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**Subcommittee on West Kowloon Cultural District Development
Meeting on 3 February 2006**

**Attendance of Public Officers
at meetings of the committees of the Legislative Council**

Purpose

This paper sets out the background and the practice and procedures relating to the attendance of public officers at meetings of the committees of the Legislative Council.

Background

2. Under Article 64 of the Basic Law, the Government of the Hong Kong Special Administrative Region (HKSAR) must be accountable to the Legislative Council with the obligation to answer questions raised by Members. That obligation to answer questions fits into Legislative Council's power and function to raise questions on the work of the Government under Article 73 of the Basic Law. Under the political system established by the Basic Law, Government does not have a seat in the Legislative Council. However, according to Article 62 of the Basic Law, the Government shall designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the Government.

3. Pursuant to the power given to it to make rules of procedure on its own, the Legislative Council has devised a committee system to facilitate Members to understand and examine specific issues, and to exchange views with parties concerned before deciding on a legislative or financial proposal or giving views on particular issues of public concern.

4. Regarding the attendance of public officers at meetings of the Legislative Council and its committees, the Rules of Procedure (RoP) of the Legislative Council provide specifically that each of the standing committees¹ may invite public officers to give information at its meetings and to assist the committee in its work. Rule 9(4) of the RoP also provides that a public officer may be invited by any other committee or subcommittee of the Council to attend the meeting of the committee or the subcommittee if circumstances so require.

5. By virtue of Article 73(10) of the Basic Law, the Legislative Council has the power to summon, as required when exercising the other powers and functions of the Council provided in the same article, persons concerned to testify and give evidence. This power is reflected in section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (the Ordinance) which provides that the Council or any of its standing committees may order any person, including a public officer, to attend before the Council or a standing committee to give evidence or to produce any paper, book, record or document. Other committees of the Council, including the House Committee, a Panel, a Bills Committee or a select committee may also exercise this power, if they are specifically authorized by a resolution of the Council.

6. The Subcommittee on West Kowloon Cultural District Development (the Subcommittee) is a subcommittee of the House Committee of the Legislative Council. In accordance with the definition of “committee” as provided in section 2 of the Ordinance, the Subcommittee is a committee of the Legislative Council, and as such, it may exercise the power to order the attendance of any person if so authorized specifically by a resolution of the Council.

7. Pursuant to Articles 62, 64 and 73 of the Basic Law, when a public officer attends a meeting of the Council or its committees, he is appearing on behalf of the Government, and is under a constitutional obligation to answer questions on the work of the Government that are put to him by Members.

8. Under Article 48(11) of the Basic Law, the Chief Executive has the power to decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees. The Chief Executive’s power is reflected in Rule 80 of the RoP.

¹ The standing committees of the Legislative Council are the Finance Committee, Public Accounts Committee and Committee on Members’ Interests. Rules 71(12), 72(8) and 73(6) of the RoP provide that these committees may invite public officers to give information at their meetings and assist the committees in their work.

Implications of refusal to attend meetings

Declining an invitation to attend meetings

9. As a matter of practice, committees of the Council usually invite public officers to attend its meetings. For example, standing committees such as the Finance Committee and its subcommittees invite, rather than summon, public officers to attend their meetings. It is an exception rather than a rule that public officers invited would decline such invitations. In one specific case of the Public Works Subcommittee (PWSC) where the two Bureau Secretaries responsible for public works and planning and land matters had refused to be present at meetings of the PWSC as a standing arrangement, it was agreed that by virtue of Rule 9(3) of the RoP², designated public officers including the two Bureau Secretaries are invited to attend a PWSC meeting if the clerk states the names of the relevant public officers against a certain item of business on the agenda of that meeting. It was also agreed that the relevant Permanent Secretaries of the Bureaux concerned should attend PWSC meetings as a standard arrangement.

Effect of the Council's resolution to order attendance at meetings

10. Where section 9 of Cap. 382 has been invoked, it is an offence for any person to disobey a lawful order made by the Legislative Council or a committee requiring him to attend or produce any papers, books, documents or records. It is also an offence to refuse to be examined or refuse to answer questions during the course of an examination, to intentionally give a false answer, to present any false, untrue, fabricated or falsified document with intent to deceive the Legislative Council or a committee, or to tamper with or unduly influence any witness in regard to any evidence to be given by him. Where any person lawfully ordered to give evidence or produce any document etc. before the Legislative Council or a committee and he refuses to answer any question or produce any document on the ground that the same is of a private nature and does not affect the subject of inquiry, the President of the Legislative Council may (and shall if such question or the production is not relevant) excuse the answering or production. On the other hand, the President may order the answering or production.

² Rule 9(3) of the RoP provides that where it appears to the Clerk, when preparing the Agenda of the Council or the agenda of the Finance Committee or a subcommittee of the Finance Committee showing the business for a meeting, that a particular item of business requires the attendance of a designated public officer, the Clerk shall state, in respect of that particular item, the name of the office of that public officer.

Matters for consideration in respect of the Chief Secretary for Administration's declining to attend the Subcommittee's meeting on 3 February 2006

11. On 13 January 2006, following the presentation of the Subcommittee's Phase II Report to the House Committee on 6 January 2006, the House Committee decided that a motion debate should take place on the Reports of the Subcommittee at the Council meeting on 8 February 2006. It was also considered necessary to invite the Chief Secretary for Administration (CS) to meet with the Subcommittee before the motion debate to enable Members to participate in the debate after listening to the response of the Administration to the Reports. On 16 January, the Clerk to the Subcommittee, on behalf of the Subcommittee, issued a letter to the Secretary for Housing, Planning and Lands (SHPL) to invite CS to attend a meeting on 3 February to respond to the Phase I and Phase II Reports of the Subcommittee and to explain the way forward for the West Kowloon Cultural District (WKCD) Development. The invitation also recapitulated the Administration's indication in October 2005 that CS would be pleased to hold a further discussion with the Subcommittee after studying its Phase II report. CS had declined to attend the meeting of the Subcommittee on 15 October 2005 to respond to the Phase I Report.

12. For the meeting on 3 February 2006, the scope of questions the Subcommittee has intended to raise for CS to answer at the meeting may be elaborated as follows:

- (a) the Administration's response to the conclusions and recommendations in the Phase I Report, in particular the need to allow competition in the mode of development and undertake financial and technical feasibility studies for the cultural facilities;
- (b) the Administration's response to the conclusions and recommendations in the Phase II Report, in particular the need for the early establishment of a provisional body to oversee the implementation of the project and to conduct structured consultation with stakeholders and the public through consultation panels on how WKCD should be developed;
- (c) the current position of the WKCD project in the light of the proponents' response to the modified approach; and
- (d) the Government's way forward for the WKCD project in the light of (c) above.

13. On 27 January 2006, Mr Danny LAU on behalf of SHPL advised the Clerk to the Subcommittee that the Administration was aware of the Subcommittee's views on the project and had written to the Subcommittee on 6 January 2006 providing its response to the Phase II Report. He further stated that CS did not see the need for him or the Administration to meet with the Subcommittee at this stage. Nevertheless, the letter said that CS would be pleased to meet with the Subcommittee after formulating more detailed proposals on the establishment of an independent statutory body to take forward the WKCD project. The letter from SHPL dated 27 January 2006 is attached. It should be pointed out that the Administration's response Mr LAU referred to in his letter is a press release issued to the public by the Administration on the date of publication of the Phase II Report.

14. Notwithstanding CS's refusal to attend the Subcommittee's meeting on 3 February, it is not clear at this stage whether CS would participate at the motion debate for the endorsement of the Phase I and Phase II reports at the Council Meeting on 8 February 2006, and whether he will speak before Members speak on the motion. Members may wish to consider whether CS's attendance at meetings of the Subcommittee is still necessary for the purpose of understanding the details of the matters under paragraph 12 (a) to (d). Under the circumstances, members may also wish to consider:

- (a) whether the necessary Legislative Council authorization should be sought so that the Subcommittee may order the CS to attend the Subcommittee's meetings;
- (b) whether the matter should be brought to the attention of the House Committee with its recommendation on the way forward; and
- (c) whether the Subcommittee should write to the CS again expressing its view on his decline to attend the 3 February meeting and advising him that a Council's authorization to order his attendance may be sought.