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*Legislative Council*

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**Paper for the House Committee meeting  
on 12 January 2001**

**Committee on Rules of Procedure**

**Consultation Paper  
on the working mechanism of Panels and Bills Committees  
for the scrutiny of legislative and financial proposals**

**Purpose**

This paper invites Members to give views on the recommendations of the Committee on Rules of Procedure (the Committee) in respect of the working mechanism of Panels and Bills Committees for the scrutiny of legislative and financial proposals.

**Background**

2. The House Committee, at its meeting on 13 October 2000, discussed Ms Margaret NG's proposal on the working mechanism of Panels and Bills Committees for the scrutiny of legislative and financial proposals (**Appendix I**). The House Committee then noted at its meeting on 27 October 2000 that the Chief Secretary for Administration also sought to explore channels to improve communication between the Administration and the Legislative Council (LegCo), including putting forward options for LegCo Members' deliberation before finalizing its proposals. The House Committee decided to refer the matter to the Committee for detailed examination.

3. In the course of its study of the subject, the Committee examined the current arrangements for the scrutiny of legislative and financial proposals in the Hong Kong Legislature and made reference to the practices in overseas legislatures, including the United Kingdom, Australia, Canada and the United States. An analysis is provided in **Appendix II**. The Committee also invited views from the chairmen and deputy chairmen of various Panels (Panel Chairmen) and representatives of the Administration on the current working mechanism and Ms Margaret NG's proposal.

### **Ms Margaret NG's proposal**

4. In gist, Ms Margaret NG proposes that:
  - (a) the Legislative Programme should be updated regularly by the Administration;
  - (b) the Legislature should be invited to give views on major legislative and financial proposals at the earliest stage, preferably at the time of formulation of the proposals, and sufficient time should be allowed for detailed discussion at meetings;
  - (c) all political parties should be represented in the committees so that different views on the proposals could be taken into account by the Administration before the proposals are finalized; and
  - (d) the decisions made by a Bills Committee should, to a certain extent, have some binding effect on Members and any proposed amendments to a Bill should be thoroughly discussed by the relevant Bills Committee.

### **Responses to Ms Margaret NG's proposal**

5. The Panel Chairmen who gave views to the Committee are unanimous that the current mechanism needs to be improved. While they consider that Ms Margaret NG's proposal is a well-intended move to improve the consultation process, they find that some of the specific measures in Ms NG's proposal may cause practical difficulties. The views of Panel Chairmen and the Administration are given in paragraphs 6 to 15.

#### Updating of Legislative Programme

6. Both Panel Chairmen and members of the Committee are in support of regular updating of the Legislative Programme provided to LegCo at the beginning of a legislative session. They consider that a more realistic timetable will enable the relevant Panels to have a clearer picture of how soon the proposed bills are likely to be presented to LegCo and hence, facilitate the planning of agenda items of Panel meetings. To enable the relevant Panels to have a clearer picture of how soon the proposed bills are likely to be introduced into LegCo, the expected time for the introduction of the bills should be provided in the Legislative Programme.

7. The Administration also sees the merits of providing LegCo with periodic updates of the Legislative Programme. It agrees to consider issuing periodic updates of the Programme. Nevertheless, it undertakes to provide an updated Programme around March 2001, after conducting an internal review of the current progress in the preparation of the proposed bills. As regards details on the expected time for the

introduction of the bills into LegCo, the Administration agrees to consider providing such information but stresses that it could at best be an estimate as the proposed bills are subject to, among other things, the Executive Council (ExCo)'s approval.

#### Timing for consultation

8. Both Panel Chairmen and the Administration concur that it will be more meaningful for the Administration to consult the relevant Panels on major legislative and financial proposals as early as practicable. The Administration undertakes that, where practicable, it will put forward legislative proposals to the relevant Panels for consultation before proceeding to the drafting of the bills. This will give room for a more fruitful exchange of views between Members and the Administration, and facilitate the reaching of consensus at least on the principles of the proposals before they are formally introduced into LegCo.

9. As regards the most appropriate timing for consultation, Ms Margaret NG has suggested a time-frame of three to six months before formal introduction. The Administration envisages that a majority of the legislative proposals will be submitted to the relevant Panels three months before they are formally introduced into the Council. The Committee notes that unless a more concrete Legislative Programme is available, it will be difficult for individual Panels to monitor the submission of the proposals for consultation.

#### Discussion of legislative and financial proposals at Panel meetings

10. Panel Chairmen share Ms Margaret NG's view that when a legislative proposal is presented to a Panel, sufficient time should be allowed for the discussion of the proposal. However, some Panel Chairmen are concerned that in view of the usually heavy agenda of Panel meetings, it may not be possible to allocate sufficient time for detailed discussion on each major legislative and financial proposal at regular Panel meetings. In this connection, Panel Chairmen note that more time could be allocated for such discussions if fewer discussion items are scheduled for each meeting. However, the adoption of this arrangement may result in more Panel meetings for dealing with the long list of outstanding items of Panels. If all major legislative and financial proposals are to be thoroughly discussed at Panel meetings, there will have to be more special meetings for the purpose. As a result, Panel members may not be able to attend all special meetings, hence giving rise to the problem of quorum.

11. Nevertheless, Panel Chairmen agree that it is important for the Administration to ensure that papers on legislative and financial proposals are forwarded to the relevant Panels well in advance. The availability of the papers well in advance of the Panel meetings, whether during the formulation or drafting stage, will facilitate Panel members to initiate preliminary consultation with those concerned before the Panel meetings. In this respect, the Administration agrees that it will make every endeavour to provide the papers once available.

### Participation of all parties in committees

12. Panel Chairmen agree that there are merits in having a broad representation of the various political parties in the membership of Panels and Bills Committees. However, in view of the small number of Members and the substantial volume of Council business to be dealt with, it will be difficult for small parties or Members with no party affiliation to involve themselves in the activities of all Panels and Bills Committees.

### Improving the effectiveness of Bills Committees

13. Panel Chairmen are of the view that any changes in the Administration's position after consultation with the relevant Panel should be reflected in the LegCo Brief. It would also be useful to Members if the Administration could highlight any differences between its position and the general view of Members in the LegCo Brief. In this respect, the Administration draws the Committee's attention to the fact that information regarding consultation with the relevant Panel has all along been provided in the LegCo Brief. The Administration undertakes to consider providing more details in the LegCo Brief to enable Members to understand the differences between the original and final proposals.

14. Panel Chairmen share Ms Margaret NG's observation that on some occasions, matters which had been considered at Panel meetings were revisited at Bills Committee meetings. However, they consider this unavoidable because of the different membership of Panels and Bills Committees, and the fact that any views expressed at Panel meetings are not binding on Members. On Ms NG's suggestion that individual Members who have an interest in a legislative or financial proposal should take part in the Panel's discussion of the proposal to enable the Administration to have a general understanding of their concerns and individual stance, most Panel Chairmen consider it difficult for Panel members to indicate their stance at such an early stage. Political parties also need to have regard to public views before they can formulate their stance. To improve the current mechanism, however, Panel members may give views on the proposals for the Administration's consideration before a final decision is made on the proposals, and Bills Committee members may refer to the records of previous discussions of the relevant subject in the Council and the relevant Panels, to be provided by the respective clerks.

15. Regarding Committee Stage Amendments (CSAs) to bills, Panel Chairmen support in principle that proposed CSAs should be put to the relevant Bills Committees for discussion before they are moved in the Committee of the Whole Council. However, they do not support that CSAs not considered by the relevant Bills Committee should not be proposed at the Committee stage. They note that Ms Margaret NG's proposal to require a Member to explain to the Council for not having raised the subject in the relevant Bills Committee is aimed at deterring Members from putting forward an amendment which has not been considered previously by the Bills Committee. They consider that all Members have the right to

move CSAs, Members should be allowed to propose CSAs even after the relevant Bills Committee has completed scrutiny of the bill. It is undesirable to impose too many restrictions on the moving of CSAs by Members, having regard to the fact that non-Bills Committee Members, in particular Members who have no party affiliation, may not be aware of the implications of the bill until the Bills Committee has submitted its report to the House Committee.

### **The Committee's views and recommendations**

16. The Committee observes that despite the efforts made in past years to enhance the communication between the Administration and LegCo on major legislative and financial proposals prior to their formal introduction into the Council or presentation to the Finance Committee, the extent of consultation is still very limited. Most proposals are put forward to LegCo at a rather late stage, i.e. after the proposals are finalized and endorsed by ExCo. As a result, the presentation of the proposals to the relevant Panels is more of a formality than for the purpose of having a meaningful exchange of views. The Committee therefore welcomes the suggestions made by Ms Margaret NG on how the current mechanism could be improved. Although the Committee does not agree with some of the details in Ms NG's proposal, members consider that her proposal would improve the communication and co-operation between the Administration and the Legislature in processing legislative and financial proposals.

17. The Committee finds that both Panel Chairmen and the Administration are in agreement with the general direction of initiating communication on major proposals, in particular legislative proposals, at the earliest stage when the subject is still open for suggestions. The Committee welcomes the positive response of the Administration to Members' request for the opportunity to comment on all available options before the matter is decided by ExCo. Whilst the views expressed in Panels may not necessarily represent the stance of the political parties or affiliations concerned, early commencement of consultation allows the Administration to take into account the views from different interested parties before the proposal is converted into a bill.

18. The Committee also notes that part of Ms Margaret NG's proposal is to minimize the duplication of discussions at the relevant Panel and Bills Committee. In view of the small size of LegCo and the large proportion of Members who have no party affiliation, it is difficult in practice to ensure that the membership of all Bills Committees is broadly representative of all parties, or to set up Bills Committees under the relevant Panels for the examination of bills.

19. Having regard to the views of the Panel Chairmen and the Administration, the Committee has come up with the following recommendations and would like to invite all Members of the Council to comment on these recommendations:

(a) Updating and monitoring of Legislative Programme

The Administration will be requested to provide LegCo with periodic updates of the Legislative Programme and the expected time for the introduction of the relevant bills. The proposed bills included in the Programme will be incorporated, where appropriate, into the list of outstanding items of the relevant Panels. The relevant Panels will then monitor the developments of the proposed bills and liaise with the corresponding bureau on the timing for consultation.

(b) Early consultation with the relevant Panels on major legislative and financial proposals

The Administration will be requested to consult the relevant Panels on major legislative and financial proposals as early as practicable and to provide the relevant papers well in advance of the Panel meetings. The Administration should explain in the LegCo Brief any changes in its position after consultation with the relevant Panel and any differences between its position and the general views of Members.

(c) Discussion of major legislative and financial proposals at Panel meetings

When a major legislative and financial proposal is presented for consideration by a Panel, the relevant Panel should, as far as practicable, allocate sufficient time for the discussion of the proposal.

(d) Improving the effectiveness of Bills Committees

To allow Members and the Administration sufficient time to consider and exchange views on the CSAs to bills, any proposed CSAs should preferably be submitted to the relevant Bills Committees for discussion.

**Views sought**

20. This consultation paper will be put to the House Committee for its meeting on 12 January 2001. All Members are invited to give views on the subject and the recommendations given in paragraph 19 **on or before Friday, 19 January 2001.**

21. Any enquiries on this consultation paper can be directed to:

Ms Pauline NG, Assistant Secretary General 1, at 2869 9220; or  
Miss Salumi CHAN, Chief Assistant Secretary (1)5, at 2869 9244.

Council Business Division 1  
Legislative Council Secretariat  
9 January 2001

(English translation prepared by  
the Legislative Council Secretariat  
for Members' reference only)

**Some proposals on the method of work in Panels and Bills Committees**

**Margaret Ng**

**Objectives:**

- (1) To enhance the function of the Legislative Council (LegCo) in monitoring Government policies and scrutinizing bills; and
- (2) To improve the working relationship between the executive authorities and the legislature.

**Proposals:**

- (1) The role of Panels in monitoring the implementation of policy objectives should be enhanced by turning the Panels into a forum for the executive authorities and the legislature to exchange views on legislative and financial proposals;

Specific measures:

- (a) sufficient time should be allocated for each agenda item at Panel meetings to allow full discussion among members;
- (b) discussions should be two-way instead of questions raised by members only; some time should be allowed for members to discuss the views they have heard and state their positions;
- (c) the clerk of a Panel should provide background information on matters of special concern of the Panel, if necessary and possible, so that the members will know clearly the matters requiring special attention in addition to those highlighted in government papers;
- (d) a Panel should submit a report to the Council after consultation and studies on a matter of public concern, and a motion debate should be moved by the Panel if necessary; and

- (e) all parties, alliances and groups should endeavour to assign their members to all Panels and important Bills Committees for better representation in Panels and Bills Committees.
- (2) For bills involving policy changes or introduction of new policies, the Panels concerned should be given the opportunities and sufficient time for substantive discussion.

Specific measures:

- (a) the Government should be asked to submit the legislative time-table when the Policy Address is given every year, and the time-table should be updated monthly; information on all legislative proposals should be provided to the Panels concerned for consultation three to six months before the proposals are tabled at the Council;
- (b) all parties, alliances and groups should indicate their stances in the course of deliberation;
- (c) comments of Panels should be included in papers to be submitted to the Executive Council by policy bureaux; to ensure actual implementation of this process, an item "Consultation with LegCo Panel" should be added to the papers concerned to report on the dates of discussion in the Panels and the support solicited; this information should also be given in LegCo Briefs;
- (d) if the position of the Administration differs from the general view of LegCo or the Administration's previous position stated in the consultation paper submitted to the Panel concerned, an explanatory paper highlighting and explaining the discrepancies should be attached when the matter is referred to a Bills Committee;
- (e) a Bills Committee should support in principle the policy of a bill which has been endorsed by the panel concerned; no fresh discussion is required unless the situation has changed; deliberation should be focussed on how to implement the policy as well as on issues and necessary amendments concerning the policy to be implemented through the bill and the drafting aspect; and
- (f) in principle, Committee Stage Amendments to be moved by Members or government officials at Council meetings should be put to discussion in the Bills Committee in advance. Justifications are required when amendments are proposed without prior discussion.

**Analysis of the current arrangements  
for the scrutiny of legislative and financial proposals  
by Panels and Bills Committees in the Hong Kong Legislature  
and overseas practices**

**Hong Kong**

At present, major legislative and financial proposals are usually put to the relevant Panels for consultation before the relevant bills are introduced into the Council or financial proposals placed on the agenda of the Finance Committee or its subcommittees. This arrangement has now become a standing practice as a result of the repeated appeals from Members of LegCo. The intention is to enable the Administration to understand the general views of Members on major legislative and financial proposals before finalizing the proposals.

2. Past experience reveals that in those cases where the policy bureaux put forward proposals to the relevant Panels during the formulation stage, the public officers concerned were more prepared to take on board Members' views when finalizing the proposals. However, the Administration was less prepared to take heed of Members' views if a proposal was already at an advanced stage of its formulation or the relevant bill was ready for presentation to LegCo. In such cases, there was little incentive for Members to express views as their views could not be incorporated into the proposals at that stage. Detailed discussion would have to take place at the relevant committees especially in the case of a bill. It is therefore common that Bills Committees have to spend a substantial amount of time on the examination of the policy aspects and very often on the fundamental principles of a bill.

3. Due to the different membership of Panels and Bills Committees, matters which have been considered at Panel meetings may have to be revisited at Bills Committee meetings. As the decisions of Bills Committees are not binding on Members, any Member, whether he has taken part in the work of the Bills Committee or not, may propose Committee Stage amendments to a bill even after the Bills Committee has completed its work.

**Overseas Practices**

4. It is common practice in the legislatures of common law jurisdictions to refer a bill to a committee for detailed scrutiny after second reading, i.e. when the House has given support to the principles of the bill. The task of the committee is more on clause-by-clause scrutiny, rather than discussion on the general principles and merits of the bill. Most bills are introduced by the Government which is the majority party in the legislature. Participation in the

work of committees is also a special privilege and honour for individual Members who are mainly backbenchers seeking an opportunity to prove themselves.

5. Modernization of procedures is taking place in some overseas legislatures. In the House of Commons in the *UK* and *Canada*, some measures have been proposed or procedures put in place to facilitate more discussions by Members on legislative proposals before they are formally introduced into the House, or on bills before second reading. For example, the Select Committee on Modernization of the House of Commons in *UK* recommended in July 1997 that the House should enable formal consideration of legislative proposals by referring them to one of the departmental select committees (DSCs) or a select committee appointed for the purpose of pre-legislative scrutiny. The functions of the 16 DSCs were primarily to examine the expenditure, administration and policy of the relevant government departments and associated public bodies. Up to March 2000, four draft bills have been considered by the relevant DSCs. This practice is comparable to the consultation with the relevant LegCo Panels on major legislative proposals.

6. The legislative procedure of the House of Commons in *Canada* has the distinctive feature that the House may, after the adoption of a motion moved by a Minister, refer a government bill to a standing committee or legislative committee for scrutiny before second reading. This arrangement was introduced in 1994 as an alternative to the traditional three-reading procedure, having regard to the fact that with the adoption of the second reading motion, the principles of a bill will have been defined, thus limiting the scope of the amendments to be moved in committee and report stages. During the 36<sup>th</sup> Parliament (September 1997 to October 2000), five out of the 134 government bills introduced into the House of Commons were referred to committees before the second reading of the bills.

7. In *Australia*, *Canada* and the *US*, bills are referred to the relevant standing committees, each of which has its own jurisdiction and functions in relation to the policies and programmes of individual government departments or agencies. In *US*, all bills relating to subjects within the jurisdiction of a standing committee are referred to the committee. The committee may then refer the bill to the appropriate subcommittee for detailed study.