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Paper for the House Committee meeting on 6 November 2009

**Report of the 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**

Purpose

This paper reports on the deliberations of the 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 ("the Subcommittee") and invites the House Committee to consider the procedure proposed by the Subcommittee for the election of Members for appointment to an investigation committee.

Background

2. At the House Committee meeting on 9 October 2009, members agreed that allegations in respect of the dismissal of an assistant by Hon KAM Nai-wai should be followed up by the moving of a motion under Rule 49B(1A) of the Rules of Procedure of the Legislative Council ("RoP"), i.e. a censure motion leading to the disqualification of a Member under Article 79(7) of the Basic Law. Under Rule 49B(2A) of the RoP, upon the moving of such a motion, the debate shall be adjourned and the matter stated in the motion shall be referred to an investigation committee unless the Council, on a motion which may be moved without notice by any Member, otherwise orders. The investigation committee is responsible for establishing the facts stated in the censure motion and giving views on whether or not the facts as established constitute grounds for the censure.

3. The House Committee meeting on 9 October 2009 also agreed that a subcommittee be formed to discuss and make recommendations on the wording of the censure motion, which would be moved by the Chairman of the House Committee.

4. At its meeting on 16 October 2009, the House Committee deliberated further the issues relating to the moving of the censure motion. To avoid the complication arising from the appointment of members of a subcommittee

which had been involved in the framing of the motion, the House Committee decided that the Subcommittee should not be so involved and should only be tasked to assist the House Committee in considering matters other than the drafting of the censure motion, such as making a proposal on the procedure for election of Members for appointment to an investigation committee, which would be established in the event that a censure motion had been moved and adjourned in accordance with Rule 49B(1A) and (2A) of the RoP respectively.

Membership and meeting of the Subcommittee

5. As there were changes in the terms of reference of the Subcommittee and in line with normal practice, the Subcommittee was renamed¹ and signification of membership of the Subcommittee was re-opened. In view of this development, the Subcommittee decided, at the beginning of the meeting on 16 October 2009, to defer consideration of its business (including election of the Chairman) until after other Members who wished to join the renamed Subcommittee had done so.

6. After re-opening of signification of membership, the Subcommittee comprises four members², with Hon Mrs Sophie LEUNG elected the Chairman at its meeting on 23 October 2009. The membership list of the Subcommittee is in **Appendix I**.

7. At the meeting on 23 October 2009, the Subcommittee deliberated the proposed procedure for the election of Members for appointment to an investigation committee. Other than this task, the Subcommittee did not consider there was any other preparatory work it should undertake in relation to the establishment of an investigation committee.

8. The main deliberations of the Subcommittee on the procedure to be proposed for consideration by House Committee are outlined in paragraphs 9 to 24 below.

Procedure for the election of Members for appointment to an investigation committee

Relevant rules of the Rules of Procedure

9. The Subcommittee notes that under Rule 73A(1) of the RoP, all members of an investigation committee required to be established under Rule

¹ 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".

² Hon Miriam LAU Kin-ye, Hon Alan LEONG Kah-kit, Dr Hon LAM Tai-fai and Hon IP Kwok-him have withdrawn from the Subcommittee while Hon LAU Kong-wah has joined the Subcommittee.

49B(2A) of the RoP shall be Members appointed by the President in accordance with an election procedure determined by the House Committee. The rule also provides that an investigation committee shall comprise a chairman, a deputy chairman and five members. Moreover, the mover of the censure motion, the three Members jointly signing the notice of the motion, as well as the Member who is the subject of the motion shall not be appointed to the investigation committee.

Procedures adopted for other committees

10. In considering the procedural arrangements for the election of Members for appointment to an investigation committee, the Subcommittee has made reference to the procedure 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"), as members of these committees are also appointed by the President in accordance with an election procedure determined by the House Committee. The Subcommittee has also made reference to the relevant arrangements of the election procedure adopted for select committees and The Legislative Council Commission ("the Commission").

Election and nomination of Members for the election

11. The Subcommittee proposes that the election of Members for appointment to an investigation committee be held at a House Committee meeting, same as the arrangement for PAC, CMI, CRoP and select committees.

12. The Subcommittee notes that nominations for the election of Members for appointment to PAC, CMI, CRoP and select committees are made orally at a House Committee meeting at which the election is held. On the other hand, nominations for the election of members of the Commission are invited in writing at least seven clear days before the House Committee meeting at which the election is held; and a nomination is considered valid only if it is made in a nomination form delivered to the Secretariat at least three clear days before the election date. In cases where the number of nominations received by the deadline is less than the maximum number of members that may be elected, further nominations may be made orally at the House Committee meeting at which the election is held.

13. The Subcommittee considers that as an investigation committee is 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. The Subcommittee therefore proposes that the nomination procedure for the election of Commission members be adopted for an investigation committee.

Voting on the nominations

14. The Subcommittee notes that for PAC, CMI, CRoP and select committees, where there are more valid nominations than the number of places available, voting on the nominations will be by a show of hands, and Members may vote as many times as the number of places. On the other hand, voting on the nominations for the election of Commission members is by secret ballot, with the votes being counted in accordance with the simple or relative majority system of election (i.e. first-past-the-post system of election).

15. The Subcommittee considers 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. The Subcommittee therefore proposes that voting on the nominations should be by a show of hands at an open meeting of the House Committee.

Tied votes

16. The Subcommittee notes 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"), a separate poll will be taken in respect of that nominee and such other nominee(s) until all the remaining place(s) is/are filled. On the other hand, lots will be drawn by the Chairman of the House Committee to resolve tied votes in the elections of Members for appointment to select committees.

17. The Subcommittee proposes that a further round of poll be taken to resolve tied votes and if there are still tied votes after that further round, lots should be drawn by the Chairman of the House Committee to determine which of the Members should be nominated.

Election of chairman and deputy chairman

18. The Subcommittee proposes 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 be elected by and among its members.

19. In line with the arrangements made for PAC, CMI, CRoP and select committees, the Subcommittee proposes that the House Committee meeting be suspended for 10 minutes immediately after the election of the members. The suspension is to enable the Members so elected to decide amongst them which two of them are to be nominated for appointment as the chairman and deputy

chairman of the investigation committee respectively. That election result shall be reported to the House Committee for endorsement upon resumption of the House Committee meeting. The procedure for the election should follow that for the House Committee, Panels, Bills Committees and subcommittees as set out in Appendix IV of the House Rules.

Proposed election procedure

20. The procedure for the election of Members for appointment to investigation committees as proposed by the Subcommittee is set out in **Appendix II**. The Subcommittee considers that such a procedure, once determined by the House Committee, should apply to any investigation committee established in the future.

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

21. The Subcommittee has also considered the issue of representation of Members from different political parties or groupings on an investigation committee.

22. Dr Hon Priscilla LEUNG considers that an investigation committee should comprise Members from different political parties or groupings, same as the arrangement for standing committees, select committees and the Commission. She points out 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 were advised that in making nominations, they should have regard to the need to ensure that the committee's membership is balanced and broadly representative of the membership of the Council. She considers that, as an investigation committee under Rule 49B(2A) of RoP has never been established before, it is essential to state explicitly as a principle for the election procedure that an investigation committee so established should have balanced representation. She suggests that if the principle cannot be written into the election procedure, it should at least be set out as a general advice to Members.

23. Dr Hon Margaret NG has expressed the view that the advice given to Members in respect of other committees on balanced representation may be inapplicable to the case of an investigation committee. She points out that the nature of the work of an investigation committee is different from that of other committees. Unlike the Commission which is responsible for overseeing the work of the Secretariat, or select committees which are appointed to inquire into the work of the executive authorities, an investigation committee is established on an ad hoc basis to investigate allegations against a particular Member, who may belong to a certain political party or grouping. Members

from such party or grouping might, for various reasons, decide not to take part in the work of that particular investigation committee. The stipulation of the principle of balanced representation in the election procedure for an investigation committee may be inappropriate. Dr NG also points out that while the CRoP of the First Legislative Council 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, CRoP's emphasis was on the number of Members to be appointed and not their political affiliations.

24. The Subcommittee decided that the aforesaid views of members be set out in this Report for consideration by the House Committee.

Advice sought

25. Members are invited to take note of this Report and consider the proposed procedure for the election of Members for appointment to investigation committees set out in **Appendix II**.

Council Business Division 3
Legislative Council Secretariat
3 November 2009

**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**

Membership List

Chairman Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP

Members Dr Hon Margaret NG

Hon LAU Kong-wah, JP

Dr Hon Priscilla LEUNG Mei-fun

(Total : 4 members)

Clerk Mr Arthur LEUNG

Legal Adviser Mr Stephen LAM

**Procedure for the election of Members
for appointment by the President
to investigation committees established
under Rule 49B(2A) of the Rules of Procedure
upon the moving of a censure motion under Rule 49B(1A)**

1. An election of Members shall be held at a meeting of the House Committee, the date of which ("election date") shall be appointed by the House Committee.
2. The Legislative Council Secretariat shall issue a circular and a nomination form to the Members of the Legislative Council at least seven clear days before election date, inviting nominations to be made.
3. Each nomination form shall be for the nomination of one Member and shall be signed by one Member as the proposer, one Member as the seconder, and by the nominee Member to signify his consent to the nomination.
4. Duly completed nomination forms shall be delivered to the Legislative Council Secretariat at least three clear days before the election date.
5. In cases where the number of nominations received by the Legislative Council Secretariat by the deadline for nomination is less than seven, further nominations may be proposed, at the House Committee meeting at which the election is conducted, by any Member and seconded by another, with the proposed nominee signifying his consent to the nomination.
6. In the case where the number of nominations received under paragraphs 4 and 5 is equal to seven, the Chairman of the House Committee shall declare the nominees duly elected.
7. In cases where the number of nominations received under paragraphs 4 and 5 is more than seven, a poll shall be taken at the House Committee meeting at which the election is conducted; voting at which shall be by a show of hands, whereby a Member may vote for seven times and no more and the nominees who get the highest numbers of votes will be declared elected.
8. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the manner of election provided in paragraph 7.

9. If, after a separate poll is held under paragraph 8, there is still a nominee who would have been elected but for there being one or more other nominees having been given the same number of votes, lots shall be drawn by the Chairman of the House Committee among such nominees to determine which of them will take up the remaining place/places.

10. Immediately after the election of Members for appointment to the investigation committee, the meeting of the House Committee shall be suspended for 10 minutes to enable the elected Members to elect amongst them the two Members to be nominated for appointment respectively as Chairman and Deputy Chairman of the investigation committee by the President.

11. The meeting of the House Committee will then resume and House Committee will be asked to endorse the results of the election of the Chairman and Deputy Chairman of the investigation committee.