

立法會

Legislative Council

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Paper for the House Committee meeting on 11 November 2005

Committee on Rules of Procedure

Proposed amendments to Rules of Procedure regarding voting rights of chairmen of committees/subcommittees

Purpose

The Committee on Rules of Procedure (CRoP) invites the House Committee (HC) to endorse its recommendations and the proposed amendments to the Rules of Procedure (RoP) regarding the voting rights of the chairmen of Finance Committee (FC), Public Accounts Committee (PAC), HC, Investigation Committee (IC), Select Committee (SC), Committee on Members' Interests (CMI) and CRoP, and of HC's subcommittees other than those on subsidiary legislation, as well as the corresponding amendments to the rules regarding Panels and Bills Committees.

Background

2. At its meeting on 7 October 2005, HC endorsed CRoP's recommendations that:

- (a) the chairmen of FC, PAC, HC, IC, SC, CMI, and CRoP and of HC's subcommittees other than those on subsidiary legislation should have a casting vote but not an original vote;
- (b) the casting vote should be exercised according to the convention followed by the Speaker of the House of Commons of the United Kingdom (UK) Parliament (the convention), which consists of three principles:
 - (i) to provide an opportunity for further discussion, where this is possible, e.g. on the Question that a bill be read a second time, the Chair would vote "Aye", to enable the House of Commons to give further consideration to the bill at its later stages;

- (ii) when no further discussion is possible, decisions should not be taken except by a majority, e.g. on the Question that a bill be read the third time, the Chair would vote “No”, because there is no further opportunity for consideration by the House of Commons, and a majority has not been obtained; and
 - (iii) a casting vote on an amendment to a bill should leave the bill in its existing form. The Chair would therefore vote against the amendment; and
- (c) the relevant proposed amendments to RoP should be presented to HC for endorsement and then to the Council for approval as soon as possible.

Applicability of UK parliamentary convention to chairmen of committees of this Council

3. CRoP has studied how the three principles of the convention, which apply to the handling of bills by the UK House of Commons, may be reflected in RoP regarding committees of the Council.

4. CRoP notes that in this Council, the formal proceedings on bills take place at meetings of the Council. CRoP considers that, for FC, PAC, HC, IC, SC, CMI, and CRoP and of HC’s subcommittees other than those on subsidiary legislation, the first and third principles of the convention should **not** apply to the chairmen of these committees/subcommittees when exercising the casting vote.

5. CRoP notes that the second principle of the convention, i.e. when no further discussion is possible, decision should not be taken except by a majority, is already reflected in the current provisions in the relevant procedures of FC, the Establishment Subcommittee and the Public Works Subcommittee. According to these provisions, the respective chairmen shall not exercise the casting vote in such a way as to produce a majority vote in favour of the question before the committee/subcommittee. CRoP recommends that provisions of the same effect should be provided in the relevant RoP regarding the exercise of the casting vote by the chairmen of the other committees/subcommittees.

Voting rights of chairmen of HC’s subcommittees on subsidiary legislation not subject to sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1)

6. Rule 75(10) and (11) of RoP provide respectively that HC shall decide the manner of consideration of any subsidiary legislation which is subject to the provisions of sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) and that HC may consider, in such manner as it thinks fit, any other item relating to the business of the Council. Rule 75(12) provides that HC may appoint subcommittees to assist it in performing its functions under Rule 75(10) and (11). Under Rule 75(12B)

and (12C) of RoP, the chairmen of HC's subcommittees on subsidiary legislation which is subject to sections 34 and 35 of Cap. 1 shall have an original vote but not a casting vote, while the chairmen of HC's other subcommittees shall only have a casting vote in a tied vote situation.

7. Other than subsidiary legislation, there are also instruments made under legislation and subject to scrutiny by the Council similar to that applicable to subsidiary legislation. Examples of these instruments are codes of practice and technical memoranda. Furthermore, there is also subsidiary legislation which is not subject to a legislative scrutiny mechanism. Examples of such subsidiary legislation are the regulations made under the United Nations Sanctions Ordinance and Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005.

8. HC may appoint subcommittees to study the instruments and subsidiary legislation mentioned in paragraph 7 above. HC may also appoint a subcommittee to study an item of subsidiary legislation which is subject to section 34 or 35 of Cap.1, together with items that are not so subject. An example of such subcommittees is the Subcommittee to Study Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 and Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005 — the former Notice is subject to section 34 of Cap.1 while the latter is not.

9. As the instruments referred to in paragraph 7 and subsidiary legislation not subject to sections 34 and 35 of Cap. 1 are made under legislation, CRoP recommends that the chairmen of the subcommittees dealing with them should have the same voting rights as the chairmen of subcommittees which deal with subsidiary legislation which is subject to sections 34 and 35 of Cap. 1. In other words, the chairmen should likewise have an original vote but not a casting vote.

10. Furthermore, HC has previously appointed subcommittees to study drafts of subsidiary legislation subject to section 34 of Cap.1 and instruments made under an Ordinance. Some items of subsidiary legislation have also been studied by subcommittees even though the notices of the motions to approve them have been withdrawn at the request of HC. These are not the subsidiary legislation referred to in sections 34 and 35 of Cap. 1. However, since the subcommittees so appointed deal with subsidiary legislation or instruments to be made or intended to be made under an Ordinance, CRoP recommends that the chairmen of these subcommittees should have the same voting rights as the chairmen of subcommittees dealing with subsidiary legislation subject to sections 34 and 35 of Cap.1.

11. The proposed amendments to RoP regarding the voting rights of the chairmen of the committees/subcommittees mentioned in paragraph 2(a) above and of HC's subcommittees on subsidiary legislation not subject to sections 34 and 35 of Cap. 1 and on any other instruments made under an Ordinance are in the **Appendix**. Corresponding amendments are also made to the rules regarding Panels and Bills Committees.

12. CROp recommends that the amendments be presented to HC for endorsement and then to the Council for approval on 23 November 2005. HC's support should also be sought for the chairman of CROp to seek the President's waiver of the required notice for moving the relevant proposed resolution. Pending the Council's approval of the amendments to RoP, the exercise of the casting vote by the chairmen of FC, PAC, HC, IC, SC, CMI and CROp, and of HC's subcommittees other than those on subsidiary legislation should be as recommended by CROp in the interim.

Advice sought

13. Members are invited to endorse CROp's recommendations in paragraphs 4, 5, and 9 to 12 as well as the proposed amendments to RoP in the Appendix.

Legislative Council Secretariat

10 November 2005

**Proposed amendments to the Rules of Procedure regarding the
voting rights of the chairmen of committees/subcommittees**

71. Finance Committee

(1) There shall be a standing committee, to be called the Finance Committee, the members of which shall be all the Members other than the President.

(2) The chairman and deputy chairman of the committee shall be elected by and 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. ~~Notwithstanding the provision in subrule (8), the chairman or the member presiding, as the case may be, shall have his original vote in addition to his casting vote in such elections. (L.N. 126 of 2002)~~

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(5) The committee may appoint subcommittees for the purpose of assisting the committee in the performance of such functions of the committee as the committee may determine.

(5A) *The chairman and 8 other members shall form a quorum of the committee.*

(5B) *All matters before the committee or its subcommittees shall be decided by a majority of the members voting. Neither the chairman of, nor any other member presiding at, the committee or its subcommittees shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote.*

(5C) *Notwithstanding the provision in subrule (5B), the chairman or the member presiding, as the case may be, shall have an original vote in addition to his casting vote in the election of the chairman or deputy chairman of the committee or its subcommittees.*

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~~(8) The chairman and 8 members shall form a quorum. All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote.~~

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72. Public Accounts Committee

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(3) The committee shall consist of a chairman, deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. ~~In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. The chairman and 2 other members shall constitute a quorum.~~

(3A) *The chairman and 2 other members shall constitute a quorum of the committee.*

(3B) *In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.*

(3C) *All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote.*

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~~(7) All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall have a casting vote.~~

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73. Committee on Members' Interests

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(2) The committee shall consist of a chairman, deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. ~~In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence. The chairman and 2 other members shall constitute a quorum.~~

(2A) *The chairman and 2 other members shall constitute a quorum of the committee.*

(2B) *In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.*

(2C) *All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote.*

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~~(5) All matters before the committee shall be decided by a majority of the members voting. In the event that votes are equally divided, the chairman or other member presiding shall have a casting vote.~~

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73A. Investigation Committee

(1) An investigation committee required to be established under Rule 49B(2A) (Disqualification of Member from Office) shall consist of a chairman, a deputy chairman and 5 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. The mover of the motion under Rule 49B(1A), the Members jointly signing the motion, and the Member who is the subject of the motion shall not be appointed to the committee.

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(3) The quorum of the committee shall be 5 members including the chairman.

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(6) In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.

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(9) Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he shall ~~have give~~ a casting vote.

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74. Committee on Rules of Procedure

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(2) The committee shall consist of a chairman, a deputy chairman and 10 members who shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. The President may be invited to attend its meeting to advise on matters of practice and procedure relating to the Council. ~~In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during that absence. The chairman and 3 other members shall constitute a quorum.~~

(2A) *The chairman and 3 other members shall constitute a quorum of the committee.*

(2B) *In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.*

(2C) *All matters before the committee shall be decided by a majority of the members voting. Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided, in which case he shall give a casting vote.*

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~~(5) All matters before the committee shall be decided by a majority of the members voting. In the event that votes are equally divided, the chairman or other member presiding shall have a casting vote.~~

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75. House Committee

(1) There shall be a committee, to be called the House Committee, the members of which shall be all the Members other than the President.

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(10) The committee shall decide the manner of consideration of ~~any subsidiary legislation which is subject to the provisions of sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1).~~ *the following matters:*

- (a) *any subsidiary legislation, whether or not such subsidiary legislation is subject to the provisions of sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1);*
- (b) *any other instrument made under any Ordinance; or*
- (c) *any draft of subsidiary legislation or instrument referred to in paragraph (a) or (b).*

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(12) The committee may appoint subcommittees for the purpose of assisting the committee in the performance of its functions under subrules (10) and (11).

(12A) 20 members, including the chairman, shall form a quorum of the committee. ~~All matters for the decision of the committee or its subcommittees shall be decided by a majority of the members voting.~~ (L.N. 177 of 2005)

(12AA) *All matters for the decision of the committee or its subcommittees shall be decided by a majority of the members voting.*

(12B) The chairman of, or any other member presiding at, the committee or its subcommittees (other than those appointed under subrule (12) for the purpose of assisting the committee in the consideration of ~~subsidiary legislation~~ *a matter* referred to in subrule (10)) shall not vote, unless the votes of the other members are equally divided in which case he shall ~~have~~ *give* a casting vote. (L.N. 177 of 2005)

(12C) The chairman of, or any other member presiding at, a subcommittee appointed under subrule (12) for the purpose of assisting the committee in the consideration of ~~subsidiary legislation~~ *a matter* referred to in subrule (10) shall have an original vote but not a casting vote. (L.N. 177 of 2005)

~~—(12D) If the chairman or the member presiding wishes to exercise his original vote on a matter before a subcommittee referred to in subrule (12C), the vote shall only be exercised at the same time as other members of the subcommittee exercise their votes; otherwise, he shall be regarded as having given up his right to vote on the relevant matter.—(L.N. 177 of 2005)~~

(12E) Notwithstanding the provisions in subrules (12B) and (12C), the chairman or the member presiding, as the case may be, shall have both an original vote and a casting vote in the election of the chairman or deputy chairman of the committee or its subcommittees. *In the event that two or more nominees receive the same highest number of valid votes in such election, the chairman or the member presiding, as the case may be, shall give his casting vote.* (L.N. 177 of 2005)

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76. Bills Committees

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(8) All matters for the decision of a Bills Committee or its subcommittees shall be decided by a majority of the members voting. The chairman or any other member presiding shall have an original vote but not a casting vote. (L.N. 177 of 2005)

~~—(8A) If the chairman or the member presiding wishes to exercise his original vote on a matter before a Bills Committee or its subcommittees, the vote shall only be exercised at the same time as other members of the Bills Committee or its subcommittees exercise their votes; otherwise, he shall be regarded as having given up his right to vote on the relevant matter.
(L.N. 177 of 2005)~~

(8B) Notwithstanding the provision in subrule (8), the chairman or the member presiding, as the case may be, shall have a casting vote in addition to his original vote in the election of the chairman or deputy chairman of a Bills Committee or its subcommittees. *In the event that two or more nominees receive the same highest number of valid votes in such election, the chairman or the member presiding, as the case may be, shall give his casting vote.* (L.N. 177 of 2005)

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77. Panels

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(5) The chairman of a Panel shall be elected by the Panel from among its members. The Panel may also elect a deputy chairman. In the event of the temporary absence of the chairman or any deputy chairman, the Panel may elect a chairman to act during such absence. The chairman and deputy chairman of a Panel shall hold office until the election of the chairman and deputy chairman of the Panel in the session next following that for which they were elected.

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(13) All matters for the decision of a Panel, a subcommittee appointed under subrule (9) or a joint subcommittee appointed under subrule (9A), and all matters for decision at a joint meeting referred to in subrule (10) shall be decided by a majority of the members voting. The chairman or any other member presiding shall have an original vote but not a casting vote. Such voting shall not be binding on any Member, whether in Council, in a committee of the whole Council or in the House Committee. (L.N. 177 of 2005)

~~—(13A) If the chairman or the member presiding wishes to exercise his original vote on a matter before a Panel, a subcommittee, a joint subcommittee or a joint meeting referred to in subrule (13), the vote shall only be exercised at the same time as other members of the Panel, subcommittee, joint subcommittee or joint meeting exercise their votes; otherwise, he shall be regarded as having given up his right to vote on the relevant matter.—(L.N. 177 of 2005)~~

(13B) Notwithstanding the provision in subrule (13), the chairman of, or the member presiding at, a Panel, a subcommittee appointed under subrule (9), a joint subcommittee appointed under subrule (9A) or a joint meeting referred to in subrule (10), as the case may be, shall have a casting vote in addition to his original vote in the election of its chairman or deputy chairman. *In the event that two or more nominees receive the same highest number of valid votes in such election, the chairman or the member presiding, as the case may be, shall give his casting vote.* (L.N. 177 of 2005)

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78. Select Committees

(1) The Council may appoint one or more select committees to consider matters or bills which the Council may refer to the committee. (L.N. 107 of 1999)

(2) The President shall decide the size of every select committee and shall appoint the chairman, deputy chairman and members thereof, taking into account the recommendations of the House Committee.

(3) The quorum of a select committee shall be one third of the members excluding the chairman, a fraction of a whole number being disregarded.

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79. Procedure of Select Committees

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(3) In the event of the temporary absence of the chairman and deputy chairman, the committee may elect a chairman to act during such absence.

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(6) Neither the chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he shall ~~have~~ give a casting vote.

79A. Exercise of Voting Rights of Chairmen of Committees

(1) *Where the Rules in this Part provide that the chairman of, or any other member presiding at, a committee shall give a casting vote, the chairman or the member presiding, in exercising his casting vote on a matter before the committee (other than exercising the vote in the election of the chairman or deputy chairman, as the case may be), shall not exercise the vote in such a way as to produce a majority vote in favour of the question put.*

(2) *Where two or more nominees receive the same highest number of valid votes in the election of the chairman or deputy chairman of a committee, as the case may be, lots will be drawn in respect of these nominees, and the chairman or the member presiding, as the case may be, shall exercise his casting vote in accordance with the lot drawn by him.*

(3) *Where the Rules in this Part provide that the chairman of, or any other member presiding at, a committee shall have an original vote, and if the chairman or the member presiding wishes to exercise his original vote on a matter before the committee, the vote shall only be exercised at the same time as other members of the committee exercise their votes; otherwise, he shall be regarded as having given up his right to vote on the relevant matter.*

(4) *Notwithstanding the definition of “committee” in Rule 93(e) (Interpretation), in this Rule, “committee” includes a joint subcommittee appointed under Rule 77(9A) (Panels) and a joint meeting referred to in Rule 77(10) (Panels).*

Legend:

Texts proposed to be added are shown in *italics*.

Texts proposed to be deleted are shown with deletion lines.