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Information note on procedural arrangements for relieving a Legislative Council Member of his duties under Article 79(6) of the Basic Law

Purpose

This paper provides information on the procedural arrangements for relieving a Legislative Council ("LegCo") Member of his duties under Article 79(6) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("BL 79(6)").

2. This paper also provides at **Appendix I**, as background information, a chronology of events leading to the amendment of the Rules of Procedure ("RoP") in order to provide procedures for dealing with a motion to relieve the duties of a Member pursuant to BL 79(6) in the summer of 1998 when a Member was convicted by the Court of First Instance and sentenced to three years' imprisonment (reduced to one year on appeal) on 3 August 1998.

Procedural arrangements for relieving a Member of his duties under BL 79(6)

3. The procedural rules to implement BL 79(6) were made by the First LegCo on 9 September 1998 after the Committee on Rules of Procedure ("CRoP") had conducted a study on the subject in response to the request of the House Committee at its special meeting held on 5 August 1998.

4. During CRoP's deliberation on the procedural arrangements for relieving a Member of his duties under BL 79(6), it considered, as a matter of principle, that in implementing provisions of the Basic Law, as far as possible, the general philosophy and principles underlying the way Council business was conducted should be maintained, and existing procedures governing motions, rules of speaking, etc. should remain

unchanged. Only when general rules were considered not applicable should specific rules be drawn up for incorporation into RoP, or suitable amendments made to existing rules, to cater for such special circumstances. The views of CRoP and the procedural arrangements for relieving a Member of his duties under BL 79(6), which were detailed in the paper submitted by CRoP to the House Committee at the meeting on 4 September 1998 (LC Paper No. CB(1)128/98-99), are set out below.

Form of motion

5. Under RoP, a motion may be moved by any Member or any public officer designated by the Government of the Hong Kong Special Administrative Region. These rules also apply to a motion under BL 79(6), which may be moved by either a Member or a designated public officer.

6. BL 79(6) does not stipulate when such a motion should be moved, and it would be up to Members to determine whether, and if so when, such a motion should be moved. Since the RoP allow the moving of a motion which has complied with the relevant notice requirement, and as an item of business of the Council, the proposed motion will automatically be placed on the agenda of the House Committee, there is no special procedure or time frame in relation to the conviction and sentence of a Member for setting off the procedures for the moving of the proposed motion.

7. As the objective and effect of a motion under BL 79(6) should be single-barrelled and unequivocal, the wording of the motion should be short and precise and in a prescribed form. The prescribed form of the motion as set out in RoP 49B(1) is as follows –

"That whereas (name of Member) was convicted on (date) in (court) in (place) of a criminal offence(s) and was sentenced on (date) by (court) to imprisonment for one month or more (as particularized in the Schedule to this motion), this Council relieves (name of Member) of his/her duties as a Member of the Legislative Council."

8. No amendment may be moved to the motion (RoP 49B(2)).

Notice requirement

9. The existing rules governing notice requirements apply to a motion moved under BL 79(6), i.e. a notice period of 12 clear days is required for moving such a motion, and the President may in his discretion dispense

with such notice (RoP 29(1)). CRoP was of the view that waiver of the notice requirement should only be given by the President under exceptional circumstances.

Adjournment of motion

10. In the event that it is considered that the debate on the motion should be adjourned for a certain reason, e.g. when an appeal against conviction and/or sentence is pending or there is a lack of factual details of the conviction and/or sentence if the court proceedings took place outside Hong Kong, the Council may decide to adjourn the debate on a motion moved by a Member without notice (RoP 40(1)).

Rules of speaking

11. The provisions in RoP 41 on contents of speeches apply to a motion moved under BL 79(6). RoP 41(7), which was amended on 9 September 1998 as recommended by CRoP, provides for an exception to allow the conduct of the Member concerned to be raised during the debate where the conduct of that Member is the subject of a particular motion.

12. The speaking time limit of 15 minutes for each Member under RoP 36(5) applies to such a motion. Exceptions may be granted by the President under RoP 36(5) to allow the Member to speak for more than 15 minutes and under RoP 38 to speak for more than once.

Written statement/speech from the Member concerned

13. If the Member concerned wishes to explain himself at the Council meeting, he should inform the President of his wish and provide an advance copy of the intended explanation to the President to ensure that the explanation will not provoke a debate (RoP 28A(1) and (2)). In the event that the Member concerned cannot be physically present at the Council meeting at which the personal explanation is to be given, the President may direct that the personal explanation submitted to the President be taken as read and the text be recorded in the Official Record of Proceedings (RoP 28A(3)).

Voting procedure

14. The passage of a motion to relieve a Member of his duties under BL 79(6) shall require a vote of two-thirds of the Members present (RoP 49B(3)). This, however, does not apply to procedural motions moved in the same debate, such as a motion to adjourn the debate moved

under RoP 40, the passage of which requires a majority vote of each of the two groups of Members present: Members returned by functional constituencies and those returned by geographical constituencies through direct election (RoP 46(2)).

15. On the question of whether the Member concerned can vote, the remuneration received by LegCo Members may be regarded as a direct pecuniary interest. If so, Rule 84(1), which states that a Member shall not vote upon any question in which he has a direct pecuniary interest, shall apply. Should the Member concerned think otherwise and choose to vote, the procedure provided in RoP 84(4) to (6) to disallow a Member's vote shall then apply.

Decision on the Motion

16. The President shall declare that a Member is no longer qualified for the office immediately after the motion to relieve the Member of his duties is passed in the Council (RoP 49B(4)). Notification of the vacancy will then be published in the Gazette.

17. RoP 32 (Motions on Previous Decisions of Council) which governs the rescission of decisions applies to a motion moved under BL 79(6). If the motion is carried, no further motion should be moved in relation to the motion during the same session except a motion to rescind the decision with the permission of the President who would have to consider the aspect of reversibility of the decision. If the motion is negated, it cannot be considered again in the same session.

18. The relevant provisions in RoP are given in **Appendix II** for Members' easy reference.

Advice sought

19. Members are invited to note the content of this paper.

Appendix I

Chronology of events leading to the amendment of the Rules of Procedure for dealing with a motion to relieve the duties of a Member pursuant to Article 79(6) of the Basic Law ("BL 79(6)")

Date	Events	Relevant information/papers
1.8.1998	Hon CHIM Pui-chung was convicted in the Court of First Instance of the High Court of a criminal offence.	
3.8.1998	Hon CHIM Pui-chung was sentenced by the Court of First Instance of the High Court to imprisonment for three years.	
On or about 4.8.1998	Hon CHIM Pui-chung lodged an application to appeal against the conviction and sentence.	The application was due to be heard on 12.11.1998; and his another application for bail pending appeal to the Court of Appeal was due to be heard on 22.9.1998.
5.8.1998	<p>The House Committee held a special meeting to discuss Hon CHIM Pui-chung's case.</p> <p>Members agreed that a motion should be moved under BL 79(6) to relieve Hon CHIM Pui-chung of his duties as a Legislative Council ("LegCo") Member and the motion should be moved by the Chairman of the House Committee at the Council meeting of 9 September 1998.</p>	The indictment, transcript of the jury's verdict, and transcript of sentencing were circulated to Members on 6.8.1998 (LC Paper No. CB(2) 166/98-99).
August 1998	The Committee on Rules of Procedure ("CRoP") held five meetings (on 8, 10, 15, 22 and 25 August) to study the procedural arrangements for implementing BL 79(6) at the request of the House Committee made at its special meeting on 5 August 1998.	
25.8.1998	Dr Hon LEONG Che-hung, the then Chairman of the House Committee, gave notice for moving a motion under BL 79(6) to relieve Hon CHIM Pui-chung of his duties as a LegCo Member.	

Date	Events	Remarks
27.8.1998	The President of the Legislative Council ("PLC") decided that the motion to be moved by the Chairman of the House Committee under BL 79(6) be placed on the agenda for debate at the Council meeting of 9.9.1998.	LC Paper No. CB(3) 192/98-99
4.9.1998	CRoP reported to the House Committee on its deliberations and proposed amendments to the Rules of Procedure in relation to the procedural arrangements for implementing BL 79(6). The House Committee endorsed the proposed amendments.	LC Paper No. CB(1) 128/98-99
7.9.1998	Hon CHIM Pui-chung filed an application for leave to apply for judicial review to challenge the aforesaid decision of PLC. The application was dismissed by the Court of First Instance of the High Court in its hearing on 8.9.1998.	HCAL 71/1998
9.9.1998	Motion moved by Hon Selina CHOW (the then Chairman of CRoP) to amend the Rules of Procedure. The motion was passed.	
9.9.1998	Motion under BL 79(6) moved by Dr Hon LEONG Che-hung at the Council meeting of 9.9.1998. The motion was passed.	
11.9.1998	Publication of gazette notice to declare that the office of Hon CHIM Pui-chung became vacant on 9.9.1998.	Section 35(1) of the Legislative Council Ordinance (Cap. 542)

Extract from the Rules of Procedure

28A. Personal Explanations

(1) A Member who wishes to make an explanation of personal matters shall inform the President of his wish, and provide an advance copy of the intended explanation to the President for agreement to ensure that the explanation will not provoke a debate and that the contents are appropriate. If leave is given by the President for making the explanation, the Member shall not depart from the agreed contents.

(2) No debate may arise on such an explanation but the President may in his discretion allow short questions to be put to the Member making the explanation for the purpose of elucidation.

(3) Where the explanation is made in relation to a motion moved under Part JA (Procedures for Particular Motions) and the Member is unable to attend the meeting at which it is intended to be made, the President may direct that a copy of the explanation be sent to every Member and the text of the explanation be taken as read.

(L.N. 311 of 1998)

29. Notice of Motions and Amendments

(1) Except as otherwise provided in these Rules of Procedure, no motion shall be moved in the Council or a committee of the whole Council unless notice of it has been given not less than 12 clear days before the day on which the motion is to be considered by the Council or a committee of the whole Council:

Provided that the President or Chairman, as the case may be, may in his discretion dispense with such notice.

32. Motions on Previous Decisions of Council

(1) Where the Council has taken a decision on a specific question and the question has been decided in the affirmative, no further motion shall be moved in relation to that question during the current session except a motion to rescind the decision, moved with the permission of the President. *(L.N. 311 of 1998)*

(2) Where the Council has taken a decision on a specific question and the question has been decided in the negative, no further motion shall be moved in relation to that question during the current session. (*L.N. 311 of 1998*)

36. Time and Manner of Speaking

(5) Subject to Rule 37 (Recommendations of House Committee as to Time of Speaking), a Member shall not, without the permission of the President or the Chairman, to be given only in exceptional circumstances, make a speech lasting more than 15 minutes.

38. Occasions when a Member may Speak more than once

(1) A Member may not speak more than once on a question, except –
(*L.N. 86 of 2000*)

- (a) in committee of the whole Council; or
- (b) as provided in subrule (2); or
- (c) in explanation as provided in subrule (3); or
- (d) in the case of the mover of a motion, in reply at the end of the debate on the motion; or (*L.N. 86 of 2000*)
- (e) (*Repealed L.N. 86 of 2000*)
- (f) upon a Member's motion as provided in subrule (8); or (*L.N. 86 of 2000*)
- (fa) upon a motion to take note of a report of the House Committee as provided in Rule 49E(8) (Motions on Reports of House Committee on Consideration of Subsidiary Legislation and Other Instruments); or (*L.N. 245 of 2009*)
- (g) with the leave of the President. (*L.N. 86 of 2000*)

(2) A Member who has spoken under Rule 54(7) (Second Reading) may speak a second time during the same debate.

(3) A Member who has spoken on a question may again be heard to explain some part of his speech which has been misunderstood, but when speaking he shall not introduce new matter.

(4) *(Repealed L.N. 86 of 2000)*

(5) A Member who has spoken on a question may speak again on an amendment moved to that question, and on a motion that the debate now be adjourned moved during the debate on that question.

(6) *(Repealed L.N. 86 of 2000)*

(7) *(Repealed L.N. 86 of 2000)*

(8) A designated public officer may speak a second time upon a Member's motion. *(L.N. 86 of 2000)*

40. Adjournment of Debate or of Proceedings of a Committee of the Whole Council

(1) A Member who has risen to speak on a question in the Council may move without notice that the debate be now adjourned. Thereupon the President shall propose the question on that motion.

(2) When a motion that the debate be now adjourned has been agreed to, the debate on the question then before the Council shall stand adjourned and the Council shall proceed to the next item of business.

(3) When a motion that the debate be now adjourned has been negatived, the debate on the question then before the Council shall be continued and no further motion that the debate be now adjourned shall be moved during that debate except by a designated public officer.

(4) When the Council is in committee a Member may move without notice that further proceedings of the committee be now adjourned. Thereupon the Chairman shall propose the question on that motion. If the motion is agreed to, the Council shall resume; but if the motion is negatived, the committee shall continue its proceedings.

(5) It shall not be in order to move an amendment to a motion under the provisions of this Rule.

(6) Except as otherwise provided in subrule (6A), a debate adjourned under the provisions of subrule (2) may be resumed at a subsequent meeting of the Council provided that the Member or public officer who moved the motion for that debate, or in the case of a debate on

a bill, the Member or public officer in charge of the bill, shall give notice in writing to the Clerk of his intention to resume the debate not less than 5 clear days before the day on which the debate is to be resumed: (*L.N. 107 of 1999*)

Provided that the President may in his discretion dispense with such notice.

(6A) A debate adjourned under the provisions of Rule 49B(2A) (Disqualification of Member from Office) shall be resumed at the earliest meeting of the Council at which normal business is transacted after the report of the investigation committee has been laid on the Table of the Council. (*L.N. 107 of 1999*)

(7) Proceedings of a committee of the whole Council adjourned under the provisions of subrule (4) may be resumed at a subsequent meeting of the committee provided that the Member or public officer in charge of the bill to which the adjourned proceedings relate shall give notice in writing to the Clerk of his intention to resume the proceedings not less than 5 clear days before the day on which the proceedings are to be resumed:

Provided that the Chairman may in his discretion dispense with such notice.

(8) The provisions of subrules (1), (2), (3), (4) and (5) shall apply to any debate or proceedings resumed under the provisions of subrules (6) and (7).

41. Contents of Speeches

(1) A Member shall restrict his observations to the subject under discussion and shall not introduce matter irrelevant to that subject.

(2) Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case.

(3) Except as otherwise provided in Rule 66 (Bills Returned for Reconsideration), it shall be out of order to attempt to reconsider a specific question on which the Council has taken a decision during the session, except in debate on a motion to rescind that decision moved with the permission of the President.

(4) It shall be out of order to use offensive and insulting language about Members of the Council.

(5) A Member shall not impute improper motives to another Member.

(6) The name of the Chief Executive shall not be used to influence the Council.

(7) Except where his conduct is the subject of a motion to which Part JA (Procedures for Particular Motions) applies, the conduct of the Chief Executive, a Member of the Executive Council or a Member of the Legislative Council otherwise than in the performance of his official duties shall not be raised. *(L.N. 311 of 1998)*

(8) The conduct of Judges or other persons performing judicial functions shall not be raised.

46. Decision on Motions

(1) Except as otherwise provided in Rules 49B (Disqualification of Member from Office) and 66 (Bills Returned for Reconsideration) and Articles 52(2), 73(9) (in respect of a motion of impeachment) and 159 of and Annex I and Annex II to the Basic Law, the passage of all motions before the Council or a committee of the whole Council shall, subject to subrule (2), require a majority vote of the Members present. *(L.N. 311 of 1998; L.N. 107 of 1999; L.N. 235 of 2005)*

(2) The passage of a motion (other than a motion moved under any of the excepted Rules or Articles of the Basic Law referred to in subrule (1)) or bill introduced by a Member, or an amendment introduced by a Member to any motion or bill, shall require a majority vote of each of the following two groups of Members present – *(L.N. 311 of 1998)*

(a) Members returned by functional constituencies (Group I); and

(b) Members returned by geographical constituencies through direct elections (Group II). *(L.N. 161 of 2004)*

49B. Disqualification of Member from Office

(1) A motion to relieve a Member of his duties as a Member under Article 79(6) of the Basic Law shall be moved in the following form:

“That whereas (name of Member) was convicted on (date) in (court) in (place) of a criminal offence(s) and was sentenced on (date) by (court) to imprisonment for one month or more (as particularized in the Schedule to this motion), this Council relieves (name of Member) of his/her duties as a Member of the Legislative Council.”.

(1A) A motion to censure a Member under Article 79(7) of the Basic Law shall be moved in the following form:

“That this Council, in accordance with Article 79(7) of the Basic Law, censures (name of Member) for misbehaviour/breach of oath under Article 104 of the Basic Law/misbehaviour and breach of oath under Article 104 of the Basic Law (details as particularized in the Schedule to this motion).”.

(L.N. 107 of 1999)

(2) No amendment may be moved to a motion moved under subrule (1) or (1A). *(L.N. 107 of 1999)*

(2A) Upon the moving of a motion under subrule (1A), 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. If the latter motion is agreed to by the Council, no further action shall be taken on the motion moved under subrule (1A). *(L.N. 107 of 1999)*

(3) The passage of a motion moved under subrule (1) or (1A) shall require a two-thirds majority vote of the Members present. *(L.N. 107 of 1999)*

(4) Where the Council has decided to relieve a Member of his duties or to censure a Member, the President shall declare forthwith that the Member is no longer qualified for his office. *(L.N. 107 of 1999)*
(L.N. 311 of 1998)

84. Voting or Withdrawal in case of Direct Pecuniary Interest

(1) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.

(L.N. 126 of 2002)

(1A) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy. *(L.N. 126 of 2002)*

(2) *(Repealed L.N. 126 of 2002)*

(3) *(Repealed L.N. 126 of 2002)*

(3A) A motion for the withdrawal of a Member on the ground of his failure to withdraw as required by subrule (1A) may be moved without notice by any Member after the President or Chairman has put the question on the original motion but before the vote is taken. *(L.N. 107 of 1999; L.N. 126 of 2002)*

(4) A motion to disallow a Member's vote on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member immediately upon the statement by the President, Chairman of a committee of the whole Council or chairman of his judgment on whether there is a required majority or, if a division has been ordered, upon his statement of the numbers of Members recorded in the division. *(L.N. 107 of 1999)*

(5) The President, Chairman of a committee of the whole Council or chairman shall have the discretion whether or not to propose the question upon a motion under subrule (3A) or (4); and in exercising such discretion he shall have regard to the nature of the question upon which the vote is taken and to the consideration whether the interest therein of the Member whose presence or vote is challenged is direct and pecuniary and not an interest in common with the rest of the population of Hong Kong or a sector thereof and whether the vote is on a matter of Government policy. *(L.N. 107 of 1999)*

(5A) If the question for the withdrawal of a Member is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council or a committee of the whole Council for the duration of any vote

on the question. If the motion is agreed to, the Member shall withdraw or continue to withdraw from the Council or the committee of the whole Council when the original question is put and voted upon. *(L.N. 107 of 1999)*

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of any vote on the question. If the motion is agreed to, the President, Chairman of a committee of the whole Council or chairman shall state anew his judgment on whether there is a required majority in the original question or, in the case of a division, direct the Clerk to the Legislative Council or the clerk to alter the numbers voting and, in the case of the Council or a committee of the whole Council, the effect of the presence of the Member in the original division accordingly. *(L.N. 107 of 1999)*

(7) *(Repealed L.N. 107 of 1999)*