立法會 Legislative Council

LC Paper No. CB(3) 256/09-10

Ref: CB(3)/HS/1

Subcommittee on Preparatory Work in relation to the Establishment of an Investigation Committee under Rule 49B(2A) (Disqualification of Member from Office) of the Rules of Procedure*

Minutes of the second meeting held on Friday, 23 October 2009 at 3:00 pm in Conference Room B of the Legislative Council Building

Members present: Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP (Chairman)

Dr Hon Margaret NG Hon LAU Kong-wah, JP

Dr Hon Priscilla LEUNG Mei-fun

Clerk in attendance: Mr Arthur LEUNG

Chief Council Secretary (3)1

Staff in attendance : Ms Pauline NG

Secretary General

Mr Jimmy MA, JP Legal Adviser

Mrs Justina LAM

Assistant Secretary General 3

Ms Connie FUNG

Senior Assistant Legal Adviser 1

Mr Stephen LAM

Assistant Legal Adviser 4

^{*} The Subcommittee was formerly known as "Subcommittee on Preparatory Work for the Moving of a Motion under Rule 49B(1A) (Disqualification of Member from Office) of the Rules of Procedure on Hon KAM Nai-wai".

Ms Serena CHU Senior Council Secretary (3)5

Miss Kawinza LEE Senior Administrative Assistant (3)1

Members noted that Hon Ronny TONG had no intention of joining the Subcommittee, as informed by Dr Margaret NG.

I. Election of Chairman

2. <u>Dr Margaret NG</u>, who had the highest precedence in the Council among the members of the Subcommittee, presided at the election of the Chairman of the Subcommittee. Proposed by Dr Margaret NG and seconded by Mr LAU Kong-wah, <u>Mrs Sophie LEUNG</u> was elected the Chairman of the Subcommittee.

II. Terms of Reference

(LC Paper No. CB(3) 75/09-10(01) — Proposed Terms of Reference)

3. <u>Members</u> agreed to the proposed terms of reference of the Subcommittee as set out in paragraph 3 of the paper.

III. Procedure for the election of Members for appointment to the Investigation Committee

(LC Paper No. CB(3) 75/09-10(02) — Procedure for the election of Members for appointment to the investigation committee to be established upon the moving of a censure motion)

4. At the invitation of the Chairman, the Clerk briefed members on the proposed procedure, as set out in the paper, for the election of Members for appointment to an investigation committee which would be established under Rule 49B(2A) of the Rules of Procedure of the Legislative Council ("RoP) upon the moving of a censure motion under Rule 49B(1A) of the RoP. The Clerk said that the proposed procedural arrangements mainly followed those adopted for the election of Members for appointment to the Public Accounts Committee ("PAC"), the Committee on Members' Interests ("CMI"), and the Committee on Rules of Procedure ("CRoP"). Reference had also been made to those adopted

for the elections of Members to The Legislative Council Commission ("the Commission") and elections of Members for appointment to select committees.

Representation of Members from different political parties or groupings on an investigation committee

- 5. <u>Dr Priscilla LEUNG</u> said that an investigation committee should comprise Members from different political parties or groupings. While there was an established practice that a balanced representation of Members in the committees such as the Commission was achieved through informal consultation among Members, such a practice did not seem to have been incorporated in the proposed election procedure although it was the first time that an investigation committee was to be established. She therefore suggested stipulating as a principle in the proposed election procedure that an investigation committee should comprise Members from different political parties.
- 6. At the invitation of the Chairman, <u>Assistant Secretary General 3</u> ("ASG3") explained that CRoP of the First Legislative Council ("LegCo") considered that the membership size of seven of an investigation committee was to allow for a fair representation of different political groups or interests in the Council. <u>The Clerk</u> further informed members that in the relevant papers submitted in the past to the House Committee on the procedure for the election of Members for appointment to PAC, CMI and CRoP, Members had been advised that in making nominations, they "should have regard to the need to ensure that the committees' membership is balanced and broadly representative of the membership of the Council". As Members had all along been able to reach consensus on the membership of these committees, no election needed to be held.
- 7. <u>Dr Priscilla LEUNG</u> said that in order to provide guidance to Members in making nominations to an investigation committee, Members should be given the same advice on balanced representation as that given to Members in respect of PAC, CMI and CRoP.
- 8. <u>Dr Margaret NG</u> said that the advice given to Members in respect of other committees on balanced representation might be inapplicable in the case of an investigation committee. She pointed out that the nature of work of an investigation committee was different from that of other committees. Unlike the Commission which was responsible for overseeing the work of the Secretariat, or select committees which were appointed to inquire into the work of the

executive authorities, an investigation committee was established under Rule 49B(2A) of the RoP on an ad hoc basis to investigate allegations against a particular Member, who might belong to a certain political party or grouping. As such, Members from such political party or grouping might, for various reasons, decide not to take part in the work of that particular investigation committee.

- 9. <u>Dr Priscilla LEUNG</u> said that as the principle of balanced representation was applicable to select committees, which were also set up on an ad hoc basis to undertake investigatory work, it should also be applicable to an investigation committee. She considered that application of the principle to an investigation committee would not hinder individual Members from making decisions on whether or not to participate in the work of a particular investigation committee. It was therefore essential to state explicitly as a principle for the election procedure that an investigation committee so established should have balanced representation. She suggested that if the principle could not be written into the election procedure, it should at least be set out as a general advice to Members.
- 10. <u>Legal Adviser</u> (LA) said that as the Subcommittee was tasked to recommend, for consideration of the House Committee, a procedure for the election of Members for appointment to investigation committees, the Subcommittee might be regarded as acting outside its terms of reference if it were to propose considerations other than the procedural arrangements in the proposed election procedure. He added that it was in the context of setting the membership size of an investigation committee that CRoP of the First LegCo considered the issue of representation of different political groups or interests on the committee. As this was the first time such an election procedure was drawn up and the possibilities of legal proceedings could not be ruled out, members might wish to be cautious in proposing the election procedure.
- 11. <u>Dr Margaret NG</u> considered it inappropriate to stipulate the principle of balanced representation in the election procedure for an investigation committee. She recalled that CRoP of the First LegCo held the view that the membership size of an investigation committee should allow for a fair representation of different political groups or interests in the Council, but CRoP's emphasis was on the number of Members to be appointed and not their political affiliations. As the task of the Subcommittee was to recommend an election procedure, it was unnecessary for the Subcommittee to deliberate further the principles on which individual Members should base their decisions in making nominations or voting.

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12. <u>Secretary General</u> (SG) said that upon completion of its work, the Subcommittee would submit a report to the House Committee, which would reflect members' views expressed at the meeting. It might not be necessary at this stage to incorporate the advice into the election procedure which would be set out in a separate appendix attached to the report. The suggestion to incorporate the advice on fair representation of political affiliations on the membership of the investigation committee into the election procedure would be considered by the House Committee.

the Clerk

- 13. <u>The Chairman</u> said that the aforesaid views of members should be recorded in the minutes of the meeting and reflected in the Subcommittee's report to the House Committee. She was confident that there would be consultation among Members on the membership of an investigation committee, if established, before nominations were made.
- 14. <u>LA</u> said that the procedure for the election of Members for appointment to an investigation committee, once determined by the House Committee, should be applicable to any investigation committee established in the future. <u>Members</u> agreed.

Election and nomination of Members for the election

- 15. <u>Members</u> agreed that the election of Members for appointment to an investigation committee should be held at a House Committee meeting, same as the arrangement for PAC, CMI, CRoP and select committees.
- 16. <u>The Chairman</u> invited members' views on whether nominations for the election of Members were to be made orally at a House Committee meeting at which the election is held, which was the arrangement for PAC, CMI, CRoP and select committees, or to be made in writing at least seven clear days before the election, which was the arrangement for the Commission.
- 17. Mr LAU Kong-wah said that as an investigation committee was responsible for investigating serious allegations against a Member which could lead to the Member being disqualified from office, Members should give very careful consideration before making nominations or accepting a nomination. He therefore proposed that the nomination procedure for an investigation committee should follow that for the election of Commission members. Members agreed to his proposal.

Voting on the nominations

- 18. <u>The Chairman</u> sought members' views on, when the number of nominations for an investigation committee exceeded the number of places available, which was seven, whether the voting on the nominations should be by a show of hands, which was the arrangement for PAC, CMI, CRoP and select committees, or by secret ballot, which was the arrangement for the Commission.
- 19. <u>Dr Margaret NG</u> enquired whether, according to the normal practice of the Council, Members would be allowed to claim divisions after the nominations were voted on by a show of hands. <u>SG</u> replied that Members would be able to do so if the relevant procedure allowed it, e.g. members may claim divisions at meetings of the Finance Committee in accordance with the Finance Committee Procedure. It had also been a practice in other committees to allow divisions to take place if such was called.
- 20. Mr LAU Kong-wah considered that the general public would expect the composition of an investigation committee not to be lopsided, and there would be more uncertainty in the composition if voting was by secret ballot. Dr Margaret NG said that given the important nature of the work of an investigation committee, there should be as much transparency as possible in the election process, and the process should be subject to public scrutiny. Dr Priscilla LEUNG said that the election procedure should be fair to all Members from different parties.
- 21. Having regard to members' views, the Chairman proposed that voting on the nominations should be by a show of hands. Members agreed.
- 22. <u>ASG3</u> said that normally when votes were taken by a show of hands at a House Committee meeting, only the numbers of Members voting for or against a question, but not the names of the Members, were recorded. <u>Dr Margaret NG</u> said that the normal practice of the House Committee should be followed whereby the names of Members would also be recorded by the Clerk if any Member so requested. <u>Members</u> agreed.

<u>Tied votes</u>

23. <u>Members</u> noted that for PAC, CMI and CRoP, where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes (i.e. "tied votes"),

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> a separate poll would be taken in respect of that nominee and such other nominee(s) until all the remaining place(s) is/are filled, whereas lots would be drawn by the Chairman of the House Committee to resolve tied votes in the elections for select committees. The Chairman sought members' views on whether tied votes in relation to an investigation committee should be resolved by conducting a further round or rounds of poll, or by lots drawn by the Chairman of the House Committee.

> 24. Mr LAU Kong-wah proposed that a further round of poll be taken to resolve tied votes and, if there were still tied votes after that further round, lots should be drawn by the Chairman of the House Committee to determine which of the relevant nominees should be Members agreed to his proposal. nominated.

Election of chairman and deputy chairman

- 25. The Chairman sought members' views on how the Chairman and Deputy Chairman of an investigation committee were to be elected. Members agreed that in line with the general practice for other committees of the Council, the members nominated for appointment as the Chairman and Deputy Chairman of an investigation committee should be elected by and among its members, following the election procedure set out in Appendix IV of the House Rules.
- 26. Members also agreed that in line with the arrangements made for PAC, CMI, CRoP and select committees, the House Committee meeting be suspended for 10 minutes immediately after the election of the members, to enable the Members so elected to elect which two of them to be nominated for appointment respectively as the Chairman and Deputy Chairman of an investigation committee; and that the election result should be reported to the House Committee for endorsement upon resumption of the House Committee meeting.

2.7 The Chairman agreed that the Subcommittee would report its the Clerk deliberations and recommendations to the House Committee at its meeting on 6 November 2009.

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IV. Any other business

28. There being no other business, the meeting ended at 3:40 pm.

Council Business Division 3
Legislative Council Secretariat
30 November 2009