel bars of the diaphragm walls at Hung Hom Station of the Shatin to Central Link of the MTR Corporation Limited, would have gone unnoticed if no one had blown the whistle, and the public would not have known the truth; since there is no dedicated legislation in Hong Kong for protecting whistle-blowers and those who stand up for justice are often subjected to reprisals, including various retributive acts such as harassment, discriminatory actions, dismissal and litigation, many insiders are afraid to blow the whistle; since many countries in the world, including the United Kingdom, the United States and Japan, have already enacted dedicated legislation to protect whistle-blowers, this Council urges the SAR Government to expeditiously enact a whistle-blowing protection law *and formulate measures* to protect whistle-blowers and safeguard public interests; the areas of legislation *and the contents of the relevant measures* should cover:

- (1) providing statutory protection to whistle-blowers if the incidents disclosed involve criminal offences, breach of legal obligation, miscarriage of justice, threat to public safety or health, environmental damage, abuse of powers, waste of public money, etc., so as to guard them against any unfair treatment, such as punitive actions like dismissal, pay reduction, demotion, transfer, suspension, financial penalty and denial of learning opportunities;
- (2) requiring all business organizations ~~and~~, government agencies *or public bodies* to formulate their own internal measures on protecting whistle-blowers, including the setting up of a well-defined mechanism respectively for reporting incidents and protecting whistle-blowers, so as to stamp out any possible retributive acts;
- (3) allowing whistle-blowers to disclose to the public incidents endangering public interests in ways they deem fit, including using the media or the Legislative Council as the channels, in addition to the internal reporting mechanism mentioned above;
- (4) requiring any persons or organizations responsible for handling the secrets divulged by a whistle-blower to maintain the strictest confidentiality of the whistle-blower's personal information; ~~and~~
- (5) allowing whistle-blowers to apply for personal protection measures from the judicial authorities when they or their families feel their personal safety or freedom under threat;
- (6) *allowing whistle-blowers to seek redress and hold the relevant parties responsible through legal channels if they sustain any direct or indirect retribution from business organizations, government agencies or public bodies;*
- (7) *amending other related laws, including but not limited to the Employment Ordinance, so as to ensure consistent statutory protection for whistle-blowers and enable the legislation to keep pace with the times; and*
- (8) *formulating binding codes for government agencies and public bodies as a start before the enactment of legislation, so as to protect whistle-blowers and disseminate the important message of protecting whistle-blowers in society.*

Note: Hon Claudia MO's amendment is marked in *bold and italic type* or with deletion line.

### 3. Motion as amended by Hon Kenneth LEUNG

That, ~~unless insiders of business organizations or government agencies ('whistle-blowers') divulge that acts endangering public interests have occurred in their organizations or agencies, it is invariably difficult for the public or the media to verify the occurrence of such incidents~~ ***'whistle-blowers' are those who disclose information for the sake of safeguarding public interests; through disclosing information, they seek to hold the government agencies, organizations or enterprises involved accountable to the public and responsible for certain acts which violate the law, rules and regulations or endanger public interests;*** many past incidents involving significant public interests in Hong Kong, such as the unlawful sewage discharge by the sewage treatment contractor of Tuen Mun Pillar Point Valley Landfill in contravention of the standard requirements of the Environmental Protection Department, the frequent glitches in the new Air Traffic Control System of the Civil Aviation Department after its launch, and the shortened steel bars of the diaphragm walls at Hung Hom Station of the Shatin to Central Link of the MTR Corporation Limited, would have gone unnoticed if no one had blown the whistle, and the public would not have known the truth; since there is no dedicated legislation in Hong Kong for protecting whistle-blowers and those who stand up for justice are often subjected to reprisals, including various retributive acts such as harassment, discriminatory actions, dismissal and litigation, many insiders are afraid to blow the whistle; since many countries in the world, including the United Kingdom, the United States and Japan, have already enacted dedicated legislation to protect whistle-blowers, this Council urges the SAR Government to expeditiously enact a whistle-blowing protection law to protect whistle-blowers and safeguard public interests; the areas of legislation should cover:

- (1) providing statutory protection to whistle-blowers if the incidents disclosed involve criminal offences, breach of legal obligation, miscarriage of justice, threat to public safety or health, environmental damage, abuse of powers, ~~waste of public money~~, etc., so as to guard them against any ~~unfair treatment~~ ***civil liabilities and unreasonable treatment at work due to their whistle-blowing***, such as punitive actions like dismissal, pay reduction, demotion, transfer, suspension, financial penalty and denial of learning opportunities;
- (2) requiring ~~all business organizations~~ ***with a specified business turnover or number of employees*** and ***all*** government agencies to formulate ~~their own~~ internal measures on protecting whistle-blowers, including the setting up of a well-defined mechanism respectively for reporting incidents and protecting whistle-blowers, so as to stamp out any possible retributive acts;

- (3) ~~allowing specifying that if it is not suitable to follow a specified reporting mechanism for blowing the whistle on an incident, or under other exceptional circumstances,~~ whistle-blowers ~~to~~ **may** disclose to the public incidents endangering public interests in ways they deem fit, including using the media or the Legislative Council as the channels, ~~in addition to the internal reporting mechanism mentioned above;~~
- (4) requiring any persons or organizations responsible for handling the secrets divulged by a whistle-blower to maintain the strictest confidentiality of the whistle-blower's personal information; and
- (5) allowing whistle-blowers to apply for personal protection measures from the judicial authorities when they or their families feel their personal safety or freedom under threat **due to their whistle-blowing**.

Note: Hon Kenneth LEUNG's amendment is marked in ***bold and italic type*** or with deletion line.

#### 4. Motion as amended by Hon CHAN Hak-kan

That, unless insiders of business organizations or government agencies ('whistle-blowers') divulge that ***unlawful*** acts endangering public interests have occurred in their organizations or agencies, it is invariably difficult for the public or the media to verify the occurrence of such incidents; many past incidents involving significant public interests in Hong Kong, such as the unlawful sewage discharge by the sewage treatment contractor of Tuen Mun Pillar Point Valley Landfill in contravention of the standard requirements of the Environmental Protection Department, the frequent glitches in the new Air Traffic Control System of the Civil Aviation Department after its launch, and the shortened steel bars of the diaphragm walls at Hung Hom Station of the Shatin to Central Link of the MTR Corporation Limited, would have gone unnoticed if no one had blown the whistle, and the public would not have known the truth; ~~since~~ ***while*** there is no dedicated legislation in Hong Kong for protecting whistle-blowers ~~and those who stand up for justice are often subjected to reprisals, including various retributive acts such as harassment, discriminatory actions, dismissal and litigation, many insiders are afraid to blow the whistle; since many countries in the world, including the United Kingdom, the United States and Japan, have already enacted dedicated legislation to protect whistle-blowers, this Council urges the SAR Government to expeditiously enact a whistle-blowing protection law to protect whistle-blowers and safeguard public interests; the areas of legislation should cover:~~

- ~~(1) providing statutory protection to whistle-blowers if the incidents disclosed involve criminal offences, breach of legal obligation, miscarriage of justice, threat to public safety or health, environmental damage, abuse of powers, waste of public money, etc., so as to guard them against any unfair treatment, such as punitive actions like dismissal, pay reduction, demotion, transfer, suspension, financial penalty and denial of learning opportunities;~~
- ~~(2) requiring all business organizations and government agencies to formulate their own internal measures on protecting whistle-blowers, including the setting up of a well-defined mechanism respectively for reporting incidents and protecting whistle-blowers, so as to stamp out any possible retributive acts;~~
- ~~(3) allowing whistle-blowers to disclose to the public incidents endangering public interests in ways they deem fit, including using the media or the Legislative Council as the channels, in addition to the internal reporting mechanism mentioned above;~~
- ~~(4) requiring any persons or organizations responsible for handling the secrets divulged by a whistle-blower to maintain the strictest confidentiality of the whistle-blower's personal information; and~~
- ~~(5) allowing whistle-blowers to apply for personal protection measures from the judicial authorities when they or their families feel their personal safety or freedom under threat~~

*various respects, such as protecting witnesses and preventing unreasonable dismissal of employees, are already under relevant statutory protection; many countries or regions in the world have enacted legislation for protecting whistle-blowers, with a view to enabling public and private organizations to identify internal problems as early as possible and improving their governance, and their experience is a valuable source of reference for Hong Kong; in this connection, this Council proposes that the SAR Government should draw reference from the experience of other countries and regions and, on the premise of safeguarding national security, public safety and public interests, review the arrangements for protecting whistle-blowers, including amending the law where necessary, so as to better:*

- (1) define the scope of protection for whistle-blowing;*
- (2) ensure that whistle-blowers and their families are free from any unreasonable treatment from the relevant organizations, and prevent damage to their legitimate rights and interests (especially employees' rights and interests);*

(3) *ensure that the personal safety of whistle-blowers and their families will not come under threat; and*

(4) *enhance the governance of public and private organizations.*

Note: Hon CHAN Hak-kan's amendment is marked in *bold and italic type* or with deletion line.