

# 立法會

## *Legislative Council*

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### **A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region**

#### **Purpose**

This paper summarizes the decision of The Legislative Council Commission ("the Commission") to produce "A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region" which will serve as a guide on the way the Legislative Council ("LegCo") conducts its business and the underlying philosophies behind its unique procedural system. The Chairman of the Commission will table the Part I of the Companion "An introduction to the Legislative Council, its history, organisation and procedure" at the Council meeting on 18 June 2014.

#### **Background**

2. At its meeting on 20 November 2012, the Commission decided to produce a manual, now entitled as "A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region" to provide the details about the Council's rules and practices as well as the historical development of its organisation and procedures. Similar to the publications produced by overseas legislatures, such as Arthur Beauchesne's "Parliamentary Rules & Forms"<sup>1</sup> on the Parliament of Canada, or Erskine May's "Parliamentary Practice"<sup>2</sup> on the Parliament of the United Kingdom, the Companion will serve as a source of reference for LegCo Members, Members' staff, staff of the LegCo Secretariat, public officers and members of the public on how the rules and procedures of LegCo work in practice and the way the LegCo conducts its business.

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<sup>1</sup> "Parliamentary Rules & Forms" was first written by Arthur Beauchesne in 1922. The book is an attempt to bring together the past practices of the Canadian House of Commons and the observations of others in a composition that is intended to be a ready source of information for those who need to know how the House of Commons proceeds.

<sup>2</sup> "Parliamentary Practice" was first written in 1844 by Erskine May, who was an Assistant Librarian in the House of Commons. The objective of his writing was "to describe the various functions and proceedings of Parliament in a form adapted, as well as to the purposes of reference, as to a methodical treatment of the subject".

3. The Commission endorsed the setting up of a supervisory committee comprising the Secretary General, serving as the Chair, as well as the Legal Adviser, the Deputy Secretary General, the four Assistant Secretary Generals, Head (Translation and Interpretation) to oversee the production and future updating work of the manual. The Commission also approved the engagement of Ms Pauline NG, the former Secretary General and Clerk to the LegCo, as the chief writer who will work with the supervisory committee on the production of the Companion. Two expert advisers including Mr Jonathan DAW, former Legal Adviser, and Mr LAW Kam-sang, former Deputy Secretary General, were also engaged to undertake the research and writing for the project.

### **The Companion**

4. The Companion, targeted to be completed by December 2015 with its first edition to be published before April 2016, will be in the following three parts:

- (a) Part I – An introduction to the Legislative Council, its history, organisation and procedures;
- (b) Part II – Conduct of business in the Council and committees; and
- (c) Part III – Partnership with people.

5. Part I of the Companion includes six chapters, namely, "An overview of the development of practices and procedures in the Hong Kong Legislature", "The Legislative Council", "Members of the Legislative Council", "Administrative support for the Legislative Council", "The Executive Authorities and the Legislature" and "Committee System". Preparation of this Part (**Appendix**) is completed.

### **Publication of the Companion**

6. The Commission decides that the Companion should be made available to members of the public. It is hoped that through the publication of the Companion, there will be better understanding of the way the LegCo conducts its business and the underlying philosophies behind its procedures, which in turn generates a closer working partnership among all parties in enhancing the governance of Hong Kong for the benefit of the Hong Kong community.

7. Apart from the printing of hardcopy of the Companion for distribution to tertiary institutions, public libraries, etc, the Companion will also be uploaded onto the LegCo Website for reference by members of the public. Hyperlinks will also be provided for this electronic version to enable easy access to the cross referenced documents.

Legislative Council Secretariat

June 2014



**A Companion to the history,  
rules and practices of the Legislative Council of  
the Hong Kong Special Administrative Region**

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**Part I**  
**An introduction to the Legislative Council,  
its history, organisation and procedure**

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Printed by The Legislative Council Commission  
and laid on the Table of the Legislative Council on 18 June 2014

## Preface

The Legislature of the Hong Kong Special Administrative Region ("HKSAR") exercises its powers and functions under a unique procedural system, in accordance with the Basic Law of the HKSAR. The system was developed from the rules and practices of the pre-1997 legislature of Hong Kong. It has been modified to comply with the requirements of the Basic Law and to enable the legislature to conduct its business smoothly and effectively.

It has always been a challenge to any new Member or any member of the public to understand how we work and why we do things in a certain way. It is therefore our wish to provide an authoritative guide for all those who work inside the Legislative Council or need to work with us, be they Members, Members' staff, staff of the Legislative Council Secretariat, public officers, researchers or any citizens who are interested in knowing more about the way we conduct our business.

In November 2012, The Legislative Council Commission decided to produce a manual to provide not only the details about the Council's rules and practices but also the historical development of its organisation and procedures. It also decided to appoint Ms Pauline NG as the Chief Writer for the production of this manual. Ms NG, who was Secretary General from 2008 to 2012 and was Clerk to the Legislative Council during this period, steered various major reviews of the Council's rules and procedure in her 20 years of service to the Legislature. She was considered the most suitable person to be responsible for this task.

The Manual, now entitled "*A Companion to the history, rules and practices of the Legislative Council of the Hong Kong Special Administrative Region*", will be in three parts, with the first part focusing on the "parliamentary principles" underlying our rules of procedure and an introduction to our organisation and procedures. The second part will focus on the conduct of business in the Council and in committees, and the third part on public engagement and how the legislature performs its functions through partnering with people. As the *Companion* may take some years to complete, the Commission considers it appropriate to have each part published on the Legislative Council Website for public access as soon as it is ready and have it updated from time to time. Hyperlinks to relevant reference materials are also provided in the electronic version of this publication.

The production of the *Companion* requires extensive commitment in terms of time and effort in searching out old records, compiling and cross-

checking information with reliable sources and, most important of all, setting out complicated concepts in clear and direct language so that it is readable for experts and the general public alike. We are fortunate to have the support from a number of retired and highly experienced staff members of the Legislative Council Secretariat. I wish to thank in particular the Chief Writer Ms Pauline NG and our two expert advisers Mr Jonathan DAW (former Legal Adviser) and Mr LAW Kam-sang (former Deputy Secretary General) for their dedication and perseverance in undertaking the research and writing. I also wish to thank our Legal Adviser Mr Jimmy MA and his team for providing legal research support for the project.

In the course of reviewing the contents of the *Companion*, we also consulted the former Presidents, President's Deputies of the Council and the Chairmen and Deputy Chairmen of the Committee on Rules of Procedure. I wish to thank them for their valuable views and contributions.

As this is the first time we have published a guide on our procedure and practices, we have also sought a review from the former Clerk of the House of Commons of the United Kingdom Sir Malcolm JACK, Editor of the 24<sup>th</sup> Edition of Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. In his review, Sir Malcolm considers the *Companion* a work of considerable value and importance. He adds that "it will put the Legislative Council on a comparable footing to many overseas jurisdictions in terms of having an exposition of its own procedure and practices and how they have evolved in a single, authoritative commentary".

I agree with Sir Malcolm JACK that the *Companion* should serve as a standard reference for all users. I hope that through this publication, there will be better understanding of the way the Legislative Council conducts its business and the underlying philosophies behind our procedures. It is only with this understanding that there can be a closer working partnership among all parties in enhancing the governance of the HKSAR for the benefit of its citizens.

Last but not least, I wish to thank all members of the Commission for taking a great interest in this project. Without their support, this project would not have been possible.

Jasper TSANG Yok-sing, GBS, JP  
President of the Legislative Council

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## **Chapter 1**

### **An overview of the development of practices and procedures in the Hong Kong Legislature**

1.1 On 1 July 1997, Hong Kong which had been under British administration since 1843 was established as a special administrative region directly under the Central People's Government in accordance with Article 31 of the Constitution of the People's Republic of China. To bring about this reunification, the People's Republic of China decided that the Hong Kong Special Administrative Region ("HKSAR") would be governed under the "one country, two systems" principle with a high degree of autonomy. The original capitalist system and way of life would remain unchanged for 50 years, and the laws of Hong Kong would also remain basically the same. The Constitution of the People's Republic of China and the "one country, two systems" principle became the guiding principles in the drafting of the Basic Law of the HKSAR, which was adopted at the Third Session of the Seventh National People's Congress ("NPC") of the People's Republic of China on 4 April 1990 to take effect on 1 July 1997.<sup>1</sup> The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law would be maintained in the HKSAR by virtue of Article 8 of the Basic Law. On 23 February 1997, except for a few ordinances, the then existing Laws of Hong Kong were adopted by the Standing Committee of the NPC to continue to be in force upon the establishment of the HKSAR.

1.2 Under the Basic Law, the Legislative Council of the HKSAR "shall be the legislature of the Region" and it "shall be constituted by election".<sup>2</sup> Annex II to the Basic Law stipulates that the Legislative Council shall be composed of 60 Members, and in relation to its first term, it is to be formed in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region". That Decision was adopted by NPC at the same meeting at which the Basic Law was enacted. According to this Decision<sup>3</sup>, if the composition of the last Hong Kong Legislative Council before the establishment of the HKSAR was in

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<sup>1</sup> See Address delivered by Ji Pengfei, Chairman of the Drafting Committee for the Basic Law of the HKSAR at the Third Session of the Seventh NPC on 28 March 1990.

<sup>2</sup> Articles 66 and 68 of the Basic Law.

<sup>3</sup> See Decision of the NPC on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR adopted at the Third Session of the Seventh NPC on 4 April 1990.

## *1. Development of Practices and Procedures*

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conformity with the relevant provisions of this decision and the Basic Law, those of its members who upheld the Basic Law and pledge allegiance to the HKSAR and who met the requirements set forth in the Basic Law would, upon confirmation by the Preparatory Committee for the HKSAR, become Members of the First Legislative Council. The term of office of the First Legislative Council, as stipulated in Article 69 of the Basic Law, was two years while a normal term of office of the Legislative Council is four years. The intention was to enable Members of the last term of the Hong Kong Legislative Council, who served from October 1995 to 30 June 1997, to continue to serve as Members of the First Legislative Council from 1 July 1997 for another two years.

1.3 However, in October 1992 Governor Christopher Patten, who replaced Governor Lord David Wilson in July that year, introduced in his first Policy Address a new package of electoral arrangements for the last Legislative Council which were considered by the Government of the People's Republic of China to have deviated from the electoral arrangements originally agreed with the British Government.<sup>4</sup> Despite opposition from the Chinese Government, the relevant legislation to implement Governor Patten's electoral arrangements was passed in the Legislative Council in June 1994. In September 1995, 60 Members were returned as Members of the last term of the Hong Kong Legislative Council in accordance with the new legislation.

1.4 On 24 March 1996, the Standing Committee of the NPC endorsed the report of the Preparatory Committee that the composition of the last Legislative Council of Hong Kong was not in conformity with the Basic Law, and that a Provisional Legislative Council should be set up to perform the duties of the legislature of the HKSAR under the Basic Law and to undertake any essential matters which should be carried out by the legislature before the setting up of the first Legislative Council of the HKSAR.<sup>5</sup> The Provisional Legislative Council was elected in December 1996 and held its meetings in Shenzhen between January and June 1997. The Council conducted its first meeting in Hong Kong shortly after midnight on 1 July 1997 and confirmed all bills and resolutions passed by it during its operation in Shenzhen through

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<sup>4</sup> See Chapter 3.

<sup>5</sup> See Report of the Preparatory Committee for the Establishment of the HKSAR adopted by the Standing Committee of NPC on 24 March 1996.

the passage of the Reunification Bill <sup>6</sup>. During the year from 1 July 1997 to 30 June 1998, the powers and functions of the legislature of the HKSAR under the Basic Law were performed by the Provisional Legislative Council. On 3 October 1997, the Provisional Legislative Council passed legislation to provide for the election of Members to the First Legislative Council in accordance with the method for the formation of the Legislative Council as set out in Annex II to the Basic Law. The Provisional Legislative Council also commenced deliberation of a set of rules of procedure for consideration by the Members of the First Legislative Council for adoption at the start of their term on 1 July 1998.

1.5 Under the provisions of Article 75 of the Basic Law, the rules of procedure of the Legislative Council of the HKSAR shall be made by the Council on its own, provided that they do not contravene the Basic Law. The rules of procedure are the internal rules made by resolution of the Legislature to regulate its proceedings, and are binding on all Members. They provide the principles and framework for the conduct of business in the Legislative Council and its committees and set out, among other things, the procedural steps for processing bills and subsidiary legislation, requirements governing the moving of motions and amendments, rules regulating the conduct of Members at meetings including manner of speaking, disclosure of pecuniary interests, etc.

1.6 The draft rules of procedure presented to Members of the First Legislative Council for consideration in June 1998 before they took office were modelled on the Rules of Procedure of the Provisional Legislative Council which were in turn modelled on the Standing Orders of the pre-1997 Legislature which had been in existence when Hong Kong was under British administration. The Convenor of the Working Group on Rules of Procedure <sup>7</sup> of the Provisional Legislative Council explained the rationale for using the Standing Orders as a framework for the Rules of Procedure as follows:

*"... we should adopt a set of legislative procedures that is generally recognized and accepted by the people of Hong Kong. As the*

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<sup>6</sup> Hong Kong Reunification Bill sought to confirm the 13 Bills passed by the Provisional Legislative Council before 1 July 1997, endorse the appointment of judges of the Court of Final Appeal and the Chief Judge of the High Court, assist the interpretation on and after 1 July 1997 of laws previously in force in Hong Kong, continue those laws and confirm certain other laws, establish the various levels of courts, tribunals and boards, continue legal proceedings, the criminal justice system, the administration of justice and the course of public justice on and after 1 July 1997, continue the public service on and after 1 July 1997, and other matters in consequence of the resumption of the exercise of sovereignty over Hong Kong by the People's Republic of China, and for connected purposes.

<sup>7</sup> The Working Group on Rules of Procedure was replaced by the Committee on Rules of Procedure of the Provisional Legislative Council on 10 September 1997.

## 1. *Development of Practices and Procedures*

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*Standing Orders of the existing Legislative Council are tried and proven, we think that with the exception of certain clauses that need to be adapted with reference to the Basic Law, the rest could generally be adopted."*<sup>8</sup>

1.7 On this basis, the Working Group used the Standing Orders of the pre-1997 Legislature as the starting point. It also drew reference from procedures of legislatures of other common law jurisdictions, in order to produce a set of rules of procedure that would be suitable for the HKSAR and also acceptable and comprehensible to the people of Hong Kong.

1.8 The contents of this Chapter will focus on the nature of the "parliamentary" system embodied in the Standing Orders of the pre-1997 Legislature which the Legislative Council of the HKSAR adopted and adapted for use in the HKSAR and the practice and procedures which the Council and its committees have followed in conducting their business.

### **The parliamentary system behind the Rules of Procedure adopted by the Legislative Council of HKSAR**

1.9 After the elections for the First Legislative Council of the HKSAR on 24 May 1998, the 60 Members-elect held a series of informal meetings to consider adopting rules of procedure for the Council based on a draft prepared by the Legislative Council Secretariat ("the Secretariat") under the instruction of the Committee on Rules of Procedure of the Provisional Legislative Council.<sup>9</sup> When the Members-elect met to discuss the draft Rules of Procedure in June 1998, they agreed that there was a need to formulate and adopt a set of rules that would allow the First Legislative Council to operate immediately in an efficient and effective manner. The Members-elect were also aware that the draft Rules placed before them for consideration were based on the rules and practices adopted by the pre-1997 Legislature of Hong Kong with additional procedures having been formulated to ensure conformity with the relevant provisions of the Basic Law. They studied the proposed rules and the underlying policies and principles in detail, and exchanged views with the Department of Justice on the interpretation of certain provisions of the Basic Law. There was an understanding among Members that some issues required further study or more in-depth discussion with the Government and

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<sup>8</sup> See speech of Hon Selina Chow, Convenor of the Working Group on Rules of Procedure when proposing the adoption of the Rules of Procedure of the Provisional Legislative Council at the Council meeting on 12 April 1997. *Hansard*.

<sup>9</sup> The Committee on Rules of Procedure of the Provisional Legislative Council was set up in September 1997.

that these would be followed up at a later stage.<sup>10</sup> At its first meeting on 2 July 1998, the First Legislative Council formally adopted its Rules of Procedure by resolution.

### The parliamentary system operated under the pre-1997 Standing Orders

1.10 When the First Legislative Council of the HKSAR used the Standing Orders of the pre-1997 Hong Kong Legislature as a model for its Rules of Procedure, it did not do so out of convenience or expediency. The Standing Orders contained the formal rules of a parliamentary system with which Hong Kong had been associated for over a century. This system, which originated from the Parliament of the United Kingdom ("UK"), embraced a body of customs, precedents and traditions, some of which subsequently became written rules in the form of standing orders to codify practices and to cater for modern day needs. As this was the system with which the people of Hong Kong were familiar at Hong Kong's reunification with the People's Republic of China in 1997, it was generally accepted that the Legislature of the HKSAR should continue to operate in the same manner under the "one country, two systems" principle embodied in the Basic Law.

1.11 As described in Erskine May<sup>11</sup>, the rules applied in the UK Parliament are themselves of different kinds and derive from different sources – from *practice*; from *standing orders and ad hoc orders and resolutions*; from *rulings from the Chair* and (occasionally) from *statute*. Historically the Houses reached decisions by passing Resolutions which were then referred to as precedents when future decisions were made. By the 19<sup>th</sup> Century as Government became involved in more and more areas of public life and the party system became more clearly defined, the executive needed greater control of the time available to pass bills and deal with other measures. The Standing Orders were introduced to ensure that the handling of business, particularly in the House of Commons, was more effective. They could be modified as changed circumstances arose.

1.12 The UK House of Commons also has a body of *case-law* consisting mainly of *Speakers' rulings* in response to questions on points of order on current business. Such rulings are constantly needed for the purpose of applying the Standing Orders to doubtful or new cases, and for harmonizing them with older practice and with each other. They form the precedents from

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<sup>10</sup> See speech of Dr Hon LEONG Che-hung at the Council meeting on 2 July 1998. *Hansard*.

<sup>11</sup> See Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 22nd Edition, pp. 3-8.

## 1. *Development of Practices and Procedures*

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which principles and practices may be drawn for future reference for specific situations.

1.13 In the first 15 years after the issue of the Letters Patent (the Royal Charter for Hong Kong) and the Royal Instructions<sup>12</sup> in 1843, the conduct of business in the Legislative Council in Hong Kong was mainly guided by the rules and regulations endorsed by the Executive Council<sup>13</sup> in 1845 for two Councils, i.e. the Executive Council and the Legislative Council.<sup>14</sup> These rules and regulations only provided the broad framework within which the business of the two Councils should be transacted, such as date and time of meetings, notice requirement for motions and amendments, duties of the Clerk in keeping an Order Book and notifying Members of matters to be discussed at the next meeting, keeping of minutes of proceedings, etc. It was not until July 1858 that the first set of Standing Orders and Rules for the Legislative Council were adopted. The minutes of proceedings of the Legislative Council provided little information on whether other practices had been followed at that time, but from 1929 onwards it was quite clear that the practice and procedures of the Council, as reflected in its Standing Orders and other unwritten practices, had followed closely the development of the parliamentary system of the UK House of Commons though with due regard given to the local conditions such as political development and changes in public opinion.

### *From 1858 to 1929*

1.14 The 1858 Standing Orders and Rules stipulated the need for giving notice to Members for meetings, and also set out the manner of speaking at the Council, quorum, voting method, duties of the Clerk, procedure on handling petitions, procedure in processing of an "ordinance", and examination of witnesses, although the Council at that time remained an advisory body and did not have power to consent to bills.<sup>15</sup> The reference to

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<sup>12</sup> The Letters Patent were the earliest constitutional documents generally known as "The Hong Kong Charter", which set out the powers given to the Governor in general terms and authorized the creation of the Executive Council and the Legislative Council, with emphasis on the need to preserve all the rights of Her Majesty's Government over the colony. The Royal Instructions which had the same legal force as the Letters Patent were issued under Clause II of the Letters Patent. The Royal Instructions set out the detailed mechanism of how the Legislative Council and the Executive Council were to be formed and to carry out their work. Both the Letters Patent and the Royal Instructions were first issued on 6 April 1843, and were amended from time to time and published in the Government Gazette.

<sup>13</sup> Following the issue of the Letters Patent and the Royal Instructions in 1843, the Executive and Legislative Councils started to hold meetings in January 1844, either jointly or separately, about once a week.

<sup>14</sup> The first set of rules and regulations for the Executive and Legislative Councils was passed by the Executive Council on 7 March 1845.

<sup>15</sup> Clause IX of the 1888 Letters Patent provided that the Governor, by and with the advice and consent of the Legislative Council, may make laws for the peace, order, and good government of the Colony.

the "committal or re-committal" of a bill together with the proposed amendments to a "committee"<sup>16</sup> appointed for the purpose after second reading was found in this early version of the Standing Orders. The committal to a select committee or a committee of the whole Council was regarded as an important part of the legislative process in the House of Commons at that time as it would allow Members "to speak as often as they see cause" at a committee without the "constraining presence of the Speaker"<sup>17</sup> since the Chairman of Ways and Means presides in Committee of the Whole House. The extent of details put into the 1858 Standing Orders and Rules on the procedure for processing a legislative proposal had paved the way for the new version of Standing Orders and Rules endorsed in 1873 which contained a separate section for bills.

1.15 In the 1873 Standing Orders and Rules, the procedure to take a bill through the various stages of the legislative process, including the committal of a bill to a Special Committee for detailed examination, was set out in a dedicated section called "Progress of Bills". Details of the procedure covered not only how Members should act at each stage in the progress of a bill but also the requirement that notice of affected vested rights and interests in property arising from the bill should be published in the Government Gazette.<sup>18</sup>

1.16 The procedure for any parties whose individual rights or interests in property were peculiarly affected by a bill to be heard by the Council (or any committee to which the bill was referred) was provided in the 1873 Standing Orders and Rules. This procedure was further fine-tuned in the 1884 Standing Orders and Rules under a dedicated section entitled "Private Rights". There was provision in the section to allow any affected parties to be heard upon a petition or motion made in the Council, and witnesses could be directed to appear before the Council or a committee to give evidence. To protect the property of private persons, more stringent requirements for notices were imposed on private bills in the 1890 and 1912 Standing Rules and Orders.

1.17 The changes made in the two revisions of the Standing Orders in 1884 and 1890 were more related to the manner in which debates on bills were conducted in the Council. In the 1884 Standing Orders, a dedicated section was given to the "Rules of Debate" which also covered the manner of

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<sup>16</sup> Only "Special Committees" existed from 1884 to 1929, and they were replaced by Select Committees thereafter.

<sup>17</sup> Sir Gilbert Campion (1950) *An Introduction to the Procedure of the House of Commons*, p. 27.

<sup>18</sup> Notice of bills which may affect vested rights and interest in property ought to be published at least three times before introduction of the bill, and another three times before the bill went into committee.

## 1. *Development of Practices and Procedures*

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speaking and voting. Explicit provisions for motions which could be moved without notice were set out, e.g. for adjournment of the Council or a debate, referral of a matter to a committee, the tabling of a petition, etc. General principles governing the admissibility of motions and amendments were also added to the procedure. In 1888, the Royal Instructions were amended to give the Legislative Council the important added constitutional function of giving consent to bills. This was reflected in the 1890 Standing Rules and Orders.

### *From 1929 to 1968*

1.18 In 1929, a substantially revised version of the Standing Orders was adopted. The revision was based on the draft code of model Standing Orders for Colonial Legislatures published by the UK in 1928 following the study by a committee appointed in the wake of the Colonial Office Conference of 1927. The reason put forward by the Attorney General when proposing the new version was that there would be a large degree of uniformity in the procedure of the Legislative Councils and Assemblies of the Crown Colonies generally. In the 1929 Standing Orders, new provisions were included for regulating the order of business and also Members' behaviour at sittings, such as relevancy in debate, the rule of anticipation, termination of debate, the President (i.e. the Governor) to be heard without interruption, observance of the rules of order, breaches of order, and withdrawal and suspension of a Member for grossly disorderly conduct. The scope of petitions was expanded to cover not just legislation, but any matters except for the grant of public money unless with the recommendation of the Governor. These provisions reflected practice in the UK House of Commons at the time.

1.19 One special provision added to the Standing Orders in 1929 was the need to follow the practice of the House of Commons of Great Britain and Northern Ireland "*in case of any doubt as to the application of the Standing Orders, and in any case where the Standing Orders make no provision*".<sup>19</sup> The reason put forward by the Attorney General was: "[t]hat again, of course, tends towards uniformity. It also gives a carefully worked out and easily ascertained body of practice by which we may be guided in doubtful cases". In other words, the body of practice which applied to the UK House of Commons also applied to Hong Kong. Records show that there were communications between the Attorney General's Office in Hong Kong and the Clerk of the House of Commons on doubtful cases in the application of Standing Orders in early years. This provision had remained in modernized

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<sup>19</sup> See Attorney General's speech at the Council sitting on 19 December 1929. *Hansard*.

language (in substantially the same terms) in the Standing Orders until 30 June 1997.

### *From 1968 to 1984*

1.20 On 23 November 1966, the President allowed the moving of an adjournment debate, for the first time in the history of Hong Kong, by an Unofficial Member (over practices in the Police Force). Although the adjournment debate at that time was "*an old established and popular practice in the House of Commons in London*",<sup>20</sup> there was no such practice in the Legislative Council of Hong Kong. The Standing Orders which had remained primarily the same since 1929 were found to be deficient in many respects to cater for the needs of the Council and this prompted a detailed examination of the Standing Orders. On 9 October 1968, the much revamped and modernized 1968 Standing Orders were adopted.

1.21 The 1968 Standing Orders provided a significantly more organised structure which later provided the foundation for drawing up the Rules of Procedure of the Legislative Council of HKSAR. Unlike previous Standing Orders which focused mainly on the processing of bills, the 1968 Standing Orders set out the procedures for the Legislature's various functions in dedicated parts as the UK Standing Orders did. They included the delivery of and debate on the Governor's address at the start of a session, questions to the Government, procedure on bills, financial procedure, adjournment debates on public issues, etc. As regards petitions, the requirement of a motion for referring a petition to a select committee was removed and in its place a minimum of 10 Members rising in support would allow the petition to stand referred to a select committee. At this point, it became clear that the Legislative Council was not only to enact laws, but also to undertake a wider range of activities to call the Government to account. In 1971, for the first time, Members could address the Council in Cantonese.

### *From 1985 to 1997*

1.22 Several major reviews of the Standing Orders were conducted having regard to the constitutional development of Hong Kong following the decision that the People's Republic of China would resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Discussion on the future of Hong Kong in fact took place over a period of two years from 1982 to 1984 between the UK Government and the Government of the People's Republic of

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<sup>20</sup> See Colonial Secretary's address in moving the adjournment motion on 23 November 1966. *Hansard*.

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China with the common aim of maintaining the stability and prosperity of Hong Kong. During this discussion period, the Chinese Government's concept of establishing Hong Kong as a Special Administrative Region with a high degree of autonomy under Chinese Sovereignty was explored with a view to putting the details of implementation into an agreement.<sup>21</sup> In April 1984, Sir Geoffrey Howe, Secretary for State for Foreign and Commonwealth Affairs, made a statement in Hong Kong to make it clear that Hong Kong would be returned to China in 1997. On 18 July 1984, at a special sitting<sup>22</sup> of the Legislative Council, the Governor announced the publication of a Green paper on *The Further Development of Representative Government in Hong Kong*.<sup>23</sup> On the same day, the Standing Orders were amended to enable the Public Accounts Committee to meet ordinarily in public for its hearing of evidence.

1.23 On 19 December 1984, a Joint Declaration<sup>24</sup> was signed between the Governments of the UK and the People's Republic of China to declare that Hong Kong would be restored to the People's Republic of China with effect from 1 July 1997, that a Hong Kong Special Administrative Region would be established with a high degree of autonomy, vested with executive, legislative and independent judicial power, including that of final adjudication, and that the laws then in force in Hong Kong would remain basically unchanged.

1.24 In February 1985, the Standing Orders were further amended to enable the Finance Committee to meet in public. In June 1985, the Legislative Council passed the *Legislative Council (Powers and Privileges) Bill* which set out the immunities and privileges enjoyed by the Council and its committees as well as by its Members.<sup>25</sup>

1.25 In October 1985, the first batch of 12 Members returned by functional constituencies and another 12 Members elected by an Electoral College joined

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<sup>21</sup> A draft Agreement enclosing a Joint Declaration and 3 Annexes was tabled in the Parliament of UK in September 1984.

<sup>22</sup> The word "sitting" in relation to a meeting of the Legislative Council is used interchangeably with the word "meeting" in this Companion. "Sitting" was used in statutes enacted before 1997 and in the pre-1997 Standing Orders. "Meeting" is used in the Basic Law and the Rules of Procedure of the HKSAR Legislature.

<sup>23</sup> The Green Paper introduced a package of proposals which aimed to develop progressively a system of government with authority firmly rooted in Hong Kong and was able to represent authoritatively the views of the people of Hong Kong and became more directly accountable to the people of Hong Kong. See the Governor's address on 18 July 1984.

<sup>24</sup> The full name is the "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong".

<sup>25</sup> It was the Government view that the inherent powers and privileges which derived from the status of the Legislative Council as a colonial legislature and which would cease to have effect after 1997 should be codified to smooth the transition. See speech of the Chief Secretary at the Council sitting on 15 May 1985.

the Legislative Council, making it necessary to replace all references to "an Unofficial Member" in the Standing Orders by "a Member" in 1986. In July 1991, the Standing Orders were amended to provide for a new office of Deputy President to preside over sittings of the Council apart from the Governor, and a new mechanism to require Members to register and declare their pecuniary interests. With the return of 18 directly elected Members returned from geographical constituencies and 21 from functional constituencies in October 1991, there was strong support for the opening up of all meetings of the informal committees<sup>26</sup> under the OMELCO<sup>27</sup> structure, leading to a major review of the committee structure of the Legislative Council. None of these committees were appointed by the Legislative Council and so they did not fall within the meaning of "committees" under the Legislative Council (Powers and Privileges) Ordinance. Their meetings were not open to the public. As a result of the review, the Council decided to provide for the setting up of a House Committee and bills committees under its committee structure in July 1992 and the setting up of panels in October 1993.<sup>28</sup> In an important development on 19 February 1993, the Legislative Council of Hong Kong elected its President from among its Members for the first time. The Governor of Hong Kong no longer presided over the meetings of the Legislative Council but he could at his discretion attend sittings of the Council or its committees. All these significant developments were reflected in amendments to the Standing Orders during the period from 1984 to 1993.

1.26 Following the establishment of the independent Legislative Council Secretariat in April 1994, the Standing Orders were amended in July 1994 to provide for the designation of the Secretary General of the Legislative Council Secretariat as Clerk to the Legislative Council and the Legal Adviser of the Legislative Council Secretariat as Counsel to the Legislature.

1.27 Moving towards reunification, references in the Standing Orders to ex officio Members were removed in July 1995 since all 60 seats in the Legislative Council, from October 1995 onwards, would be taken up by non-Government Members only. In July 1996, a Chinese version of the Standing Orders was adopted by the Council.

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<sup>26</sup> These informal committees included "Ad Hoc Groups" to examine individual legislative items and to discuss issues of topical interest and "Panels" to deal with topics of continuing importance. These committees reported to the then OMELCO In-house and LegCo In-house on their work.

<sup>27</sup> OMELCO stands for Office of the Members of the Executive and Legislative Councils. More details are provided in Chapter 6.

<sup>28</sup> Panels provided a forum for exchange of views between the Government and the Unofficial Members on public policies and issues of concern. See Chapter 6.

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### Continuity of the parliamentary principles and values in the working of the Legislature following reunification

1.28 The power of the Legislative Council of the HKSAR to make its own rules is provided for in Article 75 of the Basic Law with the proviso that any such rules do not contravene the Basic Law itself. The Rules of Procedure adopted by the First Legislative Council of the HKSAR have been in use since 2 July 1998 and have been amended from time to time according to the practice and procedures of the Council. As mentioned in the earlier part of this Chapter, by using the pre-1997 Standing Orders as a framework to develop the rules of procedure of the HKSAR Legislature, the First Legislative Council was putting in place a parliamentary system with which Hong Kong people were familiar, and this system embraced a body of customs, precedents and traditions, some of which were being written into rules. The Rules of Procedure of the Legislative Council were therefore not a standalone document. Associated with this set of rules is a body of precedents and conventions which have been followed over the past century and which are still valid unless they contravene the Basic Law or are no longer appropriate in the development of the Legislature. The continued application of this body of precedents and conventions in the HKSAR Legislature is consistent with the guiding principle of continuity set out in Article 8 of the Basic Law.<sup>29</sup>

1.29 A legislature is similar to a living organism in which its rules of procedure evolve with the thinking of the majority of Members at the time, who in turn represent the views and aspirations of the citizens whom they represent. The changes made in the rules of procedure invariably reflect the principles and values which Members wish to see adopted in the system. The British parliamentary system has been characterized by "*a temper of moderation and the spirit of fair play*".<sup>30</sup> A '*temper of moderation*' refers to the cooling effect brought about by practice and rules, such as requiring Members to speak to the Chair, not to interrupt another Member who is speaking, not to address another Member by name, not to use 'unparliamentary' language, etc. This kind of conversational tone helps turn a debate into a process of arguments and conciliation, rather than declamation and violence. '*The spirit of fair play*' is another important underlying principle to preserve the rights of the minorities. The rules on motions provide equal

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<sup>29</sup> Article 8 of the Basic Law provides that the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

<sup>30</sup> Sir Gilbert Campion (1950) *An Introduction to the Procedure of the House of Commons*, pp. 50-54.

opportunity for any individual Member to propose a motion, to amend the motion, to speak on the motion, and to vote on the motion, and if the Member is the mover of the motion, an opportunity to reply.

1.30 One of the pressing problems of all modern legislatures is lack of sufficient time to conduct the ever growing volume of business. In the 1880s in the UK there was the "*threat of widespread obstruction which at one time appeared likely to break down completely the procedure of the House*".<sup>31</sup> It was during this period that drastic measures, such as closure<sup>32</sup> and restrictions<sup>33</sup> upon both dilatory motions and substantive motions for the adjournment of the House, were introduced. In the UK system, as mentioned above, the principal common characteristic of the rules of practice was to provide ample opportunity for debate and for initiative in choosing subjects for debate, and there were safeguards to prevent business being taken without due notice and matters being decided without due consideration.<sup>34</sup> The introduction of more institutionalized procedures, such as standing orders, had the effect of restricting the opportunities given to individual members of Parliament in former times by the traditional practices.

1.31 In the case of the HKSAR, the Basic Law sets out the powers and functions of the legislature, the powers and functions of the President of the Legislative Council and rights of individual Members, but does not prescribe how these powers, functions and rights should be exercised. The Legislative Council, on the other hand, is given the power to make its rules of procedure on its own, provided that they do not contravene the Basic Law. The rules of procedure therefore serve more to qualify the use of the powers and rights given to the legislature under the Basic Law, rather than expanding such powers and rights. An example is Member's freedom of speech in the Legislative Council. There had never been any limit to the length of Members' speeches in the proceedings of the Council prior to July 1991. On 10 July 1991, the Standing Orders were amended to limit the time of speaking

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<sup>31</sup> Ibid., pp.39-40.

<sup>32</sup> Under Standing order No. 36 of the Standing Orders of the House of Commons in the UK, a motion for closure "That the question be now put," may be proposed by any Member at any time during a debate. Unless it appears to the chair that such a motion is an abuse of the rules of the House, or an infringement of the rights of the minority, the question "That the question be now put," is to be put immediately and is decided without amendment or debate. When the motion for closure has been decided in the affirmative, the original question should be put to a vote.

<sup>33</sup> In the UK, a dilatory motion often refers to a motion for the adjournment of a debate or of the House during any debate as such a motion moved under Standing Order No. 34 of the Standing Orders of the House of Commons has the effect of slowing down the progress of the matter under consideration. However, under Standing Order No. 35, if the Speaker, or the chair, is of the opinion that a dilatory motion is an abuse of the rules of the House, he may forthwith put the question thereupon from the chair, i.e. without further debate, or he may decline to propose the question thereupon to the House or the committee.

<sup>34</sup> See Erskine May (22<sup>nd</sup> Edition), p. 5.

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on each occasion to no more than 15 minutes except in special circumstances permitted by the President. The intention was to enhance the efficiency of the Council given the increase in the number of non-Government Members<sup>35</sup> in October 1991. On 3 February 1993, a new Standing Order was made to enable the House Committee to recommend a time limit to the President, usually a shorter one, for debates on motions not intended to have legislative effect. These arrangements have also been adopted in the Rules of Procedure in the HKSAR. Accordingly, even the President cannot allow a Member to speak for more than 15 minutes unless he is satisfied that the circumstances meet the requirements laid down in other rules in the Rules of Procedure which permit him to do so.

1.32 After reunification, there has been an understanding among Members that, where possible, the general philosophy and principles underlying the way Council business is conducted should be maintained and existing procedures should remain unchanged.<sup>36</sup> Consequently the whole body of rules, practice, precedents and conventions which existed in the pre-1997 Legislature of Hong Kong has continued to apply in principle and serves as an important reference for the President or chairmen of committees when determining the business of the Council or committees and deciding on points of order during their proceedings.

### **Rulings from the Chair**

1.33 Under Article 72(1) of the Basic Law, the President of the Legislative Council shall have the power and function to preside over Council meetings. Rule 3 of the Rules of Procedure also provides that the President, when present at a meeting of the Council, shall preside as President or when present at a committee of the whole Council, shall be Chairman. In the absence of the President, the meeting shall be presided over by the President's deputy (who is the Chairman of the House Committee) or in his absence, by the Deputy Chairman of the House Committee or in the absence of the President's deputy, the Member elected by and from among the Members present. The President's deputy or other Member presiding shall enjoy all those powers conferred by the Rules of Procedure on the President or Chairman that are exercisable in respect of the meeting or part of the meeting at which the President's deputy or that Member presides.

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<sup>35</sup> The number of non-Government Members in the Legislative Council was increased from 46 in 1988-1991 to 57 in 1991-1995.

<sup>36</sup> See Report of the Committee on Rules of Procedure of the First Legislative Council tabled at the Council in September 1998.

1.34 Similar to parliamentary practices in other common law jurisdictions such as the UK, Canada, Australia and New Zealand, the Hong Kong Legislature also has a body of rulings made by the Presidents of the Council over the years. These rulings are on questions raised by Members on points of order or requests for motions or bills or amendments to such motions and bills to be moved, or questions seeking a reply from the Government. They form a body of precedents which the President uses as a guide to interpret and decide upon the application of the Rules of Procedure and previous practice. In conducting meetings of the Council or committee of the whole Council, the President or any Member who is presiding should ensure the orderly conduct of business in accordance with the Rules of Procedure. In the event that the matter in question is not provided for in the Rules of Procedure, Rule 92 provides that the President shall decide on the practice and procedure to be followed and in so doing, he may, if he thinks fit, be guided by the practice and procedure of other legislatures.

1.35 As precedents are often referred to when a ruling is made, there is a growing trend for the President's rulings to be put in writing. Since 2000, the President's rulings were made public on the Legislative Council website to ensure greater transparency and to offer more opportunity for the public of Hong Kong to understand the work of their Legislature. Generally speaking, the Clerk of the Council and the Counsel to the Legislature, who are officers of the Council, give respectively procedural and legal advice to the President of the Legislative Council based on the Rules of Procedure, the relevant provisions of the Basic Law, and the relevant practice and procedure relating to the matters concerned in order to assist the President in making his own decisions on the issues. The President also takes into account the views of the Government and the Members concerned when making his ruling.

1.36 From time to time, the President may instruct the Clerk to inform Members of certain arrangements which are within his authority to decide but may not have been provided for in the Rules of Procedure or the House Rules for the purpose of facilitating the smooth conduct of business. These include the arrangements for the resumption of a suspended Council meeting for the continuation of the unfinished business on the agenda, order of speaking within a debate, order of asking supplementary questions, etc. Where the

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arrangements directly affect Members, it has been the practice for the President to consult Members through the House Committee or the Clerk before he makes his decision. These decisions have become the general practice of the Council unless any of these matters are subsequently raised for discussion and a rule is made to codify or change the practice.

### **Source of authority to make rules to regulate proceedings**

#### By virtue of the Basic Law of the HKSAR

1.37 The Legislative Council of the HKSAR is empowered to make its rules of procedure under Article 75 of the Basic Law of the HKSAR. There is no stipulation in the Basic Law as to how the Rules of Procedure should be made. It has been the practice in the HKSAR Legislature that the making of and amendment to the Rules of Procedure are effected by way of a Member's motion. In accordance with Annex II to the Basic Law, the passage of a Member's motion requires a simple majority vote of each of the two groups of Members present: Members returned by functional constituencies and those returned by geographical constituencies. Following the passage of such a motion, the resolution so made is published as a Legal Notice in Legal Supplement No. 2 of the Government Gazette. The updated version of the Rules of Procedure is then uploaded onto the website of the Legislative Council. As there is no requirement in the Basic Law that the Rules of Procedure of the Council should be regarded as law, such resolutions of the Council do not fall to be reported to the Standing Committee of the NPC in accordance with Article 17 of the Basic Law.

1.38 The Legislature has the responsibility to ensure that the rules it makes do not contravene the Basic Law. To this end, there is a committee under the Council named the Committee on Rules of Procedure which is given the responsibility to review the Rules of Procedure and the committee system of the Legislative Council, and to propose such changes as are considered necessary. It has been the practice of the Committee on Rules of Procedure to communicate with the Administration on any issues which may give rise to questions of conformity with the Basic Law. All deliberations on proposed changes are put to Members through the House Committee for discussion before they are brought before the Council for a decision. Any proposed amendments to the Rules of Procedure, once passed by the Council, will be binding on all Members as well as public officers attending to any business of the Legislative Council.

1.39 Despite the mechanism put in place by the Legislature to deal with questions relating to the conformity of the Rules of Procedure with the Basic Law, there have been challenges by individuals in past years regarding consistency of some rules with the Basic Law, through judicial review proceedings in court. In 2006<sup>37</sup>, a Member applied for the Court's leave to judicially review a decision made by the President of the Legislative Council on grounds which included the allegation that Rule 57(6) of the Rules of Procedure was inconsistent with the Basic Law. The Court of First Instance held that whilst "the Basic Law is supreme", nevertheless "the qualifying phrase 'on its own' in Article 75(2) underscores the fact that the Basic Law recognises LegCo [Legislative Council] to be a sovereign body under that Law [the Basic Law]. In setting rules of procedure to govern how it goes about the process of enacting, amending and repealing laws, provided those rules are not in conflict with the Basic Law, the Legislative Council is answerable to no outside authority."<sup>38</sup> The Member's application was dismissed. A list of the court cases on judicial review challenges and other proceedings that involved the Legislative Council since 1997 is at **Appendix 1-A**.

By the authority of the Rules of Procedure

1.40 The power for committees to determine their own practice and procedure derives from the Council and is provided for in the Rules of Procedure. Any such practice and procedure determined by the committees must not be inconsistent with the Rules of Procedure. Cases where inconsistencies in the practices of different committees have raised concern among Members are usually referred to the House Committee for an initial discussion followed by a referral to the Committee on Rules of Procedure for detailed study and recommendations on the way forward.

1.41 In relation to some of the provisions of the Basic Law where a decision of the Legislature is contemplated, the Council has provided the necessary procedure for it to adopt to reach that decision. Examples are the Chief Executive's return of a bill passed by the Legislative Council for reconsideration by the Council under Article 49 of the Basic Law, and the disqualification of a Member under Article 79(6) and (7) of the Basic Law. As regards proceedings on motions mentioned in the Basic Law, such as a motion to impeach the Chief Executive under Article 73(9), it has been agreed

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<sup>37</sup> *LEUNG Kwok-hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* [2007] 1 HKLRD 387.

<sup>38</sup> *LEUNG Kwok-hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* [2007] 1 HKLRD 387, Judgment, para. 10.

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among Members that where no specific procedure has yet been devised for dealing with a particular situation that has arisen, existing provisions in the Rules of Procedure would be used as far as possible, with adaptation if necessary, to deal with it.

### By statute

1.42 Apart from the Basic Law, there are various provisions in local ordinances which have a bearing on the manner in which certain business of the Council is transacted. Most of these provisions formed part of the ordinances adopted by the Standing Committee of the NPC on 23 February 1997 as those ordinances previously in force in Hong Kong which would continue to be in force upon the establishment of the HKSAR on 1 July 1997. The Legislative Council, when making any changes to the Rules of Procedure, has regard to these provisions. An example is Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) which provides for the procedure for amending subsidiary legislation. This procedural arrangement is complemented by Rule 29(2)(a) of the Rules of Procedure which provides for a notice requirement for moving a motion to amend subsidiary legislation.

1.43 Another example is the Chief Executive's power to determine the commencement and ending dates of a legislative session. This power is set out in Section 9 of the Legislative Council Ordinance (Cap. 542) and reflected in Rule 11 of the Rules of Procedure. Where any changes are to be made to the Ordinance, similar changes may need to be made in the relevant Rule.

1.44 A further example is the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) which declares and defines certain powers, privileges and immunities of the Legislative Council, its Members and officers, the Chief Executive and public officers designated by him in relation to attendance at sittings of the Legislative Council and its committees. The Ordinance was enacted in June 1985 to codify into statute law the powers and privileges which Members of the Legislative Council had historically enjoyed to enable them to discharge their functions properly, without fear or favour, and to uphold the dignity of the legislature.<sup>39</sup> Section 9 of Legislative Council (Powers and Privileges) Ordinance, which provides for the power of the Council, its standing committees and committees specially authorized, to summon witnesses and documents, is reflected in the principal part of Rule 80 of the Rules of Procedure. Since some of the provisions in the Ordinance also

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<sup>39</sup> See Chief Secretary for Administration's speech at the Second Reading debate of the Legislative Council (Powers and Privileges) Bill on 15 May 1985. *Hansard*.

apply to committees authorized to exercise the power to summon witnesses, these committees will have regard to such provisions when deciding on practice and procedure to regulate their work.

### By resolutions of the Council

1.45 The Council may provide a specific procedure to facilitate the conduct of certain proceedings of the Council or its committees by way of passing a resolution to that effect. This type of resolution may either provide a new procedure which is not already in the Rules of Procedure<sup>40</sup>, or suspend an existing Rule and provide a substitution<sup>41</sup> for application on a temporary basis. It is common practice for the House Committee to be consulted and the matter fully deliberated by the relevant committee(s) before the proposal is put to the Council for a decision.

1.46 The Rules of Procedure allow for the suspension of rules by way of the moving of a motion. Under Rule 91, a motion which has the object or effect of suspending a Rule in the Rules of Procedure shall not be moved except after notice or with the consent of the President. Suspension of rules is not a common practice in the Legislative Council to deal with procedural difficulties. Where such difficulties have arisen and the current rules cannot apply, the practice is to refer such matters to the Committee on Rules of Procedure to consider if the relevant rules ought to be changed. An example is the amendment of Rule 58(2) in March 2011 to allow changes to the order of consideration of clauses and schedules for the purpose of enabling a single discussion to cover a series of interdependent amendments to a bill.

### **Types of procedural rules in the Legislative Council**

1.47 The Hong Kong Legislature has a relatively short history in the development of its procedures. As explained in the earlier part of this Chapter, the pre-1997 Standing Orders had mainly provided a framework on the progress of bills, handling of motions and amendments, rules of debates and maintenance of order. Very limited procedures were provided on the operation of committees except select committees. The incorporation of a large number of informal OMELCO committees into the formal committee structure of the Council in 1992 -1993 had brought about the need to maintain,

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<sup>40</sup> An example is the arrangements to deal with possible claims of "public interest privilege" by witnesses. See resolution passed by the Council on 25 May 1994 and resolutions of the Council to amend this resolution.

<sup>41</sup> See resolution of the Council on 19 October 2011 to suspend Rule 47(1)(c) and (2)(c) and Rule 49(8) and adopt substitute arrangements to lengthen the duration of the ringing of division bells.

## *1. Development of Practices and Procedures*

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apart from the Standing Orders, a set of procedural rules which set out some of the more important practices in the Council and committees for reference by Members and staff.

1.48 The informal committees operating under the then UMELCO<sup>42</sup> structure (renamed as OMELCO<sup>43</sup> in October 1986) during the 20 years in the 1970s and 1980s aimed to assist the Unofficial Members of the Legislative Council to carry out their duties. When conducting their business, they were guided largely by agreed guidelines and practices, which were turned into house rules in 1988 serving as guidelines for Members in the conduct of OMELCO business. In 1992, the Standing Orders were amended to provide for the setting up of bills committees (to replace OMELCO Ad Hoc Groups on bills) and a new House Committee (to replace LegCo In-house Meetings), and in 1993, to make Panels formal committees of the Council. There was an understanding that since these committees had been working effectively for many years their mode of operation, which was more of an informal question and answer type of communication between Members and representatives of the Government, should continue. As a result, only basic and essential procedural rules such as membership, chairmanship, quorum, etc. were provided in the Standing Orders while each of these committees could determine its own practice and procedure according to its own needs.

### Rules of Procedure

1.49 The Rules of Procedure adopted by the First Legislative Council on 2 July 1998 contained 93 rules. Apart from adopting those Standing Orders of the pre-1997 Legislature which were considered relevant to the post-1997 Legislature, the First Legislative Council also incorporated in the Rules of Procedure new provisions that were necessary for the Legislative Council to implement some of the provisions in the Basic Law. Examples are provisions on quorum<sup>44</sup> and voting procedures<sup>45</sup>, restrictions that apply to bills introduced by Members<sup>46</sup>, and the procedure for reconsideration of bills returned by the Chief Executive<sup>47</sup>. During the term of the First Legislative Council, the Committee on Rules of Procedure continued to study other

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<sup>42</sup> UMELCO stands for the Unofficial Members of the Executive and Legislative Councils.

<sup>43</sup> OMELCO stands for Office of the Members of the Executive and Legislative Councils.

<sup>44</sup> Rule 17 of the Rules of Procedure is to reflect Article 75(1) of the Basic Law which provides a quorum requirement of not less than one half of all its members for meetings of the Legislative Council.

<sup>45</sup> Rule 46 of the Rules of Procedure reflects the voting requirements in Articles 49, 52(2), 73(9), 79(6), 79(7), 159 of and Annex I and Annex II to the Basic Law.

<sup>46</sup> Rule 51(3) and (4) of the Rules of Procedure reflects the effect of Article 74 of the Basic Law on the introduction of bills by Members.

<sup>47</sup> Rule 66 of the Rules of Procedure to provide a procedure to implement the steps set out in Articles 49 and 50 of the Basic Law.

provisions in the Basic Law and provided new procedures such as those on the disqualification of Legislative Council Members from office under Article 79(6) and (7).

1.50 The Committee on Rules of Procedure has the responsibility for reviewing the Rules of Procedure in response to requests by the House Committee in the light of new developments in the Legislature. Such reviews have on occasions resulted in incorporation of relevant practices into the Rules of Procedure to achieve uniformity and clarity. Examples are the standardisation of the timing and method of election of chairmen and deputy chairmen of committees.

1.51 Currently<sup>48</sup>, the Rules of Procedure contain 105 rules, set out in 16 parts. They describe in detail how business in the Council should be transacted. Such details include the introduction and processing of bills and amendments, requirements for the moving of motions and how motions are debated, amended and voted on. There are also detailed provisions on the behaviour expected of Members in the performance of their duty in the Council, including rules of speaking and the rules of order. There are also broad framework provisions on the operation of committees.

### House Rules

1.52 In addition to the Rules of Procedure, practices of the Legislative Council and its committees also play a significant part in the regulation of their proceedings. Practices are developed over time through the application of provisions of the Rules of Procedure which are normally drafted in broad terms of principle and are not intended to deal with all circumstances. Some of these practices may subsequently be written into the Rules of Procedure if it is found necessary to do so. Some may become House Rules<sup>49</sup> made by the House Committee.<sup>50</sup>

1.53 The House Rules contain guidelines to complement the Rules of Procedure. The House Rules also set out those practices which reflect agreements among Members as to how certain business of the Council and its

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<sup>48</sup> The position is as at 30 November 2013.

<sup>49</sup> The House Rules first came into existence in 1988 and were originally a Members' Guide issued to Members at the start of a new session. Since October 1992, proposed amendments to the House Rules were first referred to the Subcommittee on Procedural Matters of the House Committee for discussion before they were put to the House Committee for endorsement. The Subcommittee was no longer required when the Committee on Rules of Procedure was set up as a committee of the Council in 1998.

<sup>50</sup> The House Committee is a committee comprising all Members except the President of the Legislative Council to consider any matters relating to the business of the Council.

## *1. Development of Practices and Procedures*

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committees should be conducted. While the Rules of Procedure are approved by resolution in Council, the House Rules are adopted by the House Committee. Most provisions in the House Rules are operational guidelines to provide consistency in the conduct of business and to implement the Rules of Procedure. Members are expected to respect and observe the House Rules, although there are no formal sanctions for non-compliance.

1.54 The House Rules consist of 41 rules<sup>51</sup> which cover a wide span of areas that concern the daily working of the Legislature. They provide operational arrangements such as the allocation of questions and motion slots to individual Members so that each Member will have a fair chance to seek a reply from the Government or to move a motion debate on an issue which is of concern to the Member. The House Rules also provide general guidelines on how committees should operate.<sup>52</sup> There is a growing trend to provide for more specific guidelines in the House Rules on matters which concern all Members, such as the activation of subcommittees formed to study policy issues and the mechanism for handling invitations for the Legislative Council to conduct duty visits outside Hong Kong.

### Other procedures made by committees

1.55 The Rules of Procedure provide only a general framework for the operation of committees. Committees of the Council may determine their own practice and procedure subject to the rules provided in the Rules of Procedure for the respective committees<sup>53</sup>. This general provision however is not made available to select committees, the operation of which is guided by the Rules of Procedure. The purpose of conferring such general power to these other committees is to give them a suitable degree of flexibility in the conduct of their business. Committee clerks and legal advisers are designated to assist committee chairs on procedural and legal issues. Before a procedural decision is made, the usual practice is for the chair to consider the relevant provisions in the Rules of Procedure, the House Rules and the practice of other committees and relevant precedents in order to decide the best way to deal with the matter.

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<sup>51</sup> The position is as at 30 November 2013.

<sup>52</sup> Rule 75(8) of the Rules of Procedure provides that the House Committee may provide guidelines relating to the procedure of the Bills Committee, Panels and its subcommittees.

<sup>53</sup> See, for example, Rules 71(13), 72(11), 73(7), 73A(13), 74(6) and 75(18) of the Rules of Procedure.

### *Standing committees*

1.56 To date, only the three standing committees with power to summon witnesses have some form of procedures adopted by the committees to conduct their business. The Finance Committee has specifically endorsed a set of procedures for itself as well as for each of its two subcommittees, based on the relevant provisions in the Rules of Procedure and the established practices in processing financial proposals submitted by the Administration and in examining the estimates of expenditure each year during the budget exercise. The Public Accounts Committee sets out in a dedicated part of its reports the procedural steps it takes when considering the Director of Audit's Reports. The Committee on Members' Interests has also formulated a set of procedures for conducting its investigations.

### *Select committees*

1.57 The procedure of select committees is specifically provided for in Rules 60 - 62 (for the study of a bill) and Rule 79 (for general application) of the Rules of Procedure. Select committees have the longest history since they were the first form of committee set up by the pre-1997 Legislature to study bills and specific matters. Records show that they existed even before 1858 and the arrangements governing the formation and operation of select committees were originally published in the Government Gazette. It was not until 1929 that the procedure of select committees was for the first time written into the Standing Orders. As mentioned earlier in this Chapter, the Standing Orders were substantially revised in 1968, as a result of a modernization exercise. The procedure of select committees was set out in former Standing Orders No. 48 - 50 and 62 and became the current Rules 60 - 62 and Rule 79. These Rules have been strictly followed by select committees. It has also been a practice that each select committee after being appointed would draw up a set of practice and procedures based on the relevant provisions in the Rules of Procedure and incorporate in it operational details so as to provide a practical guide for its members and all parties concerned. In the course of its work, the select committee may adopt further procedures to supplement the standing arrangements in order to address issues not foreseen by it at the start of its work, or in response to requests made by those invited to give evidence to the select committee or other parties

## *1. Development of Practices and Procedures*

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concerned.<sup>54</sup> When drawing up the operational details for its practice and procedures or adopting supplementary arrangements, the select committee would make reference to the practices and procedures of previous select committees<sup>55</sup>.

### *Investigation committees*

1.58 Another committee which has adopted its own practice and procedures is the Investigation Committee set up in 2008 to investigate an allegation against a Member. The Committee was established following a motion moved in the Council to censure a Member for the purpose of disqualifying him from office under Article 79(7) of the Basic Law. The matter of the motion was referred to the Committee to establish the facts. Although the procedure of an Investigation Committee is provided in Rule 73A of the Rules of Procedure, the Committee considered that without any precedents to follow, it was necessary to formulate, before it began its substantive work, a set of practice and procedures on the basis of the framework of procedures provided in the Rules of Procedure. During the process of drawing up its Practice and Procedure, the Investigation Committee made reference to the general principles of natural justice as well as the procedures adopted by other committees in conducting investigations. The Practice and Procedure adopted by the Investigation Committee were also subject to amendment in the light of experience or changes in circumstances. The principles adopted in the Practice and Procedure were also explained in the Investigation Committee's report published after the completion of its work.<sup>56</sup>

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<sup>54</sup> During the inquiry of the Select Committee on Building Problems of Public Housing Units, supplementary practices and procedures were adopted to facilitate the following: a) measures to avoid possible prejudice to a person's interest in pending legal proceedings; b) handling of information contained in classified documents or obtained at closed hearings; c) provision to witness of verbatim transcripts of hearings; and d) opportunity for parties concerned to comment on its draft findings and observations.

<sup>55</sup> When determining their practices and procedures, principles such as fairness, transparency in proceedings and operational efficiency were adopted by select committees.

<sup>56</sup> See report of the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai.

## Chapter 2

### The Legislative Council

2.1 Under the political structure set out in Chapter IV of the Basic Law of the HKSAR, the Chief Executive is the head of the HKSAR. He is also the head of the Government<sup>1</sup> which is the executive authorities of the HKSAR<sup>2</sup>. The Legislative Council is the legislature<sup>3</sup>. The courts at all levels form the judiciary, exercising the judicial power of the HKSAR<sup>4</sup>. This Chapter outlines the powers and functions of the Legislative Council, privileges of the legislature in Hong Kong and its historical development, immunities enjoyed by Members of the Council, the composition of the Legislative Council and its development since the establishment of the HKSAR, adjournment and prorogation of the Council, sessions and breaks, and the roles of officers of the Council.

#### **Powers and functions of the Legislative Council**

2.2 The powers and functions of the Legislative Council are set out in Article 73 of the Basic Law. The Legislative Council, as an institution, puts in place procedures and mechanisms to facilitate the performance of its powers and functions. Article 75 of the Basic Law gives the Council the power to make rules of procedure on its own, subject to the proviso that the rules do not contravene the Basic Law. This Chapter explains what the Basic Law says about these powers and functions of the Legislative Council, how they are performed within the framework of the Rules of Procedure and how the courts have interpreted the relevant articles in the Basic Law in the various judicial review cases where the powers and functions of the Council have been the subjects of challenges before the courts. Further details of procedures and mechanisms of the Council are given in other chapters where relevant.

2.3 Article 73 of the Basic Law provides that the Legislative Council of the HKSAR shall exercise the following powers and functions:

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<sup>1</sup> Articles 43 and 60 of the Basic Law.

<sup>2</sup> Article 59 of the Basic Law.

<sup>3</sup> Article 66 of the Basic Law.

<sup>4</sup> Article 80 of the Basic Law.

## *2. The Legislative Council*

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- (1) To enact, amend or repeal laws in accordance with the provisions of this [Basic] Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;
- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (10) To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

### Making of laws

2.4 The enactment of law is one of the primary powers and functions of the Legislative Council. This power and function includes passing new laws,

and amending or repealing existing laws, and these laws include principal ordinances and subsidiary legislation. The extent of power given to the Legislative Council to "enact, amend or repeal laws" must be read with other relevant provisions in the Basic Law, where the responsibilities for the making of law have also been stipulated. Under the Basic Law, the Government of the HKSAR has the power and function to draft and introduce bills, motions and subordinate legislation.<sup>5</sup> Before introducing bills to the Legislative Council or making subsidiary legislation, the Chief Executive is required to consult the Executive Council.<sup>6</sup> After a bill is passed in the Legislative Council, the Chief Executive has the power and function of signing the bill and promulgating it, and that completes the enactment process. The power and function of the Legislative Council in the law-making process is in the examination of the legislative proposal, be it a bill or subsidiary legislation, and the amendment<sup>7</sup> and passage of it.

2.5 For performing this power and function, the Legislative Council has adopted formal procedural rules to govern the proceedings on bills and subsidiary legislation. These procedural rules set out in the Rules of Procedure have been recognized by the Court as the "legal procedures" referred to in Article 73(1) of the Basic Law.<sup>8</sup> In the Rules of Procedure, the Legislative Council has put in place a mechanism which allows the Council to fully deliberate a legislative proposal before passing it into law. Individual Members should also be able to propose amendments to the proposal subject to the restrictions laid down in the Rules of Procedure. Within the boundary of its Rules of Procedure and its body of precedents, the Legislative Council has complete autonomy in performing its law-making function, subject always to compliance with the Basic Law.

2.6 Under the Basic Law, the law-making power of the HKSAR legislature is a substantive power. The Chief Executive is required to sign the bills passed by the Legislative Council. If he considers a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he may return it to the Legislative Council for reconsideration. If he refuses to sign a bill passed the second time by the Legislative Council, he may dissolve the Council. If the newly returned Legislative Council again

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<sup>5</sup> Article 62 of the Basic Law. Under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), "subsidiary legislation" and "subordinate legislation" are given the same meaning.

<sup>6</sup> Article 56 of the Basic Law.

<sup>7</sup> Proposals to amend a bill are subject to the stipulations in the Rules of Procedure.

<sup>8</sup> According to the Court's judgment in *LEUNG Kwok-hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* [2007] 1 HKLRD 387, "the rules of procedure which the Council has the power to set for itself in order to govern the manner in which it enacts, amends or repeals laws". para. 7.

## 2. *The Legislative Council*

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passes by a two-thirds majority of all its Members the original bill in dispute, the Chief Executive is required to sign the bill or he must resign.<sup>9</sup> This law-making power is in substance different from that enjoyed by the pre-1997 Legislative Council whose constitutional role was to provide advice on, and give consent to, bills which the Governor then enacted into law in exercise of the law-making power conferred on him under the Letters Patent. A bill passed by the Legislative Council was required to be presented to the Governor who might assent or refuse to assent to the bill or reserve it for the Crown's signification.<sup>10 11</sup>

2.7 The reserved power of the NPC in respect of the laws enacted by the HKSAR legislature only applies to those laws considered by the Standing Committee of the NPC not to be in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the HKSAR.<sup>12</sup> In these circumstances, the Standing Committee may return the law in question back to the HKSAR but shall not amend it. Any law returned will immediately be invalidated but such invalidation will not have retrospective effect unless otherwise provided under the Basic Law.

2.8 Apart from the Government which may introduce bills and subsidiary legislation to the Legislative Council, individual Members of the Council, either individually or jointly, may also introduce bills but subject to the restrictions laid down in Article 74 of the Basic Law. Members may introduce bills which do not relate to public expenditure or political structure or the operation of the government. For bills relating to government policies, prior written consent of the Chief Executive is required. In the pre-1997 Legislature, the restriction was only limited to legislative proposals seeking to "dispose of or charge any part of the revenue or other public moneys of Hong Kong" (generally known as a proposal with "charging effect") unless prior permission had been obtained from the Governor.

2.9 There have been questions about the applicability of Article 74 of the Basic Law to motions and amendments to motions and amendments to bills. The view of the Legislative Council, which has been maintained up to this date, is that Article 74 only applies to "bills" initiated by Members; motions

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<sup>9</sup> Articles 49, 50 and 52(2) of the Basic Law.

<sup>10</sup> According to the enactment formula updated on 22 August 1986, "[a]ll laws shall be styled 'Ordinances' and the enacting words shall be 'enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof', or the corresponding style and words in Chinese."

<sup>11</sup> See Clause XXVIII of the Royal Instructions.

<sup>12</sup> Article 17 of the Basic Law.

and amendments do not fall within the meaning of "bills" in the context of Article 74. Nevertheless, to uphold the principle that any proposal with charging effect should only be introduced on the initiative or with the authorization of the Government<sup>13</sup>, the Legislative Council has laid down such restrictions in its Rules of Procedure to act in the nature of self-imposed limitations, such as Rule 31 of the Rules of Procedure<sup>14</sup>. The Government maintained that "bills" include motions and amendments. After lengthy argument in 1998-1999, both the Government and the Legislature maintained their original position. However, the Government so far has not challenged the President for allowing motions or amendments to be placed on the Agenda of the Council on the ground that they are caught by Article 74, and would only do so if it considered them to have a charging effect.

### Approval of budgets, taxation and public expenditure

2.10 Regarding the Legislative Council's power and function to approve budgets, taxation and public expenditure, it should be noted that under the Basic Law it is the Government's power and function to draw up and introduce budgets<sup>15</sup>, and the Chief Executive's to approve the introduction of motions regarding revenues or expenditure to the Legislative Council.<sup>16</sup> The role of the Legislative Council is to examine and decide whether to approve the proposals put before it. Proposals to incur public expenditure and to raise taxation and charges on the people can only be initiated by the Government. This is a principle which has been followed in the administration of Hong Kong since 1843 and is reflected in various provisions in the Basic Law, such as Articles 62(4), 73 and 74, and the Public Finance Ordinance (Cap. 2).

2.11 The Legislative Council has also put in place procedural rules to examine and approve the annual budget which is presented to the Legislative Council in the form of an Appropriation Bill. These are set out in Part L of the Rules of Procedure which was also modelled on a similar part in the Standing Orders of the pre-1997 Legislature.

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<sup>13</sup> The word "Government" in the context of this *Companion* refers to the Administration of the HKSAR which includes the Chief Executive and the entire executive authorities.

<sup>14</sup> Rule 31 of the Rules of Procedure stipulates that a motion or amendment with charging effect shall be proposed only by the Chief executive; or a designated public officer; or a Member, if the Chief Executive consents in writing to the proposal.

<sup>15</sup> Article 62(4) of the Basic Law.

<sup>16</sup> Article 48(10) of the Basic Law.

## 2. *The Legislative Council*

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### Monitoring the work of the Government

2.12 The Legislative Council's powers and functions to receive and debate the policy addresses of the Chief Executive, raise questions on the work of the Government, debate issues concerning public interests and receive and handle public complaints exist to provide checks and balances to the powers and functions given to the Chief Executive and the Government under the Basic Law. Under Article 64, the Government of the HKSAR is required to be accountable to the Legislative Council. The relationship between the legislature and the executive authorities has been described as a "relationship of regulating and coordinating" by Mr Ji Pengfei<sup>17</sup> in his explanation of the political structure in his address at the Seventh NPC on 28 March 1990 when he proposed the adoption of the Basic Law of the HKSAR. By providing the Legislative Council with the power and function to move and pass a motion of impeachment against the Chief Executive for serious breach of law or dereliction of duty, if found substantiated by an independent investigation committee chaired by the Chief Justice, by a two-thirds majority, the Legislative Council is in a position to hold the Chief Executive personally responsible for his conduct and performance of duty by reporting the impeachment motion to the Central People's Government.

### Endorsement of appointment and removal of senior judges

2.13 The endorsement of the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court under Article 73(7) of the Basic Law is a power and function which did not exist in the pre-1997 Legislature. The Hong Kong Legislature has provided rules in its Rules of Procedure to avoid any interference, or appearance of interference, with the working of the judiciary which might undermine the principle of independence of the judiciary. For example, the Rules of Procedure provide that Members should refrain from speaking at the Council or its committees on any matter which relates to a case pending in a court of law or ask questions that reflect on the decision of a court.<sup>18</sup> To enable the Council to perform this new function effectively, the House Committee<sup>19</sup> has adopted a mechanism to enable the examination of the recommendations on the appointment or removal of these senior judges by a subcommittee of the House Committee. The mechanism should ensure that there is transparency

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<sup>17</sup> Mr Ji Pengfei was the Chairman of the Drafting Committee for the Basic Law of the HKSAR of the People's Republic of China.

<sup>18</sup> Rules 25(1)(g) and (j), 41(2), 43 and 93(e) of the Rules of Procedure. This self-imposed restriction reflects the UK practice as well as practice in most modern legislatures.

<sup>19</sup> Meetings of the House Committee on 16 May 2003 and 28 May 2004.

and accountability in the process of examination and deliberation and Members are provided with as much information as possible about the candidates for consideration.

### Power to order attendance of witnesses

2.14 Article 73(10) of the Basic Law empowers the Legislative Council to summon witnesses to testify or give evidence in the exercise of all the powers and functions of the Legislative Council listed in Article 73(1) to (9). This power to summon witnesses, which is regarded as "a fundamental parliamentary right of the highest importance"<sup>20</sup>, is reflected in Section 9 of the Legislative Council (Powers and Privileges) Ordinance which will be further elaborated in the context of privileges and immunities of the Legislative Council in this Chapter below.

## **Privileges and Immunities of the Legislative Council**

### Privileges of the Legislature under the common law

2.15 According to Erskine May, parliamentary privilege under the common law may be defined as the sum of certain rights enjoyed by the legislative body collectively, and by Members individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.<sup>21</sup> In the UK, some privileges rest solely on the law and customs of Parliament, while others have been defined by statute.

2.16 In Hong Kong, certain rights and immunities such as freedom of speech or freedom from arrest belong primarily to individual Members because the Legislature cannot perform its functions without the unimpeded service of its Members. Other rights such as the regulation of admittance to and conduct within the precincts, the order of witnesses giving evidence, etc. belong to the Legislature as a collective body. On 15 May 1985, while introducing the Legislative Council (Powers and Privileges) Bill, the then Chief Secretary explained the privileges enjoyed by Members as they existed in the pre-1997 Legislature in the following manner:

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<sup>20</sup> See Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 22<sup>nd</sup> Edition, p. 64.

<sup>21</sup> See Erskine May (24th Edition), p. 203.

## 2. *The Legislative Council*

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*"Traditionally, the main privileges enjoyed by Members of Parliament in Westminster are as follows:*

- (1) the privilege of statements made in debate in Parliament, protecting members from any action in the courts for defamation arising out of anything said in debate;*
- (2) freedom from arrest, providing members with immunity from arrest anywhere at any time during a session in any civil cause, and protection from arrest within the precincts of the House, while the House is sitting, in a civil or criminal matter, without the leave of the House;*
- (3) exemption from jury service; and*
- (4) exemption from attending any court as a witness.*

*Although the legislature of a Crown colony does not, by its mere establishment, acquire all these powers, privileges and immunities, the existing body of law in Hong Kong (principally U.K. case law which applies in Hong Kong under the common law system) the Jury Ordinance and other administrative practices in fact confer all these powers and privileges on Members of this Council."* <sup>22</sup>

2.17 In May 1985, following the signing of the Joint Declaration in December 1984, the Hong Kong Government considered it desirable to enact legislation to codify the powers and privileges enjoyed by Members of the Hong Kong Legislature since any inherent powers and privileges derived from the status of the Legislative Council as a colonial legislature would cease to have effect in Hong Kong after 1997. With the political system in Hong Kong moving towards representative government, the Government also considered it desirable specifically to provide for the rights of Members and for the powers and privileges through which the Legislative Council managed its business to be clearly understood, including the power of its committees to summon witnesses to give evidence.<sup>23</sup>

2.18 The Legislative Council (Powers and Privileges) Bill was passed into law in July 1985. The Ordinance (referred to as the "Powers and Privileges Ordinance" in this Chapter) declares and defines certain powers, privileges

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<sup>22</sup> Chief Secretary's speech at the Legislative Council sitting on 15 May 1985. *Hansard*.

<sup>23</sup> Chief Secretary's speech at the Legislative Council sitting on 15 May 1985.

and immunities of the Legislative Council and its members and officers to facilitate the performance of their parliamentary duties. Most of the provisions in the Ordinance are derived from common law and parliamentary practice in the UK relating to the privileges and immunities of a legislative body and its members, such as freedom of speech and debate in the Council and its committees, immunity from civil or criminal proceedings for words spoken before, or written in a report to, the Council or a committee, freedom from arrest, and exemption from serving as a witness or a juror on a day when the Council is sitting.<sup>24 25</sup>

2.19 The Powers and Privileges Ordinance<sup>26</sup> also empowers the Legislative Council and standing committees to order witnesses to attend and to produce books and documents, and enables the same power to be given to any other committee by resolution of the Council. It also empowers the Legislative Council to decide on the extent of access to the precincts of the Chamber by members of the press and the public, and empowers the President, for the purpose of maintaining the security of the precincts of the Chamber and other administrative purposes, to issue administrative instructions to ensure the proper behaviour and decorum of persons within the precincts of the Chamber.

2.20 The Powers and Privileges Ordinance also makes it clear that the Council, the President or any officer of the Council shall not be subject to the jurisdiction of any court in respect of the lawful exercise of any power conferred on or vested in the Council, the President or such officer by or under the Ordinance or the Rules of Procedure.<sup>27</sup>

### The Legislative Council's power to summon witnesses

2.21 The constitutional power of the Legislative Council to summon witnesses to testify and give evidence is provided for in Article 73(10) of the Basic Law for exercise of all the powers and functions of the Legislative Council listed in Article 73(1) to (9). Article 48(11) also provides that the Chief Executive may 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.

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<sup>24</sup> See section 5(1)(a) of Jury Ordinance (Cap.3).

<sup>25</sup> In 1994, the immunities were extended to the Governor (now the Chief Executive) and public officers designated to attend a meeting of the Council and a committee, and the meaning of "committees" was extended to include panels and subcommittees.

<sup>26</sup> Section 9 of the Legislative Council (Powers and Privileges) Ordinance.

<sup>27</sup> Section 23 of the Legislative Council (Powers and Privileges) Ordinance. This does not prevent actions for judicial review of the lawfulness of exercise of the Council's powers.

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2.22 The power to summon witnesses is usually required when the Council or a committee considers it necessary to inquire into a matter which has caused wide public concern. The manner in which the Legislative Council exercises its power to summon witnesses is set out in the Powers and Privileges Ordinance, supplemented by the Rules of Procedure and the practice and procedures established by the committees which exercise such power. The provisions relating to the ordering of witnesses in the Powers and Privileges Ordinance were based on what was originally provided for in Section 4 of the Oaths and Declarations Ordinance (Cap. 11), common law and parliamentary practice in the UK. The Ordinance also includes provisions which were not clearly provided for elsewhere, such as the protection of individual witnesses lawfully ordered to appear before the Legislative Council or its committees. This protection includes a witness's entitlement to the same rights or privilege as before a court of law<sup>28</sup>, and prohibition of the use of evidence against the witness or the spouse of a witness in criminal proceedings and proceedings for the recovery of a penalty<sup>29</sup>.

2.23 The Powers and Privileges Ordinance empowers the President of the Legislative Council to allow a witness to be excused from answering a question or producing any book, record or document on the ground that it is of a private nature and does not affect the subject of the inquiry. If he considers that the question asked or the book, record or document ordered for production is not relevant to the subject matter of the inquiry the President must excuse that witness. This power is not based on common law or parliamentary practice in the UK, but is provided to facilitate the conduct of the business of the Council. The Ordinance has made it clear that the powers conferred on the President by it in this Ordinance are supplementary to any powers conferred on him by the Basic Law.<sup>30</sup>

2.24 In the extension of the Legislative Council's power to summon witnesses to its committees, section 9(1) of the Powers and Privileges Ordinance provides the standing committee with such power. Section 9(2) provides that this power may also be exercised by any other committee which is specially authorized by a resolution of the Council to exercise such powers in respect of any matter or question specified in the resolution. Originally, the "other committee" mentioned in section 9(2) of the Ordinance referred only to select committees since in 1985 only standing committees and select committees existed in the Legislative Council. It was only after the House

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<sup>28</sup> Section 14 of the Legislative Council (Powers and Privileges) Ordinance.

<sup>29</sup> Section 16 of the Legislative Council (Powers and Privileges) Ordinance.

<sup>30</sup> Section 22 of the Legislative Council (Powers and Privileges) Ordinance.

Committee and Bills Committee became committees of the Council in 1992, and Panels became committees of the Council in 1993, that these committees could also exercise the power to order witnesses if authorized by the Council. The Ordinance was amended in 1994 to enable "a subcommittee of any committee" to be included in the meaning of "committees". These provisions are also reflected in Rule 80 of the Rules of Procedure.

2.25 To ensure the proper exercise of its power to summon witnesses the Legislative Council has put in place detailed procedural rules governing the conduct of hearings for the purpose of obtaining evidence from witnesses. The procedure of select committees set out in Rule 79 of the Rules of Procedure originally was to cater for proceedings where witnesses were called and evidence was obtained and examined. As this process may also take place in other committees if so authorized by the Council, it has been the practice that each committee authorized to summon witnesses also draws up its practice and procedures based on Rule 79 and other procedural arrangements adopted by previous committees conducting inquiries. Committees undertaking an inquiry take great care in handling the evidence obtained from witnesses especially during closed meetings. Any member of the committee who prematurely publishes any evidence taken by the committee or documents presented to it may be admonished or reprimanded by the Council.<sup>31</sup>

2.26 The Legislative Council has absolute control over its records of proceedings, minutes, reports and publications. Where any contents of minutes, records of evidence or any document laid before the Council or a committee or subcommittee or in respect of any of their proceedings are to be used as evidence elsewhere, leave must be sought from the Council in accordance with section 7 of the Powers and Privileges Ordinance and the procedure set out in Rule 90 of the Rules of Procedure.

2.27 A legal challenge was brought before the High Court in 2009 in respect of a select committee's power to summon witnesses<sup>32</sup>. The applicants for judicial review were witnesses summoned to appear before a select committee of the Legislative Council to give evidence. They considered that only the Legislative Council itself had the power to summon witnesses under Article 73(10) of the Basic Law. Accordingly they challenged the legality of the witness summonses approved for issue by the President of the Legislative

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<sup>31</sup> Rule 81 of the Rules of Procedure. In the UK parliament such premature disclosure is regarded as a contempt.

<sup>32</sup> *CHENG Kar Shun and Another v LI Fung Ying and Others* [2011] 2 HKLRD 555.

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Council following an order made by the select committee. The Court dismissed the application and held that on a true construction of Article 73(10) of the Basic Law, the Legislative Council, in exercising its functions as set out in Article 73(1) to (9), is empowered to summon persons concerned to testify or to give evidence, when sitting as a full body or when functioning through a select committee.

### Control over the precincts of the Chamber

2.28 The Powers and Privileges Ordinance provides that sittings of the Council shall be open to the public<sup>33</sup>, and the rights of persons to enter or remain in the precincts of the Chamber shall be subject to the Rules of Procedure or any resolution of the Council limiting or prohibiting the enjoyment of such right. In this respect the Rules of Procedure allow the admission of members of the press and of the public as observers of the meetings of the Council, and at the same time provide the President and chairmen of committees with power to order the removal of any member of the press and of the public who behaves or appears to behave in a disorderly manner.<sup>34</sup> In July 1992, under section 8(3) of the Ordinance, the President issued the first set of "Administrative Instructions for Regulating Admittance and Conduct of Persons", which have since been included as Cap. 382A in the Laws of Hong Kong. The Administrative Instructions set out the restrictions on access to areas reserved for Members and officers of the Council, restrictions on baggage which can be carried into the precincts, the requirement for orderly behaviour within the precincts, and conduct and restrictions in the press and public galleries.<sup>35</sup>

### Freedom of speech

2.29 Freedom of speech is the fundamental right of a member of a legislature. It is regarded as the most fundamental privilege in all modern parliaments. Article 77 of the Basic Law provides that Members of the Legislative Council shall be immune from legal action in respect of their statements at meetings of the Council. The Powers and Privileges Ordinance provides specifically that there shall be freedom of speech and debate in the Council or proceedings before a committee, and such freedom of speech and

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<sup>33</sup> Section 8 of the Legislative Council (Powers and Privileges Ordinance).

<sup>34</sup> Rules 86, 87 and 88 of the Rules of Procedure.

<sup>35</sup> The "Administrative Instructions for Regulating Admittance and Conduct of Persons" were amended on 9 occasions between 1993 and 2011 for purposes such as banning of smoking inside the Legislative Council Building in 1999, and the changing of the definition of the Legislative Council "Building" following the relocation to the new Legislative Council Complex in the Tamar site in 2011.

debate shall not be liable to be questioned in any court of place outside the Council<sup>36</sup>. The Ordinance further provides that no civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to, the Council or a committee, or through any petition, bill, resolution or motion brought by him.<sup>37</sup>

2.30 Despite the freedom of speech given to Members under the Basic Law and the Powers and Privileges Ordinance, it does not mean that in practice Members have an unlimited or unrestrained right to speak on any matter before the Council or a committee. Members' speeches in the Council are still subject to the Rules of Procedure of the Legislative Council which provide specific rules on time and manner of speaking, contents of speeches, conduct of Members speaking, etc. These rules and practices are important to ensure the effective and orderly transaction of business in the Council and its committees. It is the duty of the President or any chairman of any committee to ensure the observance of the rules of order in the Council and committee respectively under Rule 44 of the Rules of Procedure and, as a general principle, to ensure that no Member, including any Member in the minority, is deprived of a fair chance to speak in the proceedings of the Council or committee.

### Freedom from arrest

2.31 Article 78 of the Basic Law provides that Members of the Legislative Council shall not be subjected to arrest when attending or on their way to a meeting of the Council. In this respect, the Powers and Privileges Ordinance provides that no Member shall be liable to arrest for any civil debt (except one which constitutes a criminal offence) whilst going to, attending at or returning from a meeting of the Council or a committee; or for any criminal offence whilst attending a meeting of the Council or a committee.<sup>38</sup> The Ordinance also provides that no process issued by any court in Hong Kong or elsewhere in the exercise of its civil jurisdiction shall be served or executed on Members within the precincts of the Chamber while the Council is sitting.<sup>39</sup>

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<sup>36</sup> Section 3 of the Legislative Council (Powers and Privileges) Ordinance.

<sup>37</sup> Section 4 of the Legislative Council (Powers and Privileges) Ordinance.

<sup>38</sup> Section 5 of the Legislative Council (Powers and Privileges) Ordinance.

<sup>39</sup> Section 6(1) of the Legislative Council (Powers and Privileges) Ordinance.

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### Exemption from jury service

2.32 The exemption of Members from jury service by virtue of section 5 of the Jury Ordinance (Cap. 3) is reflected in the Powers and Privileges Ordinance<sup>40</sup>.

### Exemption from attendance as a witness in civil proceedings

2.33 The Powers and Privileges Ordinance provides that except by leave of the Council obtained in accordance with the Rules of Procedure, a Member shall not be required to attend as a witness in any civil proceedings on a day when the Council is sitting.<sup>41</sup> For implementing this provision, a procedure is provided in Rule 89 of the Rules of Procedure to enable a Member to obtain leave to attend as a witness in civil proceedings.

2.34 According to Rule 89 of the Rules of Procedure, the party to the proceedings requiring a Member to attend on a day when the Council is meeting shall submit a written statement to the Clerk to the Legislative Council not later than 21 days before the day of attendance. The written statement should contain the reasons why the attendance of the Member is required on that day. This request for leave shall be placed on the Agenda for the meeting next following the receipt of the written statement by the Clerk and, unless a motion is moved without notice at that meeting by any Member for the leave to be refused, the Council shall be deemed to have ordered that the leave be granted. The Clerk shall then inform the party concerned and the Member of the decision of the Council in writing.

### Interfering with Members, officers or witnesses

2.35 Section 19 of the Powers and Privileges Ordinance also provides that any person who assaults, obstructs or molests any Member of the Legislative Council who is on the way to, or inside or leaving the precincts of the Chamber, or endeavours to compel any Member by force or menace to declare himself in favour of or against any motion or matters pending before the Council or a committee commits an offence. The "person" referred to in this provision can be any person including a Member of the Council or a designated public officer. The maximum penalty is a fine of \$10,000 or imprisonment for 12 months. The same penalty also applies if the target of

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<sup>40</sup> Section 6(3) of the Legislative Council (Powers and Privileges) Ordinance.

<sup>41</sup> Section 6(2) of the Legislative Council (Powers and Privileges) Ordinance.

interference is an officer of the Council while in the execution of duty or a witness before or after giving evidence to the Council or a committee.

Prosecution for an offence under the Powers and Privilege Ordinance

2.36 Under section 26 of the Powers and Privileges Ordinance, no prosecution for an offence under the Ordinance shall be instituted except with the consent of the Secretary for Justice.

**Composition of the Legislative Council**

2.37 The composition of the Legislative Council is not specified in the main text of the Basic Law, but Article 68 provides that it shall be constituted by election and the method for its forming shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress, with the ultimate aim being the election of all the members of the Legislative Council by universal suffrage.

2.38 The specific method for forming the Legislative Council is prescribed in Annex II to the Basic Law. Annex II provides that the Legislative Council shall be composed of 60 members in each term for the first three terms. The procedure to amend Annex II is set out in the Basic Law and the Interpretation of Article II of Annex II adopted by the Standing Committee of the NPC at the Eighth Session of the Standing Committee of the Tenth NPC on 6 April 2004<sup>42</sup>, summarized as follows:

- First, the Chief Executive shall make a report to the Standing Committee of the NPC as regards whether there is a need to make an amendment;
- In response to the report, the Standing Committee of the NPC shall, in accordance with the provisions of Article 68 of the Basic Law, make a determination in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress;

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<sup>42</sup> [http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext\\_doc18.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc18.pdf)

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- If the determination is in the affirmative, the bill on the proposed amendment to the method for forming the Legislative Council and the proposed amendments to such a bill shall be introduced by the HKSAR Government into the Legislative Council;
- In the Legislative Council, the bill will require the support of a two-thirds majority of all the members of the Legislative Council for it to be passed;
- For such a bill so passed to have effect, it must be reported to the Standing Committee of the NPC for the record with the consent of the Chief Executive.

### Formation of the First Legislative Council (1998-2000)

2.39 For the first term, the Legislative Council was formed in accordance with the Decision of the NPC of the People's Republic of China on the Method for the Formation of the First Government and the First Legislative Council of HKSAR<sup>43</sup>. At the Third Session of the Seventh NPC on 4 April 1990, it was decided that the First Legislative Council of the HKSAR should be composed of 60 Members, with 20 Members returned by geographical constituencies through direct elections, 10 Members returned by an election committee<sup>44</sup>, and 30 Members returned by functional constituencies. More information about these electoral systems is provided in Chapter 3.

2.40 The Legislative Council Ordinance (Cap. 542) which provided for the election of the First Legislative Council was passed by the Provisional Legislative Council on 28 September 1997. On 8 April 1998, the Provisional Legislative Council, which met for the first time in Shenzhen on 25 January 1997 and commenced operation in Hong Kong on 1 July 1997, was prorogued to enable the general election for the First Legislative Council to be held. The term of the Provisional Legislative Council ended on 30 June 1998.

2.41 On 24 May 1998, the election of the Members of the First Legislative Council of the HKSAR was held. In accordance with the Basic Law, the term of the First Legislative Council was 2 years, from 1 July 1998 to 30 June 2000.

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<sup>43</sup> [http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext\\_doc12.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc12.pdf)

<sup>44</sup> The Election Committee was composed of four 200-member sectors which were subdivided into 38 subsectors. It was formed following elections by the respective subsectors held on 2 April 1997.

### Formation of the Second Legislative Council (2000-2004)

2.42 For the second term, Annex II to the Basic Law provided that the Members returned by the Election Committee be reduced to 6 while the Members returned by geographical constituencies through direct elections be increased to 24. Together with the 30 Members returned from functional constituencies, the number of Members of the Legislative Council remained at 60. On 9 July 2000, the subsector elections of the Election Committee were held and a new 800-member Election Committee was formed with a term of office of five years. Members of this Election Committee also elected the Chief Executive in 2002 as provided for in Annex I to the Basic Law.

2.43 The election of Members of the Second Legislative Council was held on 10 September 2000. The term of the Second Legislative Council commenced on 1 October 2000 and ended on 30 September 2004.

### Formation of the Third Legislative Council (2004-2008)

2.44 For the third term, Annex II to the Basic Law further provided that the number of Members returned by geographical constituencies was to be increased to 30, the same as the number of Members returned from functional constituencies. Total membership remained at 60.

2.45 The election of Members of the Third Legislative Council was held on 12 September 2004. The term of the Third Legislative Council commenced on 1 October 2004 and ended on 30 September 2008.

### Formation of the Fourth Legislative Council (2008-2012)

2.46 The composition of the Fourth Legislative Council was not provided for in Annex II to the Basic Law. In accordance with the procedure set out in the Interpretation adopted by the Standing Committee of the NPC on 6 April 2004, the Chief Executive made a report to the Standing Committee on 15 April 2004 to propose amendments to Annexes I and II to the Basic Law to implement a package of proposals for the methods of selecting the Chief Executive in 2007 and forming the Legislative Council in 2008. On 26 April 2004, the Standing Committee decided that the election of the third term Chief Executive to be held in 2007 should not be by means of universal suffrage (**Appendix 2-A**); the election of the Fourth Legislative Council in 2008 should not be by means of an election of all the members by universal suffrage; and the ratio between members returned by functional constituencies

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and members returned by geographical constituencies through direct elections, who should respectively occupy half of the seats, was to remain unchanged. However, the two electoral methods might be amended appropriately, provided that the amendments did not contravene its decision and were consistent with Articles 45 and 68 of the Basic Law, and provisions of Annex I and Annex II to the Basic Law.

2.47 On 19 October 2005, pursuant to the decision of the Standing Committee made on 26 April 2004, the Government published a report<sup>45</sup> on its package of proposals. On 21 December 2005, the Government put to the Legislative Council two motions to amend Annexes I and II to the Basic Law respectively to implement the package of proposals.

2.48 Regarding the motion to amend Annex II to the Basic Law, the Government proposed increasing the number of Legislative Council Members to 70 with 35 from each of the two groups of constituencies. For the additional 5 seats in functional constituencies, the Government proposed that they should be returned through election by all District Council members elected from among themselves. The proposal was studied by a subcommittee of the House Committee which found that members were divided over the proposed package. While some members did not consider the package progressive enough and would not bring Hong Kong any nearer to the ultimate aim of universal suffrage, some held the view that it did expand the democratic elements in the electoral system and would help Hong Kong's constitutional development step towards the ultimate aim of universal suffrage in a gradual and orderly manner. There was also objection to the proposal of including the appointed District Board members in returning the 5 new seats in functional constituencies. These views were further reflected in the speeches of Members at the debate on 21 December 2005. At the conclusion, the motion did not receive the required two-thirds majority support of Members of the Council.

2.49 In accordance with the Interpretation made by the Standing Committee of the National People's Congress on 6 April 2004, if no amendment is made to the methods for selecting the Chief Executive and for forming the Legislative Council as stipulated in Annexes I and II to the Basic

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<sup>45</sup> "The Fifth Report of the Constitutional Development Taskforce: Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008" recommended, in respect of the composition of the Fourth Legislative Council, the number of seats be increased from 60 to 70, and the additional 5 seats in the functional constituencies were to be returned by District Council members from among themselves, hence increasing the number of seats returned by District Council Constituencies from one to six.

Law, the provisions relating to the two methods in Annexes I and II to the Basic Law would continue to apply. The composition of the Fourth Legislative Council therefore remained the same as that of the Third Legislative Council, i.e. 60 Members with 30 Members returned from functional constituencies and 30 from geographical constituencies through direct elections.

2.50 The election of Members of the Fourth Legislative Council was held on 7 September 2008. The term of the Fourth Legislative Council commenced on 1 October 2008 and ended on 30 September 2012.

### Formation of the Fifth Legislative Council (2012-2016)

2.51 In respect of the method of election of the Chief Executive and the formation of the Legislative Council for the year 2012, the Chief Executive submitted a Report to the Standing Committee of the NPC on 12 December 2007. In his Report, in respect of the models for forming the Legislative Council, the Chief Executive stated that consensus had begun to emerge on taking forward universal suffrage in the direction of implementation for the Chief Executive first, to be followed by that for the Legislative Council, and that setting the timetable for implementing universal suffrage could help promote the ultimate resolution of the issues involved. The Standing Committee deliberated on the Chief Executive's Report and decided on 29 December 2007 that the election of the Fifth Legislative Council should not be implemented by the method of electing all the members by universal suffrage (**Appendix 2-B**). The half-and-half ratio between Members returned by functional constituencies and Members returned by geographical constituencies through direct elections should remain unchanged. The procedure for voting on bills and motions in the Legislative Council should remain unchanged. Subject to the aforementioned, appropriate amendments conforming to the principle of gradual and orderly progress might be made to the specific method for forming the Fifth Legislative Council in 2012.

2.52 The subject was followed up by the Legislative Council Panel on Constitutional Affairs. In November 2009, the Government commenced a public consultation exercise on the methods for selecting the Chief Executive and for forming the Legislative Council in 2012. At the Council meeting of 14 April 2010, the Government announced its package of proposals, which included increasing the number of Legislative Council seats to 70 with 35 seats returned by each of the two groups of constituencies, i.e. functional

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constituencies and geographical constituencies, with all 5 new functional constituency seats and the existing District Council functional constituency seat being returned through election from among elected District Council members under the "proportional representation system".<sup>46</sup> A subcommittee of the House Committee was formed to study the Government's proposals. Members' views on the proposal in relation to the composition of the Legislative Council remained divided. Nevertheless, political parties/groupings and Members of the Legislative Council continued their dialogue with the relevant authorities to put across their wish to see more concrete steps towards universal suffrage in the election of the Legislative Council as set out in the Basic Law. On the other hand, Mr Qiao Xiaoyang, Deputy Secretary General of the Standing Committee of NPC, also made two statements on the subject and made it clear that the elections of the Chief Executive and the Legislative Council by universal suffrage must meet the requirement of universality and equality.

2.53 The communication between political parties/groupings and the Central Government through the Liaison Office of the Central People's Government in the two months after 12 April 2010 had made it possible for the Government to announce on 21 June 2010, two days before the day on which the two motions in relation to the methods of selecting the Chief Executive and forming the Legislative Council in 2012 were to be moved, a change in the Government's proposals. The Government agreed to introduce the arrangement of "one person, two votes" in the 2012 Legislative Council Election, which would be implemented by way of local legislation. Among the new arrangements was the proposal that candidates for the 5 new functional constituency seats should be nominated by elected District Council members and elected by all registered voters who did not have a right to vote in functional constituencies on a one-person-one-vote basis. At the Council meeting of 23 June 2010, the Legislative Council passed by a two-thirds majority the relevant motion put forward by the Government. The motion contained an amendment to Annex II to the Basic Law to provide that the Fifth Legislative Council to be elected in the year 2012 should be composed of 70 Members, with 35 returned by functional constituencies and 35 by geographical constituencies through direct elections. With the Chief Executive's consent the draft amendment to Annex II was put to the Standing Committee which, on 28 August 2010, recorded the amendment. On 15 December 2010, the Legislative Council (Amendment) Bill 2010 was introduced to the Legislative Council to implement the method for forming

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<sup>46</sup> See Chapter 3.

the Legislative Council as prescribed in the amendment to Annex II to the Basic Law. On 5 March 2011, the Bill was passed.

2.54 The general election for Members of the Fifth Legislative Council took place on 9 September 2012. The term of the Fifth Legislative Council commenced on 1 October 2012.

### **Term of office of the Legislative Council**

#### Terms and sessions

2.55 According to Article 69 of the Basic Law, the term of office of the Legislative Council of the HKSAR shall be four years, except the first term which shall be two years. Although the Basic Law specifies the duration of a term, it does not prescribe when a term should begin or end. These arrangements are provided for by the Legislative Council Ordinance (Cap. 542)<sup>47</sup> which empowers the Chief Executive to specify the date, which must be within 30 days after the relevant general election<sup>48</sup>. The decision on the date and time for holding the first meeting of each legislative term then rests with the Chief Executive<sup>49</sup>, but this must be within 14 days after the term begins.

2.56 The Legislative Council Ordinance also provides that the Chief Executive must convene at least one ordinary session in each calendar year<sup>50</sup>, and a session which begins in one calendar year may be continued and concluded in the following year.<sup>51</sup> The Chief Executive must publish in the Gazette the dates on which a legislative session is to begin and to end<sup>52</sup>. In the Hong Kong Legislature the convention is that there is one session in each calendar year commencing in October and ending in July in the following year. However, as the First Legislative Council commenced its term on 1 July 1998, its first session commenced on 2 July 1998.

2.57 Soon after the Members of the First Legislative Council had taken office on 1 July 1998, they found that the Council needed to take a break of six weeks from late July to early September as there was little Government business to be transacted in the Legislative Council before the delivery of the

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<sup>47</sup> Section 4(3) of the Legislative Council Ordinance.

<sup>48</sup> Section 4(5) of the Legislative Council Ordinance.

<sup>49</sup> Section 10(1) of the Legislative Council Ordinance.

<sup>50</sup> Section 9(1) of the legislative Council Ordinance.

<sup>51</sup> Section 9(3) of the Legislative Council Ordinance, as reflected in Rule 11 of the Rules of Procedure.

<sup>52</sup> Section 9(2) of the Legislative Council Ordinance.

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Policy Address scheduled for October that year. This long break was considered highly disruptive to the work of the Council. The Committee on Rules of Procedure was then asked to undertake a study on the appropriate commencement and ending of a legislative session for the smooth and effective operation of the legislature. The Committee noted that the Government had difficulty in advancing the Policy Address to July as the working mechanism within the Government historically had been designed to facilitate the Policy Address to be delivered in October, which was the starting time of a new session in the pre-1997 Legislative Council, followed by the budget exercise in March. Members of the First Legislative Council therefore asked the Government to consider deferring the commencement of a new session to October to tie in with the delivery of the Policy Address. In response to Members' request, the Chief Executive decided that the 1999-2000 session and future sessions of the Legislative Council would commence in October.<sup>53</sup>

2.58 When the Committee on Rules of Procedure of the First Legislative Council studied the question of the commencement date of a session, it noted that if the Second Legislative Council was to commence on 1 October 2000 there would be a gap between the end of the term of the First Legislative Council on 30 June 2000 and the commencement date of the Second Legislative Council. The Committee concluded that there was no requirement under the Basic Law that terms should follow immediately after each other. The First Legislative Council would dissolve immediately after its term of office and the gap from 1 July 2000 to 30 September 2000 would allow time for the holding of a general election to be held. As regards all subsequent terms, in order that all sessions would commence in October, the Council would have to be prorogued in July after the last meeting of the last session of the term to enable a general election to take place<sup>54</sup>.

### Council meeting dates, recess and breaks

2.59 At the start of the first session of a new term, the President, after being elected, determines the dates and times of the Legislative Council meetings to be held in that session<sup>55</sup>. Council meetings are scheduled for each Wednesday

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<sup>53</sup> Changes to the dates on which the Policy Address was delivered are elaborated in Chapter 5 under "Policy Address".

<sup>54</sup> Section 6(3) of the Legislative Council Ordinance (Cap. 542) provides "To enable ... a general election to be held, the Chief Executive may, before the end of a term of office of the Legislative Council, prorogue the Council to terminate its operation."

<sup>55</sup> The date and time of the first meeting of each new term is specified by the Chief Executive under Section 10(1) of the Legislative Council Ordinance (Cap. 542).

in the session except public holidays and during long holidays such as Christmas, Lunar New Year and Easter, or during the Budget period. Rule 14(1) of the Rules of Procedure provides that a period of 6 weeks shall not elapse between the date of one meeting and the date appointed for the next meeting in the same session. The Council normally holds 30 to 35 meetings in each session.<sup>56</sup> Each meeting may last for more than one day.

2.60 The period between two sessions, i.e. normally from mid-July to early October, is generally known as the summer recess. Prior to July 1997 when the Royal Instructions were still in force it was stipulated that the period between the last sitting of one session and the first sitting of the next session should not exceed three months. There is no such stipulation in the Legislative Council Ordinance passed in September 1997, but in practice the summer recess between two sessions in the same term has never been more than three months.

2.61 As regards meeting hours, in October 2005 the Legislative Council advanced the starting time of the meeting from 2:30 pm to 11:00 am to allow for longer meetings. The Council is adjourned when all business on the Agenda<sup>57</sup> for the Council meeting is dealt with. Each meeting may last one or more days depending on the amount of business on the Agenda. For the debate on the Motion of Thanks for the Chief Executive's Policy Address, it has been normal practice for three days to be reserved, except in 2001 when the debate lasted four days. The detailed arrangements for the debate on the Motion of Thanks are explained in Chapter 5. The last Council meeting before the summer recess is normally held in the second or third week of July. In recent years, it has been quite common for committees to meet during the summer recess in order to deal with urgent matters or make use of this period for conducting overseas duty visits.

### Adjournment of the Council

2.62 It is the President's responsibility to determine how frequently the Council should meet so that there is sufficient time for the Council to deal with the business put forward by the Government and by Members of the Council in the session. In the event that the business on the Agenda of a meeting cannot be dealt with within one single day, it is normal practice that

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<sup>56</sup> Except in the First Legislative Council term during which 45 Council meetings had been held, on average 32 Council meetings (excluding first meeting where Members are sworn in and the Chief Executive's Questions and Answers sessions) have been held in each session since the Second Legislative Council.

<sup>57</sup> "Agenda" is the word used in the Basic Law. It is intended to be the same as "Order Paper" of the Legislative Council sittings that took place before 1 July 1997.

## 2. *The Legislative Council*

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the President suspends the meeting at a certain hour of that day and resumes it on the following day or any day to be determined by him after consulting Members<sup>58</sup>, until all business on the Agenda is dealt with, and the Council will then stand adjourned until the next scheduled meeting date. In the event that the Council is adjourned due to a lack of quorum, Rule 17(5) of the Rules of Procedure provides that the question on which it is adjourned shall stand over until the next meeting. The President then orders that the unfinished business be stood over to the Agenda for the next scheduled meeting in accordance with the order of the business set out in Rule 18 of the Rules of Procedure.<sup>59</sup> In the event that a meeting is suspended and the unfinished business cannot be continued on another day before the next scheduled meeting, it has also been the practice that the unfinished business would stand over to the next scheduled meeting and be placed on the Agenda in the same manner<sup>60</sup>.

### Prorogation of the Council

2.63 Under Section 6 of the Legislative Council Ordinance, the Chief Executive must specify a date for holding a general election to elect the Members for each term of office of the Legislative Council. The date must be not earlier than 60 days and not later than 15 days before the new term of office is to begin. To enable such a general election to be held, the Chief Executive may require the Legislative Council to be prorogued to terminate its operation and in that event he must specify a date for such prorogation in the Gazette.

2.64 When the Council is prorogued, all its unfinished business falls. All the bills not yet been passed will lapse at the end of the term of office of

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<sup>58</sup> On 18 May 1999, the House Committee of the First Legislative Council decided to recommend to the President that if the business of a Council meeting could not be completed before midnight on the same day, the meeting should be suspended at 10 pm and resumed on another day. The President has since adopted this recommendation as a practice under normal circumstances.

<sup>59</sup> Due to the adjournment of the Council at its meeting on 17 October 2007 for the lack of a quorum, the President ordered that the unfinished motion debate on "Development of the convention and exhibition industry" be placed on the agenda of the following meeting (24 October 2007). The motion was placed on the Agenda ahead of the Motion of Thanks which was originally the only Members' motion for 24 October 2007. (One reason the President considered when making his decision was that it was natural and logical for the Council firstly to deal with an unfinished motion stood over from the last meeting before moving on to the next item on the Agenda.)

<sup>60</sup> At the House Committee meeting on 25 May 2012, Members agreed to recommend to the President that any unfinished business on the Agenda of the Council meeting of 30 May 2012 which would last for four days until 2 June 2012 would stand over to the next scheduled meeting of the Council on 6 June 2012.

the Legislative Council<sup>61</sup>. Members, however, are still Members of the Legislative Council and in the event that an urgent meeting is to be convened during the prorogation of the Council any Members, notwithstanding their being nominated as a candidate for the upcoming Legislative Council election, may attend and vote at the meeting in accordance with the Rules of Procedure.<sup>62</sup>

### Dissolution of the Council

2.65 By virtue of section 4(6) of the Legislative Council Ordinance, the Legislative Council is, if not dissolved earlier by the Chief Executive in accordance with the Basic Law, dissolved immediately after its term of office ends. When a Legislative Council is dissolved, Members of the dissolved Council are no longer Members of the Legislative Council and they cease to receive any Members' remuneration and benefits with effect from the date of dissolution. The new Legislative Council must be reconstituted by election within three months<sup>63</sup>. However, by virtue of Section 11 of the Legislative Council Ordinance, where an emergency session of the Legislative Council is to be convened at the request of the Chief Executive during the period after the Council is dissolved but before the general election takes place, the persons holding office as Members of the Legislative Council during the term of office immediately before the emergency session shall be deemed to be Members of the Legislative Council.

### **Order of precedence of Members**

2.66 The order of precedence of Members helps to determine which Member should convene a meeting before a chairman is elected. It is an established practice in the Legislative Council, as reflected in Appendix IV of the House Rules, that the Member who has the highest precedence amongst Members present at an election of a chairman should preside at the election.

2.67 Under Rule 1A of the Rules of Procedure, the order of precedence of a Member of the Legislative Council is determined according to the continuous period of time for which the Member has served as a Member; and the longer

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<sup>61</sup> Section 9(4) of the Legislative Council Ordinance provides, "The consideration of any bill or other business of the Legislative Council is not to be affected by the end of a session and may be resumed at any subsequent meeting, but is to lapse at the end of a term of office or on a dissolution of the Legislative Council."

<sup>62</sup> Section 12 of the Legislative Council Ordinance.

<sup>63</sup> Article 70 of the Basic Law.

## *2. The Legislative Council*

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his service the higher his order of precedence. Where two or more Members have the same length of continuous service precedence is given to the one who first made or subscribed the oath or affirmation in accordance with Rule 1 of the Rules of Procedure. The order of the making of an oath/affirmation for those with the same continuous service is determined according to the number of strokes in the traditional characters of the Members' names in Chinese; a Member whose name has the least number of strokes shall make or subscribe an oath or affirmation first. This practice is reflected in Rule 1(b) of the House Rules.

### **The President of the Legislative Council**

2.68 Article 71 of the Basic Law provides that the President of the Legislative Council shall be elected by and from among the members of the Legislative Council. The President shall be a Chinese citizen of not less than 40 years of age, who is a permanent resident of the HKSAR with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

### Powers and functions of the President of the Legislative Council

2.69 Article 72 of the Basic Law provides that the President of the Legislative Council shall exercise the following powers and functions:

- (1) To preside over meetings;
- (2) To decide on the agenda, giving priority to government bills for inclusion in the agenda;
- (3) To decide on the time of meetings;
- (4) To call special sessions during the recess;
- (5) To call emergency sessions on the request of the Chief Executive; and
- (6) To exercise other powers and functions as prescribed in the rules of procedure of the Legislative Council.

2.70 According to the Rules of Procedure<sup>64</sup>, the President, when present at a meeting of a committee of the whole Council, shall be the Chairman. When presiding, the President shall enjoy all those powers conferred by the Rules on the President or the Chairman. Although the President is given the general powers and functions to preside over meetings and to decide on the agenda, Article 72(6) of the Basic Law provides that the President is to exercise other powers and functions as prescribed in the rules of procedure of the Legislative Council. In this respect, the Court of Appeal has held that the powers given to the President in the Rules of Procedure are to be supplementary to his power under Article 72(1) of the Basic Law to preside over meetings, and that the Rules of Procedure are there to give the President additional powers, rather than to restrict his power under the Basic Law "to preside over meetings".<sup>65</sup>

2.71 The President is expected to be fair and impartial, and independent of any political influences. The President is guided by the Rules of Procedure and conventions in presiding over meetings of the Council. In any matter not provided for in the Rules of Procedure, the President, under Rule 92 of the Rules of Procedure, may decide such practice and procedure to be followed in the Council, and in the process, if he thinks fit, he may be guided by the practice and procedures of other legislatures. Under Rule 44, the President, when presiding, shall be responsible for the observance of the rules of order, and his decision on a point of order shall be final. As mentioned above, the Powers and Privileges Ordinance also provides power to the President of the Legislative Council to excuse a witness from answering a question or producing any book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry. The President also excuses the witness if he considers that the question asked or the book, record or document ordered for production is not relevant to the subject matter of the inquiry. This power is also supplementary to those conferred on him under the Basic Law. Under the Powers and Privileges Ordinance, the President shall not be subject to the jurisdiction of any court in respect of the lawful exercise of any power conferred on or vested in him or under this Ordinance or the Rules of Procedure.<sup>66</sup>

2.72 The President is at the same time the Chairman of The Legislative Council Commission by virtue of his position as President. The Legislative

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<sup>64</sup> Rule 3(1) of the Rules of Procedure provides that "There shall be a President of the Council who, when present at a meeting of the Council or a committee of the whole Council and able, in his opinion, to act, shall preside or be Chairman."

<sup>65</sup> See *LEUNG Kwok-hung v The President of Legislative Council*, CACV 123/2012 (1 February 2013), in particular para. 53.

<sup>66</sup> Section 23 of the Legislative Council (Powers and Privileges) Ordinance.

## 2. *The Legislative Council*

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Council Commission is a statutory body established by The Legislative Council Commission Ordinance (Cap. 443), with the main function of providing administrative and support services to the Council through the Legislative Council Secretariat. As the Chairman of the Commission, the President oversees the provision of administrative support to the Council and its Members, and ensures that the Legislative Council has the means and support that it requires for exercising and performing its powers and functions under the Basic Law effectively, efficiently and independently. Further details are provided in Chapter 3.

### Election of the President

2.73 The election of the President takes place at the first meeting of the Council at the start of a new term. Nominations signed by a Member making the nomination and by at least three other Members seconding the nomination should reach the office of the Clerk to the Legislative Council at least 4 clear days<sup>67</sup> before the day of election. The Clerk must distribute a list of all valid nominations to all Members of the Council at least 2 clear days before the day of election. Prior to the meeting for the election of the President, it has been a practice since 2000 for a candidate for the office to present his/her platform and answer questions from Members at a special forum, which is not a Council meeting but is open to the public.

2.74 The procedure for the special forum is set out in the House Rules<sup>68</sup>. The special forum usually lasts for no more than two hours. The presiding Member is the Member present with the longest continuous service in the Council. After each candidate has spoken for up to 5 minutes, all Members present are invited to put forward their questions for answer by one or more candidates. The contents of speeches made and questions asked at the special forum are subject to the following:

- (a) It shall be out of order to use offensive and insulting language about Members of the Council;
- (b) A member shall not impute improper motives to another Member;

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<sup>67</sup> The expression "clear days" excludes the day of the giving of notice, the day of the relevant meeting and intervening public holidays.

<sup>68</sup> Rule 1A and Appendix I of the House Rules.

- (c) Questions put to a candidate shall be concise and to the point; and
- (d) Only one question shall be asked by a Member at a time.

2.75 The election of the President takes place at the first Council meeting, immediately after all Members have made or subscribed an oath or affirmation administered by the Clerk. The Member who has the longest continuous service in the Council and who is not nominated for the office of the President presides at the election. A vote by secret ballot is ordered if there are two or more valid nominations. All Members present including the presiding Member shall have the right to vote. The candidate who receives the highest number of votes is declared elected as the President. It is only when there is a tied vote between the two Members with the highest number of votes that a second round of voting will be ordered. In the event of a second tied vote the election is decided by the drawing of lots.

#### Term of office

2.76 The President shall hold office until the Council dissolves at the end of the term or is dissolved under the Basic Law. Nevertheless, section 25 of the Powers and Privileges Ordinance provides that the President may exercise the powers conferred on him by the Ordinance even though the Council has been dissolved. In the event that the President resigns in the middle of the term, an election of the President must be held in accordance with Rule 4 and Schedule of the Rules of Procedure. In the meantime, the President's Deputy shall have the powers conferred by the Rules of Procedure on the President or Chairman of the committee of the whole Council that are exercisable in respect of the meeting at which the President's Deputy presides.

#### Voting right

2.77 Although it is a practice that the President of the Legislative Council does not vote in the Council in order to maintain his neutrality, the President does have his original vote which should be cast, if he decides to do so, at the same time when all other Members are casting their votes. None of the Presidents of the Legislative Council of the HKSAR has cast his or her original vote so far.

## 2. *The Legislative Council*

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2.78 The casting vote given to the President in the Pre-1997 Standing Orders<sup>69</sup> was removed from the First Legislative Council<sup>70</sup> onwards in order to conform with the requirement of the Basic Law. Under the Basic Law, the passage of all motions before the Council or in a committee of the whole Council requires a majority vote of the Members present or a majority vote of each of the two groups of Members present, as the case may be. A motion with a tied vote is regarded as not passed and is deemed to be decided in the negative.

### **The President's deputy**

2.79 In the absence of the President from a meeting or a part of a meeting of the Council or a committee of the whole Council or when, in his opinion, he is unable to act, the President's deputy shall preside at that meeting or that part of the meeting. The Member elected as the chairman of the House Committee is *ex officio* the President's deputy. In the event that he is absent or, in his opinion, unable to act, the member elected as the deputy chairman of the House Committee acts as the President's deputy.

2.80 Under Rule 3(3) of the Rules of Procedure, the President's deputy enjoys all those powers conferred by the Rules of Procedure on the President or Chairman that are exercisable in respect of the meeting, or part of the meeting, of the Council or a committee of the whole Council at which the President's deputy presides or is Chairman. The exercising of the powers includes not only those required for the conduct of a meeting but also for dealing with matters which require the prior approval of the President or Chairman in respect of the part of the meeting at which the President's deputy will preside.<sup>71</sup> In addition, the President's deputy shall also enjoy such other powers conferred on the President or Chairman as the President may specify by notice in the Gazette.

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<sup>69</sup> Standing Order No. 35(2).

<sup>70</sup> The voting method in Annex II to the Basic Law did not apply to the Provisional Legislative Council. The President of the Provisional Legislative Council was required to vote when there was a tie in votes.

<sup>71</sup> In respect of a request from Hon Cyd HO Sau-lan for moving an adjournment motion under Rule 16(2) of the Rules of Procedure on "the integrity and probity of the Chief Executive and his responsibility for upholding the fairness and impartiality of the next Chief Executive Election to be held on 25 March" at the Council meeting of 29 February 2012, the President considered himself unable to determine the matter as he had announced to the public that he would seriously consider to stand in the Chief Executive Election. The President's Deputy exercised the power of the President and permitted the Member to move the motion.

### **The Clerk to the Legislative Council**

2.81 By Section 3 of the Interpretation and General Clauses Ordinance (Cap.1), the Clerk to the Legislative Council means the Secretary General of the Legislative Council Secretariat, appointed under the Legislative Council Commission Ordinance (Cap. 443)<sup>72</sup> and includes the Deputy Secretary General and any Assistant Secretary General of the Legislative Council Secretariat. The Secretary General may designate the Deputy Secretary General or any Assistant Secretary General to undertake any of the duties which should be carried out by the Clerk as specified in the Rules of Procedure. The duties of the Clerk are set out in Rule 6 of the Rules of Procedure and can be summarized as follows:

- (a) advising the President on all matters relating to the procedure of the Council;
- (b) keeping the minutes of proceedings of the Council and of committees of the whole Council, recording the Members attending, all decisions made and details of every division in voting held;
- (c) preparing from day to day a Council Agenda Item Book showing all future business of which notice has been given and making it open to inspection by Members and relevant public officers at all reasonable hours;
- (d) preparing for each Council meeting an Agenda showing the business for that meeting, under the directions of the President;
- (e) having custody of the votes, records, bills and other documents laid before the Council, and making such documents open to inspection by Members and relevant public officers at all reasonable hours;
- (f) being responsible for the production of the Official Record of all proceedings in the Council and in the committee of the whole Council, under the direction of the President;
- (g) providing every committee and subcommittee of the Council with a clerk; and

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<sup>72</sup> Section 15(1) of The legislative Council Commission Ordinance (Cap. 443).

## 2. *The Legislative Council*

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- (h) undertaking any other duties laid upon the Clerk in the Rules of Procedure and all other duties as ordered by the Council or directed by the President.

2.82 As Clerk to the Legislative Council, the Secretary General is the principal adviser on procedural matters in the Legislative Council. He advises the President on all procedural matters and also oversees the provision of procedural advice given by other clerks to the chairmen and members of committees. It is also the Secretary General who oversees the preparation of explanatory notes and guidelines to facilitate Members' understanding of procedural rules, as well as the production of handbooks and work manuals for committee chairmen and clerks.

2.83 It has been the practice of the Legislative Council in Hong Kong, even before reunification, that Members are kept informed of all business to be dealt with at Council meetings at the earliest opportunity. Changes are made from time to time to improve the working mechanism within the Council to allow Members sufficient time to prepare themselves for debates and, if needed, to give notice of the amendments sought to be moved. With the rising public expectation for greater transparency of the work of the Legislative Council it has been the practice for the Clerk to issue any bills for which notice has been given, as well as any documents to be laid before the Council, to all Members as soon as such notice or document is received. As for questions to be raised or motions to be moved at a Council meeting, Members will be notified once the President has approved their inclusion on the Agenda.

2.84 Under Rule 14(2) of the Rules of Procedure, written notice of every meeting of the Council, other than the first meeting of a new session and meetings held within 14 clear days of the commencement of the first session of a term, is given by the Clerk to Members at least 14 clear days before the day of the meeting<sup>73</sup>. It is an established practice that the preliminary Agenda of a Council meeting is issued 6 clear days (usually the Tuesday in the week preceding the Council meeting if there is no intervening holiday) before the date of the meeting, with all items of business agreed to be included on the Agenda by the President, in order that Members and relevant public officers are made well aware of the matters to be considered at the Council meeting. The updated formal Agenda is issued one clear day before the Council meeting. If any item is found to be out of order by the President and therefore

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<sup>73</sup> The President may dispense with such notice in cases of emergency and meeting held for the purposes of Rule 8 (Attendance of the Chief Executive) and Rule 15 (Meetings for Urgent Business), and in that event the longest possible notice shall be given.

not included on the Agenda, the Clerk will ensure that such decision is relayed to the Member concerned as well as all other Members on the same day. All information on the Agenda of meetings of the Council, as well as that of committees, is available at the official website of the Legislative Council.

2.85 The keeping of records is an important function of the Clerk as it is in all legislatures where decisions may be challenged. For Council meetings, there are the minutes of the proceedings and Official Record of proceedings (which is generally referred to as "Hansard" as explained in Chapter 4). The records of proceedings are first presented in the original language as delivered by Members and public officers at Council meetings as a "Floor version" which is published and uploaded onto the official website of the Legislative Council within 7 working days, with the translated versions within 24 working days<sup>74</sup>. It is also the duty of the Clerk to appoint a clerk to every committee and subcommittee of the Council. The clerk responsible for servicing a committee or subcommittee prepares minutes of meetings with detailed records of attendance, deliberations and decisions made. On occasions, with the committee's consent, the record of the discussion of a meeting may be prepared in verbatim form to facilitate future referral to the information given at the meeting. It is the responsibility of the Clerk to ensure that all records of the proceedings of the meetings of the Council and committees are properly kept and made available for public access (except those parts which are classified as confidential).

### **The Counsel to the Legislature**

2.86 Under Rule 7 of the Rules of Procedure, the Legal Adviser of the Legislative Council Secretariat shall be the Counsel to the Legislature. The Counsel's general duty is to advise the President and the Clerk on legal questions arising in relation to the business or administration of the Council.

2.87 Prior to 1995, it was the Attorney General's Chambers or the Legal Department that was responsible for advising the Clerk on procedural matters, and the Law Draftsman in the Legal Department was named as the Counsel to the Legislature in the Standing Orders. Even after the appointment of a Legal Adviser to the then UMELCO Secretariat in 1985, the Law Draftsman of the Legal Department continued to act as Counsel to the Legislature until the Standing Orders were amended in 1995 to substitute the Legal Adviser of the

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<sup>74</sup> The target commitment of 7 working days for producing the Floor version and 24 working days for the translated version of the record of proceedings of a Council meeting is for a one-day meeting.

## *2. The Legislative Council*

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Legislative Council Secretariat for the Law Draftsman following the establishment of The Legislative Council Commission in April 1994.

2.88 The Legal Adviser is assisted by a team of legal professionals. They form the Legal Service Division of the Legislative Council Secretariat which provides legal service for the Council and its committees. They also perform the role of in-house lawyers of The Legislative Council Commission. In cases where the President and also Members of the Council are involved in litigation on matters arising from their exercise and discharge of powers and functions in their official capacity, the Legal Service Division provides them with the necessary legal service, including the briefing of counsel to represent them in judicial proceedings. The Legal Adviser and his assistants are exempt from service as jurors by virtue of section 5 of the Jury Ordinance (Cap. 3).

### **Other officers of the Council**

2.89 Under section 24 of the Powers and Privileges Ordinance, every officer of the Council shall, for the purposes of that Ordinance and of the application of the criminal law, have all the powers and enjoy all the privileges of a police officer within the precincts of the Chamber. Section 23 of the Ordinance further provides that any officer of the Council shall not be subject to the jurisdiction of any court in respect of the lawful exercise of any power conferred on or vested in ... such officer by or under the Ordinance or the Rules of Procedure.

2.90 In the Administrative Instructions for Regulating Admission and Conduct of Persons, "officer of the Council" is defined as the Clerk or any other officer or person acting within the precincts of the Chamber under the orders of the President, and includes any police officer on duty within the precincts of the Chamber. These "officers of the Council" generally refer to the staff members engaged by The Legislative Council Commission<sup>75</sup> to perform various duties to support the work of the Council. It has been the policy adopted by The Legislative Council Commission that the day-to-day security management of the precincts of the Chamber is undertaken by the internal security staff of the Legislative Council Secretariat, who are the officers of the Council within the meaning of the Administrative Instructions. It is only under very urgent and serious circumstances that police officers would be called into the precincts to assist.

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<sup>75</sup> The Legislative Council Commission is a statutory body established by The Legislative Council Commission Ordinance (Cap. 443), with the main function of providing administrative and support services to the Council through the Legislative Council Secretariat.

## Chapter 3

### Members of the Legislative Council

3.1 This Chapter focuses on how Members of the Legislative Council are elected from their constituencies, what they need to do after assumption of office and what practices and procedures have been put in place to ensure that Members, as representatives of their constituencies to serve in the Legislative Council, perform their constitutional functions in a manner which inspires public trust and confidence in the Legislature. This Chapter also examines the procedures for the disqualification of Members from office under Article 79 of the Basic Law.

3.2 Although the emphasis of this *Companion* is not on the details of the electoral system or how the election of Legislative Council Members is conducted, it may be useful to readers if some background information is provided on the development of the two groups of constituencies, namely the functional and the geographical, returning Members to the Legislative Council since before reunification; and the changes to the composition of the Council initiated by this development. All these issues are relevant to the understanding of how and why the current set of Rules of Procedure came into being, and for considering necessary modifications in the Rules of Procedure in light of the constitutional development in the HKSAR.

#### Election of Members

3.3 According to Article 68 of the Basic Law, the Legislative Council of the HKSAR shall be constituted by election. The specific method for forming the Legislative Council is prescribed in Annex II to the Basic Law. Annex II provides that for the third term of the Legislative Council there should be 60 seats in the Council made up of 30 for Members returned by functional constituencies and 30 for Members returned by geographical constituencies. Annex II also provides that for the formation of the Legislative Council after 2007, amendments must be made in accordance with the provisions in Annex II if there is a need to do so. In accordance with the Interpretation by the Standing Committee of the NPC promulgated on 26 April 2004, the Chief Executive shall make a report to the Standing Committee of the NPC as regards whether there is a need to make an amendment to the method for

### 3. *Members of the Legislative Council*

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selecting the Chief Executive and for forming the Legislative Council, and the Standing Committee shall then, in accordance with Article 68 of the Basic Law, make a determination in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. This has been explained in Chapter 2.

3.4 For the formation of the Fourth and Fifth Legislative Councils, it was decided by the Standing Committee of the NPC, on 26 April 2004 and 29 December 2007 respectively, that the ratio between Members returned by functional constituencies and those returned by geographical constituencies through direct elections, who should respectively occupy half of the seats of the Legislative Council, was to remain unchanged.

3.5 At the Council meeting of 23 June 2010, the Legislative Council passed a motion to propose to amend Annex II to the Basic Law to increase the number of seats in the Fifth Legislative Council to 70, with 35 from each of the two groups of constituencies. The passage of the motion which required a two-thirds majority vote of the Members of the Council, was largely due to the fact that the Government had agreed to introduce the arrangement of "one-person-two-votes" in the 2012 Legislative Council Election. On 15 December 2010, the Government introduced the Legislative Council (Amendment) Bill for the election of the Fifth Legislative Council which contained, inter alia, the "one-person-one-vote" election arrangement for functional constituencies. The Bill was passed on 3 March 2011. Details are provided below.

#### Constituencies

##### *Historical background*

3.6 The concept of *functional constituencies* and *geographical constituencies* was first introduced in the Green Paper on the Further Development of Representative Government of Hong Kong announced by Governor Sir Edward Youde at a special Legislative Council sitting on 18 July 1984, towards the final stages of the two-year negotiation between the UK Government and the Government of the People's Republic of China over the future of Hong Kong. The Green Paper proposed a progressive development of a more representative Government by building on the two different types of shared interests among the people in the community, namely those arising from their place of residence and those arising from their occupation, which were described as geographical constituencies and

functional constituencies respectively. The Green Paper proposed two types of indirect elections: one through functional constituencies by way of a formal election of representatives from a wide range of functional constituencies such as commerce, industry, the medical profession, the legal profession, educational institutions, etc.; and one through an electoral college consisting of bodies with elected elements such as District Boards, the two Municipal Councils, etc.

3.7 After consultation, the Government published a White Paper in August 1984 and announced that 12 Members would be returned from each group of the two constituencies in 1985. In respect of functional constituencies, the Government also laid down guidelines for their determination and voting eligibility. For economic and social constituencies, votes would be based on organisations, associations and institutions with a territory-wide coverage, i.e. corporate votes. For professional constituencies, these would be based on membership of those professions with well-established and recognized qualifications, i.e. individual votes. In respect of geographical constituencies, the Government took note of the public's strong reactions about the lack of direct election in the 1984 Green Paper and agreed that a review would take place in 1987.

3.8 In 1988, the Government proposed in its plan to introduce 10 directly elected seats in the Legislative Council in 1991. In May 1989, the Unofficial Members of the Executive and Legislative Councils reached a consensus on the pace of democratic reform and one of the proposals was to have one-third of the seats of the Council, i.e. 20 seats, directly elected in 1991 and not less than 50%, i.e. 30 seats, directly elected in 1995. Seats of functional constituencies should be 20 in 1991 and no more than 30 in 1995. Following further negotiations between the UK Government and Government of the People's Republic of China, the Chinese Government finally agreed to increase the number of directly elected seats to 20 in the 60-member First Legislative Council of HKSAR, to 24 in the Second Legislative Council and to 30 in the Third Legislative Council. The Hong Kong Government then announced that the number of directly elected seats of the Hong Kong Legislative Council would be increased to 18 in 1991 and to 20 in 1995.<sup>1</sup>

3.9 On the other hand, the number of seats for functional constituencies in the Hong Kong Legislative Council was increased from 12 in the 1985-1988 legislative term to 14 in the 1988-1991 term, to 21 in the 1991-1995 term, and

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<sup>1</sup> See *Research Paper: Political Development in Hong Kong since the 1980s* published by the Research and Library Division of the Legislative Council Secretariat (September 1996).

### 3. *Members of the Legislative Council*

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to 30 in the 1995-1997 term.<sup>2</sup> Those Members returned in the 1985, 1988 and 1991 elections were elected according to the principles set out in the White Paper, i.e. corporate votes for economic and social constituencies and individual votes for professional constituencies.

3.10 In July 1992, Christopher Patten arrived in Hong Kong to replace Lord David Wilson as Governor of Hong Kong. On 7 October 1992, he announced in his first Policy Address new electoral arrangements for the functional constituencies as well as other electoral arrangements for district organisations. The new arrangements for functional constituencies included the broadening of the franchise of existing functional constituencies by replacing corporate voting with individual voting and the introduction of 9 functional constituencies which further broadened the size of the electorate. These arrangements were considered by the Government of the People's Republic of China to have deviated from the electoral arrangements originally agreed between China and the U.K. for maintaining the prosperity and stability of Hong Kong, making it not possible for the composition of the last Legislative Council to be in conformity with that stipulated in the Basic Law. The "through train" arrangement set out in the Decision<sup>3</sup> of the Standing Committee to provide for a smooth transition of the Legislature upon the establishment of the HKSAR was therefore no longer applicable.<sup>4</sup>

3.11 Nevertheless the Hong Kong Government introduced two bills into the Legislative Council on 15 December 1993 and 9 March 1994, to put in place the new electoral arrangements for the District Boards Election in 1994 and for the Legislative Council Election in 1995 respectively. The two bills were passed by the Legislative Council on 24 February 1994 and 30 June 1994 respectively. In the 1995 Legislative Council election, 30 Members were returned from 28 functional constituencies which had a total of 1 147 107 registered electors, and they served until 30 June 1997.

3.12 On 1 July 1997, the Provisional Legislative Council commenced its operation in Hong Kong.<sup>5</sup> On 3 October 1997, it passed the legislation to provide for the election of the First Legislative Council. Among the

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<sup>2</sup> The number of seats of functional constituencies in the last term of the pre-1997 Legislature was the same as that of the First Legislative Council of HKSAR.

<sup>3</sup> According to Decision of the Standing Committee adopted by the Seventh NPC on 4 April 1990, if the composition of the last Hong Kong Legislative Council before the establishment of the HKSAR is in conformity with the relevant provisions of this Decision and the Basic Law, those of its members who uphold the Basic Law and pledge allegiance to the HKSAR of the People's Republic of China, and who meet the requirements set forth in the Basic Law may, upon confirmation by the Preparatory Committee, become members of the First Legislative Council of HKSAR.

<sup>4</sup> See 《魯平口述香港回歸》, pp. 84-85.

<sup>5</sup> See Chapter 1, para. 1.4.

60 Members of the First Legislative Council, the 30 seats for functional constituencies were to come from 28 constituencies. The original methods to return Members from functional constituencies were maintained.<sup>6</sup> As for the 20 Members from geographical constituencies, the election was conducted using a list system of proportional representation<sup>7</sup> which has been used up to this date. The remaining 10 seats were returned by an Election Committee.

3.13 Changes were made in subsequent elections to the components of 30 functional constituencies to incorporate more sectors of the community into this group of constituencies. The number of directly elected seats representing the geographical constituencies was increased progressively to 24 in the Second Legislative Council and to 30 in the Third and Fourth Legislative Councils. In 2010, as explained in Chapter 2, a decision was made to enlarge the electorate to return Members from functional constituencies by way of the "one-person-one-vote" method for the Fifth Legislative Council and the number of Members to be returned from functional constituencies was increased to 35. Details are provided in **Appendix 3-A**.

3.14 In the 2012 Legislative Council election, every elector was entitled to two votes, one for each of the two groups of constituencies. The number of registered voters for functional constituencies was increased from 229 861 in the 2008 Election to 3 466 201 in the 2012 Election.<sup>8</sup> For geographical constituencies, the 35 seats were to come from 5 geographical constituencies<sup>9</sup>.

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<sup>6</sup> The original voting system for functional constituencies was retained: 3 smallest constituencies by preferential elimination voting system; Labour constituency by block vote system; others by single-seat, single-vote system.

<sup>7</sup> Under this system, an elector is entitled to cast a single vote for a list and not for an individual candidate. The number of valid votes cast for the election in a geographical constituency is divided by the number of vacancies to be elected for that constituency to arrive at the quota of votes. Each list that achieves the quota would have one candidate on the list elected. When all the vacancies in a constituency are not filled by applying the quota, then the filling of the remaining seat or seats will be decided by the largest remainder of votes cast for each list after the deduction of the quota or a number of quotas of votes cast for that list. If there are votes cast for a list that exceed the quota or quotas necessary to return all the candidates in the list, the list will be treated as having no further votes remaining.

<sup>8</sup> See Report on the 2008 Legislative Council general election, Electoral Affairs Commission; and Report on the 2012 Legislative Council general election, Electoral Affairs Commission.

<sup>9</sup> The power to decide on the delineation, the name, and the number of seats in each constituency is vested with the Chief Executive in Council, having regard to the relevant recommendations of the Electoral Affairs Commission. In delineating the geographical constituencies, the Electoral Affairs Commission follows the statutory criteria stipulated in the Legislative Council Ordinance and the Electoral Affairs Commission Ordinance and the working principles adopted by the Commission. In gist, there are to be 5 geographical constituencies and the number of Members to be returned from each constituency is to be not less than 5 or greater than 9. The extent of each proposed constituency is such that the population in that constituency is as near as practicable to the "resulting number" which is obtained by multiplying the population quota by the number of seats in that constituency.

### 3. *Members of the Legislative Council*

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The population represented by each seat in the geographical constituencies was 205 163.<sup>10</sup>

#### *Impact on procedures*

3.15 While there have been functional constituencies and geographical constituencies in the Legislature, strictly speaking, since 1985, their impact on the working of the Council has been different before and after the establishment of the HKSAR. The voting procedure in the Standing Orders of the pre-1997 Legislature made no distinction between these two groups of Members. All Members voted as members of the same group for any motion before the Council and where the Members who voted in favour of a motion were in the majority among those who voted, the motion was passed. The voting procedure of the HKSAR Legislature is provided in Annex II to the Basic Law. Unlike bills (or motions) introduced by the Government, the passage of which only require a simple majority vote of the Members present, the passage of motions, bills or amendments to government bills introduced by individual Members requires a simple majority vote of each of the two groups of Members present. Records show that even if there is a majority of Members in support of a Members' motion, the motion may not necessarily be passed under this voting method.

3.16 As for taking decisions in committees, the voting method which was used in committees in the pre-1997 Legislature, i.e. by a majority of the votes of the Members present and voting, has been adopted for use in the committees of the Legislature after 1997. There is no distinction between Members from the two groups of constituencies when voting on motions in committees.

#### Qualifications of Members

3.17 Under Article 67 of the Basic Law, the Legislative Council shall be composed of Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country. This Article also provides that permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council provided that the proportion of such members does not exceed 20% of the total membership of the Council. Those Members who are currently exempted from this nationality/right of abode requirement are those coming

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<sup>10</sup> Message from the Chairman of the Electoral Affairs Commission on the Public Consultation on the Provisional Recommendations on the Delineation of Geographical Constituencies for the 2012 Legislative Council Election (June 2011).

from the 12 functional constituencies listed in section 37(3) of the Legislative Council Ordinance (Cap. 542)<sup>11</sup>. This list and number of Members are subject to amendment provided that Article 67 is complied with.

3.18 The Legislative Council Ordinance<sup>12</sup> stipulates the eligibility for nomination as candidates for the geographical constituencies and functional constituencies:

- (a) For geographical constituencies, a person is eligible only if he has reached 21 years of age, is registered and eligible to be registered as an elector for that constituency, is not disqualified from being elected as a Member by virtue of section 39 of the Ordinance<sup>13</sup> and any other laws, has ordinarily resided in Hong Kong for the 3 years immediately preceding nomination and is a Chinese citizen who is a permanent resident of the HKSAR with no right of abode in any country other than the People's Republic of China; and
- (b) For functional constituencies, the criteria are basically the same but the person to be nominated as a candidate of a functional constituency (other than the District Council functional constituencies) must be able to satisfy the Returning Officer<sup>14</sup> for that constituency that he has a substantial connection with the constituency. Those nominated for the 12 functional constituencies listed in section 37(3) of the Ordinance are exempted from the nationality/right of abode requirement as explained above.

3.19 A Member of the Legislative Council is not eligible to be nominated as a candidate at a by-election; and a person who resigns as a Member within 6 months ending on the date of a by-election is also not eligible to be nominated as a candidate at that by-election.

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<sup>11</sup> The 12 functional constituencies are legal; accountancy; engineering; architectural, surveying and planning; real estate and construction; tourism; commercial (first); industrial (first); finance; financial services; import and export; and insurance.

<sup>12</sup> Section 37 of the Legislative Council Ordinance.

<sup>13</sup> Section 39 of the Legislative Council Ordinance lists out the persons who are disqualified from being nominated as a candidate and from being elected as a Member.

<sup>14</sup> Section 78 of the Legislative Council Ordinance.

### 3. *Members of the Legislative Council*

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#### Timing for general elections and by-elections

3.20 Sections 1 and 2 of the Legislative Council Ordinance also provide that the general election for each term of office of the Legislative Council must be not earlier than 60 days and not later than 15 days before the new term of office of the Legislative Council is to begin. To enable such a general election to be held, the Chief Executive may, before the end of a term of office of the Legislative Council, prorogue that Council to terminate its operation. Members remain as Members of the Legislative Council and may take part in the general election as candidates during the prorogation of the Council.

3.21 Where a vacancy arises from resignation or death or other reasons as set out in section 15 of the Legislative Council Ordinance, the Clerk to the Legislative Council must, by notice published in the Gazette, declare the existence of that vacancy within 21 days after becoming aware of it.<sup>15</sup> The Electoral Affairs Commission must arrange for a by-election unless the by-election, if held, would take place within 4 months preceding the end of the Council's current term of office or the Chief Executive has published in the Gazette an order to dissolve the Council in accordance with the Basic Law.<sup>16</sup> There is no stipulation in the law on when a by-election ought to be held, but section 7 of the Electoral Affairs Commission (Electoral Procedures) (Legislative Council) Regulations provides the following:

- (a) That the nomination period must not begin earlier than the date on which the election notice or by-election notice is published in the Gazette;
- (b) That the nomination period must not be less than 14 days or more than 21 days; and
- (c) That the nomination period must end not less than 28 days and not more than 42 days before the date on which the relevant election is to be held.

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<sup>15</sup> Section 35 of the Legislative Council Ordinance.

<sup>16</sup> Section 36 of the Legislative Council Ordinance.

### **Assumption of office**

3.22 The term of office of the Legislative Council shall be four years according to the Basic Law, except for the first term which was two years. Section 6(1) of the Legislative Council Ordinance provides that each term of office is to begin on a date to be specified by the Chief Executive in Council. With the exception of the First Legislative Council which commenced on 1 July 1998, the Chief Executive in Council has been designating 1 October as the commencement date of a new term of office of the Legislative Council since the Second Legislative Council.

3.23 Under section 12 of the Legislative Council Ordinance, a person returned as a Member at a general election holds office from the beginning of the term of office in the Legislative Council next following the election and vacates office at the end of the term. A person returned as a Member at a by-election holds office from the date on which the result of the by-election was declared and vacates office at the end of the term of office of the Legislative Council during which the by-election was held. The person is regarded as having accepted office unless written notice is given to the Clerk to the Legislative Council of non-acceptance of office within 7 days after notification of the person's election is published in the Gazette. A notice of non-acceptance takes effect on the date on which the notice is received by the Clerk to the Legislative Council and the person giving the notice is taken to have resigned from office as a Member from that date. The Clerk to the Legislative Council must, within 21 days after receiving the notice, publish in the Gazette a notice to the effect that the person has not accepted office as a Member.<sup>17</sup>

3.24 As a person elected to office is regarded as having assumed office on the date specified in the notice of the Gazette after election, that person is a Member with effect from that date but he cannot attend a meeting or vote in a meeting until he has taken the Oath or made an Affirmation. If a Member, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of the Legislative Council, he is subject to disqualification of membership under Article 79(2) of the Basic Law.

### Taking of the Legislative Council Oath

3.25 Article 104 of the Basic Law stipulates that when assuming office, members of the Legislative Council must, in accordance with law, swear to

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<sup>17</sup> Section 13 of the Legislative Council Ordinance (Cap. 542).

### 3. *Members of the Legislative Council*

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uphold the Basic Law of the HKSAR and swear allegiance to the HKSAR. The meaning of "in accordance with law" in that Article has been held by the Court<sup>18</sup> to mean that "a Legislative Councillor must take his oath in a manner and form that accord with the law of Hong Kong".

#### *The manner and form of The Legislative Council Oath*

3.26 The Oaths and Declarations Ordinance (Cap. 11) provides that a Member of the Legislative Council shall, as soon as possible after the commencement of his term of office, take the Legislative Council Oath which is specified in Part IV of Schedule 2 to the Ordinance, as follows:

"I swear that, being a member of the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China, I will uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China and serve the Hong Kong Special Administrative Region conscientiously, dutifully, in full accordance with the law, honestly and with integrity."

3.27 A Member may, for religious reasons, choose to swear by saying the words "I swear by Almighty God that", followed by the words in the Legislative Council Oath.<sup>19</sup> A Member may also choose to make an affirmation instead of taking an oath. For this purpose, suitable adaptation is made in accordance with the prescribed wordings provided in section 7 of the same Ordinance. Other than the above, the law does not allow a Member to use any other form and manner in taking the Legislative Council Oath. Any oath taken which amounts to deviation from the prescribed wording of the Oath as permitted under the law would be inconsistent with Article 104 of the Basic Law and will therefore be unlawful and of no effect.<sup>20 21</sup>

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<sup>18</sup> *Leung Kwok Hung v Clerk to the Legislative Council* [2004] H.K.E.C. 1242.

<sup>19</sup> Section 5 of the Oaths and Declarations Ordinance.

<sup>20</sup> In the case of *Leung Kwok Hung v Clerk to the Legislative Council* [2004] H.K.E.C. 1242, the Court said that "the form of the oath to be taken by a Legislative Councillor is fixed by statute and, until, or unless, that form is amended by the Legislative Council itself, it must be adhered to if a Legislative Councillor is to take the oath "in accordance with law".

<sup>21</sup> The President of the Legislative Council, after he was elected as President on 10 October 2012, ruled that Hon WONG Yuk-man who omitted certain words in the Oath he took at the first meeting of the term had not made or subscribed an oath or affirmation in accordance with the provision of the Oaths and Declarations Ordinance. The President allowed Mr WONG to attend the next meeting of the Council, i.e. 17 October 2012, to take the Legislative Council Oath.

#### *Oath-taking at the first meeting or other meeting of the Term*

3.28 In line with the requirement of Article 104 of the Basic Law on the taking of the oath of allegiance when assuming office by a Member, provisions are made in the Rules of Procedure as follows:

- (a) Rule 1 stipulates that no Member shall attend a meeting or vote in a meeting until he has made the Legislative Council Oath (or affirmation) in accordance with the Oaths and Declarations Ordinance. Where a general election for all Members of the Legislative Council is held, a Member who had previously made the Oath (or affirmation) shall again do so before he attends a meeting or votes in the Council: and
- (b) Rule 12(1) stipulates that the taking of the Legislative Council Oath shall take place at the first meeting of the term.

3.29 The first meeting of a new term is often held on the second or third Wednesday in October. The taking of Oath by Members is held at the beginning of the meeting, administered by the Clerk to the Legislative Council in accordance with section 19 of the Oaths and Declarations Ordinance.<sup>22</sup> This is followed by the election of the President of the Legislative Council.

3.30 For those Members who fail to take the Oath at the first meeting or who are returned to the Council through a by-election during the term, the taking of the Oath is held at the start of the earliest meeting possible, and it will be administered by the President or any Member acting in his place.<sup>23</sup>

#### *Failure to take oath*

3.31 Section 21 of the Oaths and Declarations Ordinance provides that if a person declines or neglects to take an oath which he is required to take, he shall vacate the office, or if he has not entered on his office, be disqualified from entering on it. This provision is also applicable to a Legislative Council Member.

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<sup>22</sup> Prior to October 2012, it was a convention for all Members to remain standing while other Members were taking Oath at meetings of the Council. On 10 October 2012, with the number of Members increased to 70, discretion was given to individual Members to decide whether they wished to sit or stand while others were taking Oath.

<sup>23</sup> Section 19 of the Oaths and Declarations Ordinance.

### *3. Members of the Legislative Council*

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#### *Order in taking the Oath or Affirmation*

3.32 The order of Members in taking the Oath (or affirmation) is determined according to the continuous period of time for which the Member has held office in the Legislative Council. A Member who has held office for a longer continuous period shall have precedence. Where two or more Members have held office for the same continuous period, their order shall be determined according to the number of strokes in the traditional characters of the Members' surnames and then names in Chinese. A Member whose name has less number of strokes shall have precedence.<sup>24</sup>

#### *Signing of written Oath or Affirmation*

3.33 It has been the convention for Members to sign on the printed version of the Oath or Affirmation after they have taken the Oath or Affirmation. There is no requirement under the law that the Legislative Council Oath must be signed. It is therefore for the individual Members to decide whether they wish to sign on the printed version. All signed copies of the Legislative Council Oath are kept in the Legislative Council Archives.

#### Seating in the Chamber and Conference Rooms

3.34 Members are allocated dedicated seating for Council meetings, meetings of the House Committee, the Finance Committee and the two subcommittees of the Finance Committee. Fixed seating is necessary for these meetings as voting often takes place and, where a division has been ordered, the counting of votes is carried out through an electronic voting system which is installed in the individual seats of Members. According to Rule 48 of the Rules of Procedure, where an electronic system of voting is provided in the Council or a committee of the whole Council, the Members present and voting are required to cast their votes by using the electronic system unless the President or Chairman otherwise orders.

3.35 Prior to the establishment of the First Legislative Council, for Council sittings, the allocation of seats in the Chamber was determined by the precedence of Members, with the Members having the longest continuous service in the Legislature seated in the front. This seating arrangement was considered appropriate when the majority of Members were either official or appointed. With more Members returning to the Council by way of elections, whether through functional constituencies or geographical constituencies,

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<sup>24</sup> Rule 1 of House Rules.

there was a growing need for those who belonged to the same political party or affiliation to be seated near to each other for easy communication. During a briefing session for Members-elect of the First Legislative Council, it was agreed that from then onwards, Members should sit according to their preferred grouping. It was also agreed that the Members should be consulted on their preferred group and seats be allocated by the drawing of lots. This method of allocation was further fine-tuned in subsequent terms based on the size of groupings and physical constraints in the Chamber of the old Legislative Council Building.

3.36 In anticipation of the relocation of the Legislative Council to the new Legislative Council Complex at Tamar in September 2011, the matter was examined by The Legislative Council Commission. In June 2011, the Commission adopted an allocation method having regard to the new configuration of the Chamber and also the need for meetings of the House Committee and the Finance Committee to be held in a separate Conference Room. This allocation method, which has been used up to this date, is explained below.

3.37 When assuming office, Members are invited to indicate to the Legislative Council Secretariat whether they wish to sit as a group in the Chamber and in Conference Room 1, and if so, provide the names of the group as well as their preferred seats in the two meeting venues. Members are then invited to attend a closed meeting before the commencement of the first session of the new term to discuss and finalize the seating arrangements. The principle adopted in the allocation of seats is that Members in larger groups will have priority in selecting the block of seats over those in smaller groups and individual Members. For Members with the same group size, lots will be drawn to determine their relative priority in selecting the blocks of seats to be allocated to the groups. Members within the same group will determine among themselves the allocation of the seats within the block of seats allocated to the group. For Members who do not belong to any group, lots will be drawn to determine their relative priority in selecting seats in the meeting venues.

3.38 For the two subcommittees of the Finance Committee, namely the Establishment Subcommittee and the Public Works Subcommittee, the clerks to the two subcommittees determine the seating according to the grouping provided to the Secretariat and arrange for Members of the same grouping to be seated near to each other.

### *3. Members of the Legislative Council*

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3.39 For other meetings of committees, Members may sit in any unallocated seats. Seats on one side of the meeting room are usually reserved for public officers who have notified the clerk to the committee of their attendance and a seating plan is provided to allow the chairman to identify the individual public officers attending. For any persons or groups invited by committee to attend the meeting, separate seats will be designated for them and their seating will appear on the seating plan which will also be provided for members of the committee.

#### **Addressing a Member**

3.40 A person elected to the Legislature is addressed as a Member of the Legislative Council. When being addressed formally, in writing or in official ceremonies, or at meetings of the Legislative Council, the prefix "The Honourable" is used before their name. It is for each individual Member to decide whether their professional titles should be added, and if added, such title should be put before "The Honourable", followed by the awards received by the Member, if any, such as "Dr the Honourable (name), G.B.S."<sup>25</sup> A female Member may choose to add her personal status in her name, such as "The Honourable Mrs (name)" or "The Honourable Ms (name)" but this is not compulsory.

3.41 Where a HKSAR award received by a Member is added to the name of the Member, only the highest rank of the awards received by the Member should be included. For example, if a Member receives a Golden Bauhinia Star (G.B.S.) several years after being awarded a Silver Bauhinia Star (S.B.S.), only G.B.S. should be included. Where a Member is appointed as a Justice of the Peace (J.P.), the title may be added to the name of the Member, but after the awards, such as "The Honourable (name), G.B.S, J.P."

3.42 In correspondence or official ceremonies, there is no need to use the prefix "The Honourable" each time the name is mentioned. After the Member has been addressed as "The Honourable" for the first time, he/she may be referred to as "Mr", "Mrs" or "Ms" in the subsequent part of the correspondence or official proceedings.

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<sup>25</sup> Based on Departmental Standing Instructions issued by Government Secretariat of Hong Kong (1979).

#### **Responsibilities and conduct of Members**

3.43 Upon election, Members are returned to the Legislative Council as representatives of their respective constituencies. They have the duty to participate in the work of the Council so that the Legislative Council may perform the powers and functions given to it under the Basic Law. The responsibilities of a Member are wide-ranging. Members are required to observe the rules of order<sup>26</sup> in the Council and committees as set out in the Rules of Procedure. Apart from attending meetings of the Council and taking part in the enactment process of laws, in debates on public policies, and in raising questions to the Government, Members are also expected to take an active role in committees, to handle public complaints under the Redress System<sup>27</sup> and to make themselves available to their constituents. Through maintaining communication with constituents<sup>28</sup>, Members should be familiar and up to date with the concerns of the public about Government policies or legislation to be, or being, considered by the Legislative Council, and are well placed to convey to the Government what needs to be done to address these concerns. This communication process requires Members to acquire and develop specialized knowledge in specific areas of public policies and legislation and establish effective channels to listen to the views of the public. The exchange of views among Members who represent different interests in the community also helps enhance greater understanding of the impact any new policies or legislation may have on affected stakeholders and the community at large.

#### Advisory Guidelines on Members' conduct

3.44 In Hong Kong, Members of the Legislative Council are expected to conduct themselves in a manner which inspires the public's trust and confidence in the Legislature.<sup>29</sup> Although there is no code of practice for Legislative Council Members, there is a set of advisory guidelines on matters of ethics issued to all Members at the start of each new term. This was first

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<sup>26</sup> Rule 45 of the Rules of Procedure provides for order in Council and committee, including the power of the President and chairman of any standing or select committee to act upon grossly disorderly conduct of Members.

<sup>27</sup> The Redress System is operated by the Legislative Council Secretariat, with Members serving on a roster to handle complaints and representations from the public.

<sup>28</sup> Members are provided with various kinds of reimbursements for expenses arising from their Legislative Council duties, including reimbursements for the operation of Members' Offices and the setting up of district offices in their constituencies.

<sup>29</sup> Report of the Ad Hoc Group on Review of Standing Orders submitted the LegCo In-house Meeting (1991).

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drawn up by the Committee on Members' Interests<sup>30</sup> of the pre-1997 Legislature in June 1996 after it had taken into account the practices adopted by overseas legislatures in monitoring the conduct of Members of the Parliament. The current set of guidelines, which is called the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such" (the "Advisory Guidelines"), has been developed based on the principles laid down in the first set of Advisory Guidelines drawn up in June 1996 and adopted by the HKSAR Legislature in 1997.

3.45 Over the years, the Advisory Guidelines have been reviewed from time to time in the light of new developments arising from public discussions on the general expectation of a Member's conduct. While it was the practice for the Committee on Members' Interests to consult Members at the start of a new term before issuing the Advisory Guidelines, a decision was made by the Committee on Members' Interests of the Fifth Legislative Council that in future, the Advisory Guidelines should remain in force until amended and should be issued to all Members when they take office.

3.46 The current set of Advisory Guidelines (**Appendix 3-B**) is based on the version adopted in June 2009 after the then Committee on Members' Interests decided that the Advisory Guidelines should only contain guidelines which are advisory in nature. The versions used in previous terms of the HKSAR Legislative Council contained also specific standards which were provisions relating to the registration and declaration of Members' interests and the making of reimbursement claims for operating expenses or advance of operating expenses included in the Rules of Procedure. It was considered by the Committee that the inclusion of these provisions in the Advisory Guidelines would be misleading as breaches of these provisions would result in sanctions which were set out in the Rules of Procedure. To avoid confusion, these specific standards were removed from the Advisory Guidelines in 2009. The standards currently set out in the Advisory Guidelines are only general and advisory in nature, but they contain the important principles in determining whether a Member has met the standard of conduct expected of him or her as a Member of the Legislature.

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<sup>30</sup> The terms of reference of the Committee on Members' Interests includes the consideration of matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters.

#### *Guarding the integrity of the Legislative Council*

3.47 The first principle set out in the Advisory Guidelines is that "A Member should ensure that his or her conduct must not be such as to bring discredit upon the Legislative Council".<sup>31</sup> This principle derived from one of the general principles identified by the Nolan Committee<sup>32</sup> of the House of Commons of the UK Parliament as applicable to holders of public office. The Nolan report states that:

*"Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally into disrepute."*<sup>33</sup>

3.48 To elaborate on this point, the Advisory Guidelines further provide that Members should not place themselves in a position which may be contrary to the generally assumed standard of conduct expected of a Member. An example has been quoted. Where a Member needs to decide whether to engage in activities of a commercial nature, such as advertisement activities, he or she should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council, and thereby bringing discredit upon the Council.

3.49 In relation to a particular case studied by the Committee on Members' Interests in respect of a Member's appearance in commercial advertisements, a question was raised whether any restriction on such appearance would infringe on a Member's freedom of expression enshrined in Article 16 of the Hong Kong Bill of Rights Ordinance (Cap. 383). The legal advice given to the Committee on Members' Interests was that the freedom of expression in this Article is not absolute and restriction may be imposed on a need basis. It would be for the Council to decide on the scope of restriction, its enforceability and whether there are other means to achieve the same objective.

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<sup>31</sup> The wording was adopted from a similar provision adopted by the Parliament of Victoria, Australia.

<sup>32</sup> On 25 October 1994, the Committee on Standards in Public Life was set up by the Prime Minister of the UK Government to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life. Lord Nolan was the first Chairman of the Committee. The Committee is often referred to as the Nolan Committee.

<sup>33</sup> Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 22<sup>nd</sup> Edition, p. 420.

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*Follow the spirit of the rules and not just the words*

3.50 Another principle set out in the Advisory Guidelines is that Members should "*adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or the President for the regulation of the practice and procedure of the Council and its committees or Members' behaviour in their conduct of the business of the Council*".

3.51 This provision was adapted from clause 2 of Rule 43 (currently Rule 23) of the Rules of the House of Representatives of the United States of America. It is important that Members should seek to comply with the spirit as well as the letter of the Rules.

*Should not make use of the office of a Member to further private interest*

3.52 Members should be mindful at all times of any conflict between their personal and public interests and should always resolve any such conflict in favour of public interest.<sup>34</sup> The privileges and rights which come with the capacity of a Member of the Legislative Council, such as freedom of speech in the Council, the right to move, speak and vote on motions, are given to them for the pursuance of their public duty. It is important to demonstrate to the public that Members must not take advantage of their position as a Member to pursue their private interests. In the Advisory Guidelines, the following standards have been provided:

- *A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest;*<sup>35</sup>
- *A Member should not knowingly take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public;*<sup>36</sup>
- *A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.*<sup>37</sup>

3.53 The above standards only serve to illustrate how Members are expected to conduct themselves in their ethical discharge of duties but they are

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<sup>34</sup> Erskine May (22<sup>nd</sup> Edition), p. 420.

<sup>35</sup> This standard was adapted from a provision of the Members' Standards of Office Act 1986 (Ontario), Canada.

<sup>36</sup> This standard was adapted from a provision of the Canadian Code for Ministers and Public Office Holders.

<sup>37</sup> This standard was adapted from a provision in the Draft Code for India's Members of Parliament.

not exhaustive. Members should be cautious about the existence of any potential conflict of interest and ensure that they would not take advantage of their capacity as a Member to seek information or to influence others for their private purpose.

*Personal information provided by Member should be correct and true*

3.54 The Legislative Council publishes the biographies of all Members on the official website of the Council. The biographies contain some personal information about the Members, including their education and professional qualifications. Members are reminded that the personal information they provide to the Council and the Legislative Council Secretariat, such as qualifications, should be correct and true as much in the interests of the reputation of the institution as a whole as of their personal reputation.<sup>38</sup>

#### **Disclosure of pecuniary interests**

3.55 There is a long history in the Hong Kong Legislature of requiring a Member to make known any pecuniary interests he may have on any matter considered by the Council or any committee and to disallow the Member from voting on such matter. This requirement is reflected in Rule 83A of the Rules of Procedure which stipulates that: "In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest." The origin of this provision in the Rules of Procedure can be traced back to 1968 when the Standing Orders were amended to include a disclosure of interest requirement.<sup>39</sup> This requirement has been reviewed and fine-tuned over the years, having regard to the developments in overseas legislatures. In the current Rules of the Procedure of the HKSAR Legislature, there are rules to provide for the registration and declaration of pecuniary interests as well as for the voting on matters in which Members have a direct pecuniary interest. There is also a mechanism to provide for the investigation of complaints against Members for non-compliance with the rules and the imposition of sanctions by resolution of the Council.

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<sup>38</sup> This standard was added in 2004-2005 after the Committee on Members' Interests deliberated an email message from a member of the public raising doubts about the academic standing of the educational qualifications claimed by a Member on the Legislative Council Website.

<sup>39</sup> A provision to disallow Members from voting on a matter with direct pecuniary interest was provided in the 1929 Standing Orders but there was no requirement that a Member needed to disclose his pecuniary interest when speaking on the matter. In the 1968 Standing Orders, this provision was amended in such a way that the disallowance of vote only applied to non-disclosure of direct pecuniary interests.

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#### Historical background

3.56 In the 1968 Standing Orders of the pre-1997 Legislative Council, there was a new requirement in Standing Order No. 65(1) that "*a Member shall not move any motion or amendment relating to a matter in which he has a direct pecuniary interest or speak or vote on any such matter, whether in the Council or in any committee, without disclosing the nature of that interest*". The purpose behind the disclosure of pecuniary interests was to make it known to all parties any "direct" pecuniary interest which a Member had on a matter before the Council or a committee, and which might reasonably be thought by others to have influenced the Member's speech or vote on the matter. Members were allowed to vote on a matter in which they had a direct pecuniary interest provided that they disclosed the nature of that interest. However a Member's vote could be disallowed on grounds of non-disclosure of his personal pecuniary interest upon a motion passed by the Council.

3.57 In July 1985, in anticipation of the first batch of 12 Members returned from functional constituencies and 12 elected from the Electoral College to the Legislative Council, the Clerk of Councils<sup>40</sup> instituted an administrative arrangement to compile a list of Members' interests. The purpose was to facilitate the planning of business in the Council and to anticipate where conflicts of interest might arise. All Members were requested to register at the start of the new term particulars of remunerated directorships of public or private companies; remunerated employments or offices; and remunerated trades, professions or vocations. Based on Members' returns, a list was compiled by the Clerk of Councils and updated annually for inspection by the media and the public.

3.58 In October 1989, an Ad Hoc Group was set up under the OMELCO committee system to review the Standing Orders of the Legislative Council. In its study of Standing Order No. 65, the Ad Hoc Group noted that the practice of asking Members to disclose their remunerated services and maintaining a list of Members' interests for public inspection was an administrative measure implemented by the Clerk of Councils and was not part of the procedure of the Council. This practice was in fact similar to the procedure relating to the Register of Members' Interests adopted by the House of Commons in the UK which required its Members to disclose 9 classes of pecuniary interests including those 3 classes declared by Members of the

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<sup>40</sup> Prior to 1994, support services to the official business of the Executive Council and the Legislative Council was provided by the Clerk of Councils who assigned a Clerk to service the Executive Council and a Clerk to service the Legislative Council.

Hong Kong Legislature. Concerning the purpose of the Register, the UK Select Committee on Members' Interests provided the following explanation<sup>41</sup>:

*"The purpose of the register is to record generally and to give public notice of the interest and benefits which a Member enjoys and which might on occasion affect the discharge of his Parliamentary duties. The register is supplementary to and not in place of the obligation on a Member to declare his interests where the occasion arises"*<sup>42</sup>.

3.59 The Ad Hoc Group also noted that it was also a practice for Members to declare direct pecuniary interest at OMELCO committee meetings.<sup>43</sup> As a result of this review, the Standing Orders were amended on 10 July 1991 to put in place a mechanism for the registration and declaration of Members' interests. Apart from extending the classes of pecuniary interests required to be disclosed to cover all 9 classes of pecuniary interests which Members of the UK House of Commons were at that time required to disclose, the Council also agreed to set up a standing committee similar to the UK Select Committee on Members' Interests, named the Committee on Members' Interests. This new standing committee was given the responsibility to conduct enquiries in relation to complaints and recommend sanctions by moving resolutions in the Council, and to provide advice for Members on the standards of ethics. This mechanism came into force on 12 September 1991.

3.60 In July 1992, the Committee on Members' Interests produced a set of "Guidelines on Registration of Interests" to facilitate Members in making their returns on the 9 classes of "registrable interests". A review of the mechanism was undertaken by the Committee in the following year with a view to tightening up the registration and declaration arrangements. At the Council sitting on 4 May 1994, a series of amendments were made to the Standing Orders. Among these were the raising of the level of disclosure for financial sponsorships received during election and the requirement that registration of interests received by spouses should be extended to "financial sponsorships", "overseas visits", "payments, and other material benefits or advantages" arising out of Members' membership of the Council.<sup>44</sup>

3.61 Another major change made in 1994 was the amendments to the rules governing the disclosure of interests in the proceedings of the Council and

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<sup>41</sup> Report of the Select Committee on Members' Interests made on 12 December 1974.

<sup>42</sup> Report of the LegCo Ad Hoc Group to study the Standing Orders of the Legislative Council (March 1991), Appendix D "Declaration of Interest by Members of the Legislative Council".

<sup>43</sup> Report of the LegCo Ad Hoc Group to Study the Standing Orders of the Legislative Council presented to LegCo In-house Meeting on 19 March 1991.

<sup>44</sup> Council sitting on 4 May 1994. *Hansard*.

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committees. Under the new procedure<sup>45</sup>, Members should not vote on any matter in which they had a direct pecuniary interest even if they had disclosed that interest. "Indirect pecuniary interest" should also be disclosed when moving a motion or an amendment or speaking on a matter in which a Member had a pecuniary interest. Where a Member had a direct pecuniary interest in a matter and was present at any debate or proceedings of the Council or a committee on that matter, he was required to declare that interest<sup>46</sup>.

#### Mechanism for the registration and declaration of Members' interests

3.62 The above mechanism for the registration and disclosure of Members' interests was adopted by the First Legislative Council of the HKSAR as part of its Rules of Procedure made on 2 July 1998. Further changes have taken place since then to cater for changing circumstances, such as the inclusion of donations received for meeting expenses in Legislative Council elections as registrable interests<sup>47</sup>, and the requirement to disclose names of parent companies of remunerated directorships in subsidiary companies<sup>48</sup>. The mechanism now works in the following manner:

- (a) Every Member must furnish particulars of his registrable interests to the Clerk in a form approved by the President before the first meeting of the term<sup>49</sup> or, for a new Member to fill a vacant seat, with 14 days from the date of his becoming a Member<sup>50</sup>;
- (b) Any change in such registrable interests should be furnished to the Clerk in a form approved by the President within 14 days of any such change<sup>51</sup>;
- (c) The forms which contain the particulars in (a) and (b) above are entered into a Register of Members' Interests and are available for public inspection<sup>52</sup>;

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<sup>45</sup> The new procedure was set out in Standing Order 65(1), (1A) and (1B) and was adopted as Rule 84(1), (2) and (3) of the Rules of Procedure of the First Legislative Council.

<sup>46</sup> Rule 84(3) of the Rules of procedure was amended on 28 April 1999 so that only those Members speaking at the debate or proceedings were required to declare any direct pecuniary interests which they had in the matter. This subrule subsequently became part of Rule 83A.

<sup>47</sup> Amendment made to Rule 83(5)(d)(i) of Rules of Procedure on 28 April 1999.

<sup>48</sup> Amendment made to Rule 83(5)(a) of the Rules of Procedure on 26 April 2006.

<sup>49</sup> Rule 83(1) of the Rules of Procedure.

<sup>50</sup> Rule 83(2) of the Rules of Procedure.

<sup>51</sup> Rule 83(3) of the Rules of Procedure.

<sup>52</sup> Rule 83(4) of the Rules of Procedure; the register is available for public inspection during office hours and starting from January 2001, the register is also accessible on the official website of the Legislative Council.

- (d) A Member is not allowed to move any motion or amendment relating to a matter in which he has a direct or indirect pecuniary interest or speak on such matter, in the Council or any committee or subcommittee, without disclosing the nature of that interest<sup>53</sup>;
- (e) In the Council or in any committee or subcommittee, a Member is not allowed to vote on any motion 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; such Member should also withdraw if the vote is taken in the Council or a committee of the whole Council<sup>54</sup>;
- (f) Any complaints made in relation to the registration and declaration of Members' interests are investigated by the Committee on Members' Interests which reports to the Council and makes recommendations, including a recommendation for sanctions<sup>55</sup>; and
- (g) Any Member who fails to comply with the relevant rules on the registration and declaration of interests may be admonished, reprimanded or suspended by resolution of the Council<sup>56</sup>.

3.63 In 2006, the Council decided that the Committee on Members' Interests should also consider any complaints relating to claims for reimbursement of operating expenses or applications for an advance of operating funds. When considering or investigating such complaints, the Committee should also have regard to the provisions of *A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council* ("the Reimbursement Guide"<sup>57</sup>) apart from all other relevant matters. A new Rule 83AA was provided in the Rules of Procedure to require Members to ensure that any information provided or declaration made is true, accurate and complete, and Members should act according to any undertaking that they have given<sup>58</sup>. In this respect, emphasis has been placed on the need to avoid conflict of interests in the guiding principles of the Guide. For

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<sup>53</sup> Rule 83A of the Rules of Procedure.

<sup>54</sup> Rule 84(1) and (1A) of the Rules of Procedure.

<sup>55</sup> Rule 73(1) of the Rules of Procedure.

<sup>56</sup> Rule 85 of the Rules of Procedure.

<sup>57</sup> *Guide for Reimbursement of Operating Expenses for Members of the Legislative Council* is available at the Legislative Council website.

<sup>58</sup> Rules 83AA, 73(1)(ca), (e), 73(1A) and 85 of the Rules of Procedure.

### 3. *Members of the Legislative Council*

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example, a Member should refrain from claiming reimbursement for any transaction from which he or his relatives or business associates may be perceived to have benefited. If a conflict of interest cannot be avoided, the Member should make a declaration of the interest involved which will be made available for public inspection. If the perceived conflict of interest has become a matter of public concern, the Member should take steps to resolve the conflict in favour of the public interest.<sup>59</sup>

#### Registrable interests

3.64 The registrable interests referred to in paragraph 3.62(a) and (b) above are set out in Rule 83(5) of the Rules of Procedure. There are at present 8 categories of registrable interests (as two categories of interests were amalgamated into one in 1994, as listed in category (b) below):

- (a) remunerated directorships of public or private companies (including holding companies of such companies<sup>60</sup>);
- (b) remunerated employments, offices, trades, professions or vocations<sup>61</sup>;
- (c) names of clients when the interests from the above arise from the personal services by the Member's being a Member of the Council;
- (d) election donations or financial sponsorships to the Member or his spouse;
- (e) overseas visits made arising out of the membership of the Council by the Member or his spouse, the cost of which has not been wholly borne by the Member or public funds;
- (f) payments, benefits and advantages received arising out of the membership of the Council from any Government or organisation of a place outside Hong Kong or from any person who is not a permanent resident of Hong Kong<sup>62</sup>;
- (g) land and property; and

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<sup>59</sup> "A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council" (October 2013), para. 7-12.

<sup>60</sup> Amendments made by the Council on 26 April 2006 and on 8 January 2014.

<sup>61</sup> Two categories of registrable interests were amalgamated to become one category on 4 May 1994.

<sup>62</sup> This arrangement was adopted by the Provisional Legislative Council on 12 April 1997 and it formed part of the Rules of Procedure adopted by the First Legislative Council on 2 July 1998.

- (h) names of companies in which a Member (or with or on behalf of his or her spouse or infant children) has a beneficial interest in shares of a number greater than one-hundredth of the total number of shares.

3.65 For registering the particulars of registrable interests, Members are required to use the registration form approved by the President for such purpose (**Appendix 3-C**). Explanatory notes are provided in the registration form to facilitate Members in understanding the meaning of the terms used in the form and the extent of details required. Members are also provided with a set of Guidelines on Registration of Interests (**Appendix 3-D**) which sets out the purpose of the Register and the general principles to be followed when completing the registration form. Both the Guidelines and the registration form are reviewed from time to time by the Committee on Members' Interests and where changes are to be made to the Registration Form, approval is sought from the President for making such changes. All Members are consulted before proposing any changes to the Guidelines and to the Registration Form. Where the changes are made as a result of amendments to the Rules of Procedure or consequential to legislative changes, no further consultation with Members is required.

#### *Remunerated directorships*

3.66 Remunerated directorships to be registered refer to all directorships in any local or overseas public and private companies for which a fee, honorarium, allowance or other "material benefits" is payable. Members are required to give the name of the company and state briefly the nature of the business of the company. If the company has a holding company within the meaning of section 13<sup>63</sup> of the Companies Ordinance (Cap. 622), the name of that holding company should also be registered.

3.67 Where a Member is a remunerated director of a company which holds a group of other companies, he should also register any subsidiary or associated directorships which he holds within the same group, whether remunerated or not.

3.68 "Material benefits" refer to any interests received from a single source in the course of one year where the total value of such interest exceeds 5% of

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<sup>63</sup> Section 13 and Section 15 of the Companies Ordinance (Cap. 622) provide definitions for a "holding company" and a "subsidiary" respectively. A body corporate is a holding company of another body corporate if it controls the composition of the other body corporate's board of directors; or controls more than half of the voting rights in that other body corporate; or holds more than half of that body corporate's issued share capital. This other body corporate is a subsidiary of the holding company. For details, please refer to the Ordinance.

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the annual salary (excluding general expenses allowance), or any one-off benefits exceeding \$10,000 in value. This definition also applies to remunerated employment, offices, etc., financial sponsorships, and other payments and benefits received from outside Hong Kong.

#### *Remunerated employments, offices, trades, professions or vocation*

3.69 This category of registrable interest covers all remunerated employments, offices (including public offices), trades or professions for which a salary, honorarium, allowance or other material benefit is payable. Where the remunerated position is one of a consultant nature, the Member should also state the nature of the consultancy. If the name of a firm is mentioned, the nature of business of the firm should also be provided.

#### *Clients*

3.70 Under Rule 83(5)(c) of the Rules of Procedure, a Member should also register the name of any client when the interests from any remunerated directorship or employment, trade, profession, etc. arise from the personal services by the Member's being a Member of the Council. When this category of registrable interest was first included in the Standing Orders in 1991, Members were conscious of the great difficulty in complying with this requirement due to the question of client confidentiality, particularly in the case of the legal profession. Emphasis was therefore placed on whether the personal service provided by the Member to the client arose out of his being a Member of the Council. The present requirement is that the name of the client should be disclosed, except where such disclosure would be contrary to any legal or established professional duty of privacy or confidentiality. To facilitate Members in deciding under what circumstances the names of their clients should be registered, some examples are provided in the Guidelines on Registration of Interests<sup>64</sup>.

3.71 Where the services are provided by those rendered by an organisation of which the Member is a partner, director, employee or office holder, the Member's obligation is to register those interests within his knowledge. It would not be necessary for the Member to find out the names of all the clients who have received services from the Member's organisation.

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<sup>64</sup> See Appendix 3-D.

#### *Election donations or financial sponsorship*

3.72 From April 1999 onwards, Members have been required to register all donations received as a candidate for meeting election expenses in their election to the Council. This requirement is in line with that specified in section 37(1) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554)<sup>65</sup>. For the purpose of stating the details of donations, Members may produce a copy of the election return relating to election donations which they have lodged with the Chief Electoral Officer under that Ordinance.

3.73 For financial sponsorships, Members should register any payment or material benefit or advantage received by the Members themselves or by their spouses relating to their membership of the Legislative Council. These sponsorships include any cash subsidies received from their own political organisations (as defined in "political body" in the Societies Ordinance (Cap. 151)). The material benefits or advantage should include those not generally available to members of the public. Members should ensure that they make full and timely returns of such registration by making necessary enquiries with their spouses on the receipt of financial sponsorships.

#### *Overseas visits*

3.74 Members should register any overseas visit made by themselves or their spouses relating to or arising out of their membership of the Legislative Council if the cost of the visit was not wholly borne by themselves or by public funds of Hong Kong. The details of registration include the nature of the interests received, such as passage, accommodation, etc. Before accepting any invitation to sponsored visit, a Member should make an effort to understand the nature of such visit and consider whether the acceptance of such invitation could give rise of any perceived conflict of interest.

#### *Payments, benefits and advantages received from outside Hong Kong*

3.75 Any payments, benefits and advantages received by a Member or his spouse from any government or organisation of a place outside Hong Kong, including any government or organisation in other parts of China, or from a person who does not qualify as a "Hong Kong permanent resident" should be registered. This category of interest was added onto the list of registrable interests in the Rules of Procedure of the Provisional Legislative Council and was adopted by the First Legislative Council in its Rules of Procedure. The

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<sup>65</sup> The Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) replaced the former Corrupt and Illegal Practices Ordinance on 16 February 2000.

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definition of a "Hong Kong permanent resident" is set out in paragraph 2 of Article 24 of the Basic Law of the HKSAR.

3.76 Payments and material benefits include such benefits received by a company in which a Member or his spouse has a controlling interest or the largest shareholding.

#### *Land and property*

3.77 The intention of this category of registrable interest is to register any land or property from which a Member derives income. It is therefore not necessary for a Member to register his only and principal residence in Hong Kong which he owns and ordinarily resides in it unless he also derives income from it. The land and property to be registered include that owned by the Member in his name, or held jointly through a company or through another person, where the Member has a right over its disposition (e.g. more than 50% in the shareholding of the company or in the property) or has any pecuniary interest deriving from it. Land and property held by a Member as trustee and in which the Member has no autonomous right of disposition need not be registered.

#### *Shareholdings*

3.78 It is the obligation of a Member to register any interest held by himself or with or on behalf of his spouse or dependent children in shares of a number greater than 1% of the total shares of any public or private company. Nominee shareholding is not included in this category. There is no need to register the size or value of the shareholdings. Only the name of the company and the nature of its business should be registered.

#### Direct and indirect pecuniary interests

3.79 Members have always been reminded that notwithstanding that they might have registered their interests in the registration form, they still have the obligation to disclose the nature of any pecuniary interests, whether direct or indirect, that they may have in a matter on which they speak in the Council or in a committee. As failure to make such disclosure at the time of speaking in the Council or in a committee may lead to sanctions, questions have often been raised by Members on exactly what "direct" and "indirect" pecuniary interest means.

#### *Direct pecuniary interest*

3.80 Dating back to July 1985, guidance notes had already been issued by the Clerk of Councils to assist Members to decide under what circumstances they should disclose their interests. The guidance notes issued in July 1985 provided the following general principles:

- "(a) It is the Members themselves who must first decide whether they have such interests;*
- (b) Regarding direct pecuniary interest, the interest should be 'immediate' and not merely of a remote or general character. It must be personal to the Member and not merely one which is shared with the general public."*

3.81 For direct pecuniary interests, the Clerk of Councils also provided the following illustrations in the guidance notes:

- "(a) Where a Member has no special interest but only the same interest as every other member of the public affected, no declaration at all is necessary. We all consume electricity or take taxis or trams from time to time but this does not mean we have, within the legal meaning, a special interest to declare. But if he owns a taxi, a Member does have such a special interest;*
- (b) A distinction can be made between close and remote pecuniary interests. Thus, when the raising of charges of a company (or its close competitors) is discussed, directors or shareholders, etc. of that company have a direct pecuniary interest. But when matters affecting the entire industry are discussed (e.g. regulation of the banking industry), companies in that industry have only a remote pecuniary interest (in essence the same as every other company in the industry);*
- (c) No distinction should be made between executive and non-executive directorships. Both types of director owe identical legal duties under the Companies Ordinance to forward the interests of their shareholders;*

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- (d) *The Director of a property company with significant residential holdings, or the owner or tenant of a rented flat, would have a direct pecuniary interest and should so declare, when rent control is discussed."*

3.82 In recent years, the meaning of "direct pecuniary interest" has been raised on a number of occasions in the proceedings of the Council<sup>66</sup> and committees. In this respect, the Legal Adviser to the Committee on Members' Interests has advised<sup>67</sup> that the term "direct pecuniary interest" is intended to carry its natural meaning, and that in Hong Kong it has been generally accepted that for a pecuniary interest to be direct, it should be immediate and not merely of a remote or general character. In addition, the interest must be personal to the Member and not merely one which is shared with the general public.

3.83 As regards the meaning of "pecuniary interest", the Legal Adviser has referred to the definitions of the term in statutes in some common law jurisdictions which have put in place a declaration of interest scheme similar to that in Hong Kong. In some of these statutes, "pecuniary interests" is defined to mean an interest that a person has in a matter due to a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

#### *Indirect pecuniary interest*

3.84 The requirement for Members to disclose the nature of indirect pecuniary interest when moving a motion or amendment and speaking in the Council or a committee only started in 1994. While a Member is not allowed to vote on the matter in which he has a direct pecuniary interest, he is allowed to do so if the pecuniary interest is indirect. According to the advice given by the Legal Adviser to the Committee on Members' Interests<sup>68</sup>, indirect pecuniary interest "is an interest not immediate and personal to a Member, but does have a certain relationship with the Member which would make a reasonable person to consider that such interest might have certain influence on the action or speech of the Member". In some common law jurisdictions,

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<sup>66</sup> Debate on motion moved by Hon LEE Wing-tat under Rule 84(3A) of the Rules of Procedure to require Hon David LI to withdraw on grounds of direct pecuniary interest when the Council voted on Ir Dr Hon Raymond Ho's motion to seek authorization of the Council for the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Products to summon witnesses (Council meeting of 12 November 2008). *Hansard*.

<sup>67</sup> A note on the Meaning of "Indirect Pecuniary Interest: in Rule 83A of the Rules of Procedure of the Legislative Council" (LC Paper No. LS12/02-03) issued for the meeting of the Committee on Members' Interests on 8 April 2003. This note was referred to in a paper to the Committee for its meeting on 16 December 2009 (LC Paper No. CMI 17/09-10).

<sup>68</sup> LC Paper No. LS12/02-03; LC Paper No. CMI 17/08-09.

there are statutory provisions to the effect that a member of the council or local board has an indirect pecuniary interest in any matter in which the council or local board is concerned, if the member or his nominee is a shareholder in, or a director or officer of, a company that has a direct pecuniary interest in the matter; or the member is a partner, or is in the employment, of a person or body that has a direct pecuniary interest in the matter.<sup>69</sup>

3.85 Regarding the nature of pecuniary interest involved in "non-executive directorships", it has been made clear to Members since the registration of interests system was first put in place that there is no distinction between executive and non-executive directors in law. Both are members of the board of directors of a company and both owe a fiduciary duty to their company. Although an independent non-executive director has no executive or management responsibility in the company, he has the same duty to act bona fide in the interest of the company as a whole.

3.86 Whether a pecuniary interest is direct or indirect is a matter for individual Members to judge according to the actual circumstances which may vary in each case. Under normal circumstances, if the company of which a Member is a non-executive director has a direct pecuniary interest in a matter, the Member should have an indirect pecuniary interest in the matter. It follows that the Member should, for the purpose of making the required disclosures under Rule 83A of the Rules of Procedure, take reasonable steps to find out whether the company of which he is a non-executive director has a pecuniary interest in the matter under consideration by the Council or a committee. Using public works projects as an example, the view of the Committee on Members' Interests is that a company is regarded as having a direct pecuniary interest in a project if the company has bid for a contract or has been awarded a contract under the project. A Member who is a director of the company is regarded as having an indirect pecuniary interest in the project. He is expected to take reasonable steps to find out, for the purpose of making the required disclosures under Rule 83A of the Rules of Procedure, whether the company of which he is a director has a pecuniary interest in the matter under the consideration of a committee. The same principle also applies to a Member who is a remunerated director of a parent company of a subsidiary company which has a direct pecuniary interest in a matter considered by the Council or a committee.<sup>70</sup>

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<sup>69</sup> See, for example, section 2 of the Municipal Conflict of Interest Act of Ontario, Canada, R.S.O. 1990. c. M.50.

<sup>70</sup> See Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK (June 2011), para. 3.14.

### *3. Members of the Legislative Council*

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3.87 The fact that a Member has registered the interest of a directorship does not obviate his obligation to disclose at the relevant meeting a pecuniary interest arising from the directorship. A declaration should be brief, but should make specific reference to the nature of the Members' interest. Where the nature of the interest is judged to be a direct pecuniary interest, the Member should withdraw at the time of voting or any Member may move without notice to disallow his vote.<sup>71</sup>

3.88 Where the pecuniary interest is common to all Members, such as in the case of a financial proposal put before the Finance Committee regarding a change to Members' remuneration, allowances or reimbursement of operating expenses, there is specific provision in the Finance Committee Procedure<sup>72</sup> to enable the Chairman to declare that all Members have the same pecuniary interest in the question and have this declaration recorded in the minutes. This is more an administrative arrangement to facilitate a more efficient way to declare Members' pecuniary interests when the interests are the same among all Members. The fact that Members may vote on such a proposal in which they have a direct pecuniary interest is because the proposal is on a matter of Government policy<sup>73</sup>.

3.89 Rule 83A of the Rules of Procedure does not specify at which juncture of a Member's speech the Member should disclose the pecuniary interest he has in the matter. It is the responsibility of a Member to decide the most appropriate time in his speech to disclose his interest in a matter being considered, which will enable other people to judge if his views on the matter may have been influenced by his interest. The view of the Committee on Members' Interests is that a Member should disclose his pecuniary interest at the beginning of his speech on the matter.<sup>74</sup>

#### Claims for Reimbursement of Operating Expenses

3.90 Members of the Legislative Council are provided with various kinds of reimbursements to cover the expenses arising out of their Legislative Council duties. These reimbursable expenses include staff remuneration and benefits, stationery, equipment and furniture for their offices, printing and website expenses, consultancy services, and office accommodation costs such as rentals, insurance, etc. To assist Members to set up and operate their

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<sup>71</sup> Rule 84 of the Rules of Procedure.

<sup>72</sup> Finance Committee Procedure, para. 41.

<sup>73</sup> Rule 84(1) of the Rules of Procedure applies.

<sup>74</sup> See Report of the Committee on Members' Interests on its consideration of a complaint against Ir Dr Hon Raymond HO, Hon Jeffrey LAM and Hon Abraham SHEK (June 2011), para. 3.11.

offices, they may apply for advance of operating funds. A detailed guide, titled "A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council" has been provided to ensure that public funds are used in an open, fair and accountable manner for the performance of their public duties. As mentioned in paragraph 3.63, Members are required to follow the Guide and ensure that the information they provide in making claims or applications for advance of funds is true, accurate and complete. Any complaints and allegations concerning Members' claims are referred to the Committee on Members' Interests for consideration. More details about operating expenses reimbursements are provided in Chapter 4.

#### Non-compliance and sanctions

3.91 Under Rule 85 of the Rules of Procedure, any Member who fails to register their registrable interests in accordance with Rule 83, fails to disclose direct or indirect pecuniary interests in accordance with Rule 83A, or fails to comply with Rule 83AA in making claims for operating expenses reimbursements or applications for advance of funds may be admonished, reprimanded or suspended by the Council on a motion to that effect. Any complaint against a Member for non-compliance with any of these rules is referred to the Committee on Members' Interests for consideration and investigation. If the complaint is found to be substantiated, it is for the committee to recommend a form of sanction which is commensurate with the level of non-compliance and a motion to that effect should be moved in the Council. Nevertheless, there are cases where no sanction is recommended if the failure to comply with the requirement under Rule 83 is not deliberate and no conflict of interest with the Member's role as a Legislative Council Member is involved.<sup>75</sup>

3.92 As regards a failure to comply with Rule 84(1) or (1A), there is no explicit provision in the terms of reference of the Committee on Members' Interests that it may investigate a complaint against a Member for having voted on a matter in which he is alleged to have a direct pecuniary interest. Rule 84(3A) and (4) have provided mechanisms to deal with non-compliance of Rule 84(1) and (1A) at the time of the Council or committee meeting. As regards the recommendation of a sanction for non-compliance of Rule 84(1) or (1A), Rule 73(1)(e) provides that the Committee on Members' Interest has the duty to report to the Council and make recommendations as to a sanction under Rule 85 (which covers sanctions in respect of a failure to comply with Rule 84(1) or (1A)). It may be taken to mean that the Committee on

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<sup>75</sup> See Report of the Committee on Members' Interests on a complaint against Hon Albert HO Chun-yan tabled in the Council on 10 July 2013, para. 35-37.

### *3. Members of the Legislative Council*

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Members' Interest has the role to consider a complaint about an alleged non-compliance with Rule 84(1) or (1A) in order to decide what recommendation it should make to the Council.

3.93 The Committee on Members' Interests has no jurisdiction over the handling of complaints against Members in relation to their conduct as a Member of the Legislative Council. The subject of Members' conduct has been raised for discussion in the Hong Kong Legislature both before and after 1997, but no consensus could be reached among Members for putting in place a formal mechanism to monitor Members' conduct. In the two attempts of the Committee on Members' Interests of the pre-1997 Legislature to empower the Committee to investigate into complaints about alleged misconduct of Members, the motions moved on both occasions, on 19 July 1995 and 3 April 1996, failed to get the support of the majority of Members of the respective Councils<sup>76</sup>. The only avenue available in the current Rules of Procedure in dealing with allegations against Members for misbehaviour is through the disqualification of a Member from office under Article 79(7) of the Basic Law, which is explained in the latter part of this Chapter.

#### **Cessation of office**

3.94 According to section 15 of the Legislative Council Ordinance, a Member ceases to hold office if he resigns from that office; dies; is declared in accordance with Article 79 of the Basic Law to be no longer qualified to hold that office; and if he is the President, has been found to be incapable by reason of mental incapacity of managing and administering his or her own property and affairs; and if he is not one of the 12 Members who are exempted from the nationality requirement, has altered his nationality or has a right of abode in a country other than the People's Republic of China.

3.95 A Member may, at any time, resign from the office of a Member by giving written notice signed by him to the Clerk to the Legislative Council. The notice of resignation shall take effect on the date on which the notice is received by the Clerk or if a later date is specified in the notice, on that later date.<sup>77</sup> There is nothing in the law which disallows the Member who has given notice of resignation to withdraw his notice before the effective date. The declaration which the Clerk to the Legislative Council makes under section 35 of the Legislative Council Ordinance is a declaration of the

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<sup>76</sup> A Legislative Council Election took place in September 1995. The Committee on Members' Interests decided to re-submit the proposal to the new Council for its consideration on 3 April 1996.

<sup>77</sup> Section 14 of the Legislative Council Ordinance.

existence of the vacancy after becoming aware of the vacancy and not the notice of resignation. However, in the event of the death of a Member, the Clerk may not be notified immediately. Section 35 therefore provides that the Clerk to the Legislative Council must make the declaration within 21 days after becoming aware of the existence of the vacancy. Upon such declaration by the Clerk, the Electoral Affairs Commission must arrange for a by-election to be held in accordance with section 36 of the Legislative Council Ordinance.

#### **Disqualification of Members from Office**

3.96 Among the circumstances listed under section 15 of the Legislative Council Ordinance resulting in the cessation of the office of a Member, the declaration that a Member be no longer qualified for office is set out in the Basic Law. Article 79 of the Basic Law provides that the President of the Legislative Council shall declare that a member of the Council is no longer qualified for the office under the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President;
- (3) When he or she loses or renounces his or her status as a permanent resident of the HKSAR;
- (4) When he or she accepts a government appointment and becomes a public servant;
- (5) When he or she is bankrupt or fails to comply with a court order to repay debts;
- (6) When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the HKSAR and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present; and
- (7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present.

### 3. Members of the Legislative Council

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3.97 Article 79 of the Basic Law is clear in its intention to leave matters relating to the disqualification of a Member from office, i.e. the removal of a Member from office, to the Council itself, which coincides with the parliamentary principle adopted by common law jurisdictions that "only the House has the inherent right to decide matters affecting its own membership"<sup>78</sup>. While the circumstances under Article 79(1) to (5) are clear and can be decided by the President based on facts, the circumstances under Article 79(6) and (7) can be open to different views and interpretations by Members of the Council of the day. A two-thirds vote of the Members of the Council present at the time of voting is required under both circumstances for determining whether the Member concerned should be disqualified from office or not. To ensure that any Member who may be subject to disqualification from office under Article 79(6) or (7) would not be deprived of a proper procedure for fairness and natural justice, the Committee on Rules of Procedure of the First Legislative Council began its studies on the procedural arrangements for the implementation of this Article as soon as it was established in July 1998. Two sets of procedures were then proposed and were adopted by the Council at its meetings on 9 September 1998 and 28 April 1999 to provide for the implementation of Article 79(6) and (7) respectively.

#### Implementation of Article 79(6)

3.98 In the deliberation of an appropriate procedure to implement Article 79(6) the Committee on Rules of Procedure decided on a general principle as follows:

*"It [the Committee on Rules of Procedure] is of the view that as far as possible, the general philosophy and principles underlying the way Council business is conducted should be maintained, and existing procedures governing motions, rules of speaking, etc. should remain unchanged. Only when general rules are considered not applicable should specific rules be drawn up for incorporation into the Rules of Procedure, or suitable amendments made to existing rules, to cater for such special circumstances."*<sup>79</sup>

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<sup>78</sup> See House of Commons Procedure and Practice (Canada), 2<sup>nd</sup> edition, p. 245. In the U.K. "The expulsion by the House of Commons of one of its Members may be regarded as an example of the House's power to regulate its own constitution though it is, for convenience, treated as one of the methods of punishment at the disposal of the House." See Erskine May (24<sup>th</sup> Edition), pp. 198-199.

<sup>79</sup> See Report of the Committee on Rules of Procedure on the Procedural Arrangement for Implementing Article 79(6) of the Basic Law (September 1998), p. 3.

3.99 For the implementation of Article 79(6), the Committee on Rules of Procedure considered that whilst the rules governing motions and rules of speaking in the Rules of Procedure could generally apply to the motion referred to in the Article, there were special circumstances which required specific rules to be drawn up in this case and a new Part JA (Procedures for Particular Motions) in the Rules of Procedure was proposed to deal with motions of this nature. The procedural arrangements, which were endorsed by the Council on 9 September 1998, are explained below.

#### *Notice of motion*

3.100 For the purpose of initiating action to disqualify a Member under Article 79(6), a motion to relieve the Member of his or her duties is required and the passage of this motion requires a two-thirds majority vote of the Members of the Legislative Council present. After a Member is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside HKSAR, any Member of the Council or any designated public officer may move a motion to relieve the Member of his or her duties under Article 79(6).<sup>80</sup> The notice required for the motion is the same as for any other motions, i.e. not less than 12 clear days before the day on which the motion is to be considered by the Council. The President, as the case may be, may in his discretion dispense with such notice.<sup>81</sup>

#### *Motion in prescribed form*

3.101 As the objective and effect of the motion moved under Article 79(6) should be single-barrelled and unequivocal, there is a need for the wording of the motion to be short and precise. Prescribed wording for the motion is provided in Rule 49B (1) of the Rules of Procedure, 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."

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<sup>80</sup> Rule 30(1) of the Rules of Procedure.

<sup>81</sup> Rule 29(1) of the Rules of Procedure.

### 3. *Members of the Legislative Council*

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#### *Motion not amendable*

3.102 A motion moved under Article 79(6) is not amendable<sup>82</sup> as the decision of the Council on whether the Member ought to be relieved of his or her duties in the light of the conviction and sentence should be precise. There should be no uncertainty over whether or not the requirement under Article 79(6) has been fulfilled.

#### *Case pending review in a court of law*

3.103 In the event that Members of the Council may not be in a position to decide because, for example, an appeal is pending, procedures are available in the Rules of Procedure for the debate to be adjourned upon a motion moved without notice by a Member.<sup>83</sup> If the Council has so decided, the debate so adjourned may be resumed at a subsequent meeting provided that the Member who moved the original motion gives notice of his intention to resume the debate no less than 5 days before the day on which it is to be resumed.

3.104 In September 1998, a judicial review<sup>84</sup> was sought by a Member to challenge the President's decision to place on the council Agenda a motion to relieve the Member from his duties under Article 79(6) when an appeal lodged by the Member was due to be heard in court in two month's time. The Court dismissed the application. According to the Court's judgment, by placing the motion on the Agenda, the President is not deciding that the issue has to be decided then. If any Member considers that it is premature for the issue to be debated, he may propose that the debate be deferred, for example, until after the appellate process has been completed. The President's decision to place the motion on the Agenda merely gives Members of the Legislative Council the opportunity to decide whether the issue should be debated at that meeting.

#### *Manner of speaking at debate*

3.105 As regards contents of speeches, the implications of the following subrules of Rule 41 of the Rules of Procedure on the debate have been considered and the conclusions of the Committee on Rules of Procedure are as follows:

- (a) Rule 41(2): Where reference is made to a case for which an appeal is pending in a court of law, the President is guided by

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<sup>82</sup> Rule 49(B)(2) of the Rules of Procedure.

<sup>83</sup> Rule 40(1) and (6) of the Rules of Procedure.

<sup>84</sup> *Chim Pui Chung v President of the Legislative Council of HKSAR*, HCAL000071,1998.

the principle of whether there is real and substantial prejudice to the administration of justice and decides whether or not reference to the matters in the Member's speech which may be relevant to the appeal should be allowed.

- (b) Rule 41(5): This subrule which provides that: "A Member shall not impute improper motives to another Member" should apply to the debate as Members should only speak on the established facts and the Member concerned, like any other Member, should be equally protected from being unfairly spoken about.
- (c) Rule 41(7): This subrule has been amended to make debates on motions under Part JA exempted from this subrule which disallows the raising of the conduct of a Member of the Legislative Council other than in the performance of his official duties.

3.106 In view of the serious nature of a motion moved to relieve a Member of his duties as a Member under Article 79(6), the speaking time for each Member is 15 minutes. Rule 37 of the Rules of Procedure has been amended so that the House Committee may not recommend a shorter speaking time for this motion. The mover will have 15 minutes for moving the motion and another 15 minutes making his or her reply. As for the Member concerned, the Member should have ample opportunity to speak. Under Rule 38 of the Rules of Procedure, the President has the discretion to grant leave to the Member concerned to speak more than once if so required.

*Written statement by the Member concerned*

3.107 Any written statement presented by the Member concerned to explain himself will be dealt with under item (h) "Personal explanations" in Rule 18 (Order of Business at a Meeting) and in accordance with Rule 28A (Personal Explanations). The precise contents of the statement should be submitted to the President in advance to ensure that it will not provoke a debate and that the content is appropriate. If the Member concerned cannot be present to deliver the statement, the President may direct that the statement submitted be taken as read and that the text be recorded in the Official Record of Proceedings of that meeting. In no circumstances would the statement, which is a Personal Explanation, be allowed to be read out by another Member of the Council.

### *3. Members of the Legislative Council*

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#### *Voting*

3.108 The voting requirement for the motion moved under Article 79(6) is specific in the Basic Law. The motion requires a two-thirds majority vote of the Members of the Legislative Council present. As to whether the Member concerned is allowed to vote on this motion, Rule 84(1) of the Rules of Procedure states that a Member shall not vote upon any question in which he has a direct pecuniary interest. If the Member concerned considers that the remuneration received by him as a Member of the Legislative Council is not direct pecuniary interest and chooses to vote, Rule 84 of the Rules of Procedure provides a mechanism for the Council to decide whether the Member concerned should withdraw or vote on the motion, or if he has voted, whether his vote should be disallowed.

#### *Application of Rule 32 to motions moved under Article 79(6)*

3.109 According to Rule 32 of the Rules of Procedure, where the Council has passed a motion, no Member may move the same motion again; except with the permission of the President, he may move a motion to rescind that decision of the Council. If a motion to rescind the decision of the Council is put before the President for his consideration, the President will give regard to the non-reversibility aspect of the Council's decision when deciding whether or not permission should be granted. As the President will declare the Member disqualified for the office once the motion moved under Article 79(6) is passed, the decision will become non-reversible. If the motion is decided in the negative, no further motion shall be moved in relation to the same question in the current session.

#### Implementation of Article 79(7)

3.110 Article 79(7) provides that the President of the Legislative Council shall declare a Member of the Council no longer qualified for the office when the Member is censured for misbehaviour or breach of oath by a vote of two-thirds of the Members of the Legislative Council present. On the same principle which applies to Article 79(6) above, the Committee on Rules of Procedure considered that there are special circumstances in this case which require specific rules to be made while general rules on motions and rules of speaking may apply.

3.111 Unlike cases in Article 79(6) which relate to specific convictions and sentences to imprisonment, cases in Article 79(7) refer to an evaluation of whether the condition of either "misbehaviour" or "breach of oath" is satisfied.

3.112 In the course of its study, the Committee on Rules of Procedure of the First Legislative Council noted that some overseas parliaments require their Members to act in the interests of the nation and conduct themselves with credibility as a Member of the Parliament, and that the Member should not abuse their privilege and act in such a manner as to bring the Parliament into disrepute. The Committee also noted the guiding principle in these legislatures that the legislature should exercise its penal jurisdiction as sparingly as possible and only when satisfied that it is essential to do so in order to provide a reasonable protection for the legislature and its Members. As for "breach of oath", the Committee considered that while the "oath" in Article 79(7) clearly referred to the oath under Article 104 of the Basic Law, there remained questions on how an act of a Member could constitute a breach of the oath. It concluded that it would be more appropriate for the Council of the day to make a decision on the kind of behaviour which would be regarded as a "misbehaviour" or "breach of oath" leading to the disqualification of a Member from office under Article 79(7).<sup>85</sup> Nevertheless, having regard to the serious consequence of an allegation made under the Article, it would be necessary to provide a mechanism for investigating and assessing the act(s) set out in the allegation. Decisions on whether such act(s) amount to "misbehaviour" or "breach of oath" under Article 79(7) should rest with the Members of the Council.

3.113 On 28 April 1999, the First Legislative Council endorsed the procedure for implementing Article 79(7). The procedure is set out in Part JA (Procedures for Particular Motions) of the Rules of Procedure, Rule 73A (Investigation Committee), as well as in other parts of the Rules of Procedure as explained below.

#### *Initiation of the censure motion*

3.114 Under the mechanism approved by the Legislative Council for inclusion in the Rules of Procedure on 28 April 1999, the censure motion to be moved under Article 79(7) should be initiated by a Member who wishes to move the motion plus 3 other Members.<sup>86</sup> All 4 Members need to sign the notice of motion. The requirement of 4 Members to sign the notice of the censure motion serves to deter abuse of the mechanism but at the same time ensure that minority Members of the Council would not be barred from initiating actions under Article 79(7).

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<sup>85</sup> Progress Report of the Committee on Rules of Procedure for the Period July 1998 to April 1999.

<sup>86</sup> Rule 30(1A) of the Rules of Procedure.

### 3. *Members of the Legislative Council*

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3.115 The notice period for a censure motion under Article 79(7) is the same as that for other motions, i.e. not less than 12 clear days before the day on which the motion is to be considered by the Council.<sup>87</sup> The motion should be in prescribed form as set out in Rule 49B(1A) of the Rules of Procedure, as follows:

"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)"

3.116 As the Members who initiate the motion are responsible for providing the details of the alleged misbehaviour or breach of oath in the Schedule, these Members, according to a decision of the House Committee on 16 October 2009, cannot be members of the investigation committee appointed to investigate into the allegation. These Members may be required to provide evidence to the investigation committee to substantiate the allegation. This motion, similar to the motion moved under Article 79(6) is non-amendable.

#### *Referral to an investigation committee*

3.117 According to the procedure laid down in Rule 49B(2A) of the Rules of Procedure, upon the moving of the censure motion, 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 censure motion.

3.118 The purpose of Rule 49B(2A) is to provide a mechanism for the matter in the motion to be automatically referred to an investigation committee appointed by the President to establish the facts of the matter and to express its views on the matter before Members of the Council proceed to debate the motion and decide whether or not to support it. Where it is considered that there is no need to refer the matter for investigation, any Member may move without notice after the censure motion has been moved to request the Council to decide not to refer the matter to an investigation committee. If that motion is passed, the censure motion will not be proceeded with. In other words, under this mechanism, the censure motion will not be proceeded with without going through the investigation process. The

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<sup>87</sup> Rule 29(1) of the Rules of Procedure.

procedure to dispense with the investigation is to allow the Council an opportunity to dispose of frivolous allegations.

3.119 The investigation committee is established on an ad hoc case-by-case basis, and the scope of investigation is confined to the particulars set out in the schedule to the motion. The formation of the committee and procedure of investigation are provided in Rule 73A of the Rules of Procedure, but the committee may determine its own practice and procedure subject to the Rules of Procedure. In January 2010, an investigation committee was appointed for the first time under Rule 49B(2A). Upon its formation, the Investigation Committee proceeded to draw up a set of practice and procedures for the committee having regard to the procedures in Rule 73A, as well as practices in other committees of the Council for ordering the attendance of witnesses and experience in other legislatures in the investigation of alleged misbehaviours of their Members. This set of practice and procedures was uploaded onto the official website of the Legislative Council and attached to the Investigation Committee's Report which was tabled in the Council on 28 March 2012.

3.120 It is not necessary for a subcommittee to be formed under the House Committee to consider the terms of reference of the investigation committee as is usually the case for setting up select committees. On 16 October 2009, a subcommittee was set up under the House Committee to consider the election procedure for nominating the chairman, deputy chairman and members of the investigation committee in accordance with Rule 73(1) of the Rules of Procedure. The investigation committee, once appointed, has no direct working relationship with the House Committee. The investigation committee as soon as it has completed the investigation of the matter referred to it, shall report to the Council. There is no need for a separate motion to endorse or take note of the report as the report only serves as a reference for Members to decide whether the Member concerned should be disqualified from office under Article 79(7). The investigation committee is dissolved after tabling of its report, unless it is revived to deal with any further matters arising from the investigation by resolution of the Council.

#### *Further proceedings on the censure motion*

3.121 The resumption of the debate on the censure motion is provided for in Rule 40(6A) of the Rules of Procedure. This subrule provides that a debate adjourned under Rule 49B(2A) 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. The

### *3. Members of the Legislative Council*

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general rules on debate and manner of speaking apply to the debate on the censure motion. Similar to the arrangements for the debate on the motion moved under Article 79(6), the principles in the application of Rule 41(2), (5) and (7) will apply to the debate on the censure motion.

3.122 As regards voting, the passage of the censure motion also requires a two-thirds majority vote of all the Members of the Council present. The arrangements regarding the presence of the Member concerned at the time of voting and his right to vote are the same as those for a motion moved under Article 79(6). The application of Rule 32 to the decision of the Council on the censure motion is also the same as that for the motion moved under Article 79(6).

#### **Other sanctions**

3.123 Other than the disqualification of membership under Article 79(6) and (7), the only sanctions which may be imposed on a Member in respect of his or her duties as a Member of the Legislative Council are provided in Rule 85 (Sanctions relating to Interests, Operating Expenses or Operating Funds) of the Rules of Procedure. This has been explained in paragraph 3.91-93 above. The forms of sanctions, i.e. admonishment, reprimand or suspension, provided in Rule 85 have not been extended to other misbehaviour in the Council although much discussion has taken place inside and outside the Council on whether persistent grossly disorderly conduct in the Council or committee should also be subject to sanctions, such as suspension, apart from ordering the immediate withdrawal of the Member from the Council or committee for the remainder of that meeting. The matter is being examined by the Committee on Rules of Procedure.

## Chapter 4

### Administrative support for the Legislative Council

4.1 Administrative support and services to the Legislative Council are provided by a body corporate independent of the Government. Through The Legislative Council Commission ("the Commission") established by statute in 1994, the Council employs its own staff for providing support services to the Council and its committees, for managing the accommodation and facilities of the Council and for overseeing the support given to individual Members for performing their legislative functions.

4.2 This chapter explains how the Commission provides administrative support and services to the Council through the Legislative Council Secretariat as well as the Commission's relationship with the Government over the financial arrangements for supporting the work of the Council and its Members. It also explains the Government's obligation to ensure that the Council is given the appropriate meeting facilities, office accommodation and related service support for such facilities, as well as the Commission's responsibility in managing such facilities and services on its own. Support services to individual Members, including the historical background to and present arrangements for providing Members with a remuneration package and reimbursements for operating expenses, are also explained in this Chapter.

### The Legislative Council Commission

#### Historical background

##### *The OMELCO Secretariat*

4.3 As explained in previous chapters, support services to the pre-1997 Legislature had been provided by the Government until April 1994. While service support to the proceedings of the Council and the committees under the formal structure of the Council was provided by the Office of the Clerk to the Legislative Council<sup>1</sup> which was part of the Government, secretariat services to the various committees under the informal committee structure of

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<sup>1</sup> The Clerk to the Legislative Council was an officer reporting to the Clerk of Councils who headed the Council's Division in the Government Secretariat.

#### *4. Administrative support for the Legislative Council*

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UMELCO<sup>2</sup> were provided by officers seconded from the Government or the directly engaged staff of the UMELCO Secretariat. UMELCO was set up in 1963 when the Government started to assist the Unofficial Members of both the Executive Council and Legislative Council in operating a redress system and providing secretarial service to the internal meetings of the Unofficial Members who met from time to time to exchange views with the Government. Government officers were seconded to UMELCO to provide such support. They were mainly Administrative Officers, Crown Counsels, Executive Officers and Information Officers. UMELCO was detached from the Government in 1970 and was funded under a separate head of expenditure in the Estimates. It ran its operation independently under the direction of the Senior Members<sup>3</sup> of the Executive Council and the Legislative Council. UMELCO was renamed as OMELCO<sup>4</sup> from 1985 onwards.

4.4 On 2 August 1991, in order that OMELCO could have the legal capacity to operate as an independent entity, the OMELCO Secretariat was incorporated as a company limited by guarantee under the Companies Ordinance. The membership of The OMELCO Secretariat comprised all non-Government Members of the Executive and Legislative Councils, with an Executive Committee consisting of the Senior Members of the two Councils and no more than 9 other members. The primary object for which The OMELCO Secretariat was established was to provide administrative support and services to the non-Government Members of the two Councils in the performance of their public duties.

4.5 In his Policy Address on 7 October 1992, Governor Christopher Patten stated that there would be complete separation of non-Government membership of the Executive Council and the Legislative Council and that it seemed sensible to wind up OMELCO. To ensure that the Legislative Council had the independence it needed to represent the community effectively, the Governor invited proposals from Members on ways to enable the Legislative Council to have clear and separate management of its own affairs. After the Policy Address, discussion then took place for over a year between the Government and a working group headed by Sir John Swaine, then Deputy President and elected as President on 19 February 1993, to

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<sup>2</sup> Details about the committee structure of UMELCO are provided in Chapter 6. UMELCO stands for Office of the Unofficial Members of the Executive and Legislative Councils.

<sup>3</sup> Traditionally, the Governor appointed a Senior Unofficial Member in the Executive Council and also one in the Legislative Council. These Senior Unofficial Members enjoyed a higher status in their respective Councils. In 1985, the post title of "Senior Unofficial Member" was changed to "Senior Member" following the removal of the term "unofficial" from the Standing Orders when referring to non-Government Members.

<sup>4</sup> OMELCO stands for Office of the Members of the Executive and Legislative Councils.

#### 4. *Administrative support for the Legislative Council*

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explore ways to develop financial and managerial autonomy in organising the Council's administration and support facilities. Membership of the President's Working Group, which was known as the Working Group on the Proposed Reorganisation of the Legislative Council Secretariat, originally comprised the President and 3 other Legislative Council Members<sup>5</sup>. It was later enlarged to include 6 other Members from an OMLEGCO<sup>6</sup> working group set up for a similar purpose<sup>7</sup> to avoid duplication of work between the two groups.

##### *A statutory body to oversee the administrative support to the Legislature*

4.6 The President's Working Group presented its report to the House Committee on 20 April 1993. In its report, the President's Working Group recommended the setting up of a new Legislative Council Secretariat<sup>8</sup> for taking over the services then provided by the Office of the Clerk to the Legislative Council and the OMELCO Secretariat. The Working Group also recommended that to confer legal status on the new Legislative Council Secretariat, a Legislative Council Commission should be set up by statute to provide the necessary legislative framework to enable the Council to direct its own secretariat. The Commission should be given the managerial and financial autonomy to organise its own administration and support facilities, and to employ its own staff and determine their terms of service. In designing the remuneration package for staff, the key objective was that the package should be attractive enough to recruit, retain and motivate staff of high quality and at the same time publicly defensible.<sup>9</sup> The Commission was to be financed from public funds and therefore subject to the same degree of financial control and accountability as other publicly-funded organisations.<sup>10</sup> The general principles and guidance governing the administrative arrangements for the Commission and its working relationship with the Government would be set out in the Exchange of Letters between the

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<sup>5</sup> In addition, 3 government officers were seconded to serve as assistants to the President in the work of the Working Group.

<sup>6</sup> A decision was made by the House Committee to change OMELCO to OMLEGCO on 2 February 1993 for the purpose of the Estimates, Government telephone directory, etc. OMLEGCO stands for Office of the Members of the Legislative Council.

<sup>7</sup> A working group was set up by the House Committee on 9 October 1992. Its terms of reference included the ways and means by which the Legislative Council could achieve financial and managerial autonomy in running its business and the sort of support services the Legislative Council would require for the efficient discharge of the Council's functions.

<sup>8</sup> The services provided by the OMLEGCO Secretariat and Office of the Clerk to Legislative Council (under the Clerk to Councils) were merged under the new structure of the Legislative Council Secretariat.

<sup>9</sup> Press statement made after the House Committee on 20 April 1993.

<sup>10</sup> Speech given by the Chief Secretary when moving the Second Reading of The Legislative Council Commission Bill on 9 March 1994.

#### *4. Administrative support for the Legislative Council*

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Government and the Commission.<sup>11</sup> The recommendations of the Working Group were endorsed by the House Committee.

4.7 The House Committee also endorsed the President's Working Group's recommendation that the then incorporated OMELCO Secretariat should be reconstituted as The Legislative Council Secretariat with a new Executive Committee to serve as the Provisional Commission, pending the enactment of legislation to establish the Commission. The reconstituted Executive Committee should be a representative committee to be able to command the confidence of Members.<sup>12</sup>

4.8 On 20 May 1993, The OMELCO Secretariat was renamed as The Legislative Council Secretariat<sup>13</sup>. All references to "Executive Council" in the Memorandum and Articles of Association were deleted. Its members were all non-Government Members of the Legislative Council and its Executive Committee consisted of the President, the Chairman and Deputy Chairman of the House Committee and no more than 8 other members.<sup>14</sup> One of the major responsibilities of the Executive Committee during the 10 months before the Commission came into existence was to undertake the preparatory work for the establishment of the new Legislative Council Secretariat, including the development of human resources policies, the appointment of key staff of the new Secretariat and the phasing out of the seconded staff from the Government without causing disruption of service to the Council.<sup>15</sup>

#### *The Legislative Council Commission Bill*

4.9 On 9 March 1994, The Legislative Council Commission Bill was presented to the Legislative Council. It was passed on 30 March 1994 for it to take effect on 1 April 1994. The then incorporated Legislative Council Secretariat was dissolved<sup>16</sup> and the new Legislative Council Secretariat under the supervision of the Commission came into being. By virtue of section 4(1)(d) of the Ordinance, the members of the Executive Committee of The Legislative Council Secretariat Incorporated, other than the President, Chairman and Deputy Chairman of the House Committee, became members

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<sup>11</sup> The Audit Commission's Report on 31 March 2003, Chapter 5.

<sup>12</sup> LegCo Paper No. 2552/92-93 presented at the House Committee meeting on 20 April 1993.

<sup>13</sup> This was pursuant to the special resolution passed at the 2<sup>nd</sup> Extraordinary Meeting of The OMELCO Secretariat held on 7 May 1993.

<sup>14</sup> The official name of the OMELCO, in the context of the Estimates for 1993-94, was changed to OMLEGCO, which stands for Office of the Members of the Legislative Council.

<sup>15</sup> To ensure a smooth transition, the phasing out of seconded staff from the Government spanned over a period of one year up to 31 March 1995.

<sup>16</sup> Section 22 of The Legislative Council Commission Ordinance.

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of the Commission. They held office until the first election of members of the Commission on 21 October 1994. Elections of members then took place once every year with the last term of the pre-1997 Legislature to serve until 30 June 1997.

4.10 The Legislative Council Commission Ordinance was adopted as law of the HKSAR. For the smooth transition to the HKSAR, the Working Group on Administrative Matters<sup>17</sup> of the Provisional Legislative Council proposed amendments to The Legislative Council Commission Ordinance to change the Chinese name of the Legislative Council and to make transitional arrangements arising from the establishment of the Provisional Legislative Council and its supporting structure. The Working Group also proposed to expand the membership of the Commission to not more than 13 members. The Amendment Bill which sought to implement these changes was passed by the Provisional Legislative Council on 7 June 1997 and confirmed through the passage of the Reunification Bill<sup>18</sup> on 1 July 1997. The Legislative Council Commission Ordinance has since then remained the same up to this date.

##### Membership of the Commission

4.11 The President, the Chairman and Deputy Chairman of the House Committee are respectively ex-officio Chairman, Deputy Chairman and member of the Commission. There can also be not more than 10 other members<sup>19</sup> elected by and from amongst the Members of the Council in such manner as determined by the Council.<sup>20</sup> For this purpose, the Council passed resolutions<sup>21</sup> to set out the election method. The latest resolution, i.e. the one passed by the Council on 8 July 1998, is attached at **Appendix 4-A**. It has

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<sup>17</sup> The Working Group on Administrative Matters of the Provisional Legislative Council was set up by resolution of the Council on 22 February 1997 to oversee the administrative support to the Provisional Legislative Council during its operation in Shenzhen up to 30 June 1997.

<sup>18</sup> The Reunification Bill was the Bill passed by the Provisional Legislative Council on 1 July 1997 to confirm the bills passed by the Provisional Legislative Council before 1 July 1997. The Bill also sought to endorse the appointment of judges of the Court of Final Appeal and the Chief Judge of the High Court, assist the interpretation on and after 1 July 1997 of laws previously in force in Hong Kong, continue those laws and confirm certain other laws, establish the High Court, the District Court, magistracies and other courts, tribunals and boards, continue legal proceedings, the criminal justice system, the administration of justice and the course of public justice on and after 1 July 1997, continue the public service on and after 1 July 1997, assist the construction of certain documents on and after 1 July 1997, transfer the ownership of certain property and rights and provide for the assumption of certain liabilities on and after 1 July 1997, in consequence of the resumption of the exercise of sovereignty over Hong Kong by the People's Republic of China, and for connected purposes.

<sup>19</sup> Section 4(2) of The Legislative Council Commission Ordinance provides that the Council may by resolution amend the number of "other members" of the Commission.

<sup>20</sup> Section 4(1)(e) of The Legislative Council Commission Ordinance.

<sup>21</sup> Resolutions were passed by the Council to determine the method of election of members to The Legislative Council Commission on 22 June 1994, 16 October 1995 and 8 July 1998.

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also been agreed among Members that the elected members of the Commission should be broadly representative of the groupings in the Council.<sup>22</sup> The term of service of those members elected to the Commission is one year or until the next House Committee meeting held for the election of Commission members, or until the next dissolution of the Council, whichever is the earlier.<sup>23</sup>

4.12 During the prorogation of the Council, the membership of the Commission remains the same. However, upon dissolution of the Council, section 5(8) of the Ordinance provides that the persons who become the Chairman, Deputy Chairman and member by virtue of their being the President, Chairman and Deputy Chairman of the House Committee respectively remain in office until the next election of such offices after the commencement of the new Council.

4.13 Where the Chairman is unable to perform his functions by reason of absence from Hong Kong or incapacity, the Deputy Chairman will act in the place of the Chairman. If the Deputy Chairman is also absent or incapable to perform the function of the Chairman, the Member who becomes member of the Commission by virtue of being the Deputy Chairman of the House Committee will act in the place of the Chairman.<sup>24</sup>

#### Functions and powers of the Commission

4.14 The functions and powers of the Commission are set out in section 9 and section 10 of The Legislative Council Commission Ordinance respectively.

#### *Provision of administrative support and services to the Council*

4.15 The primary functions of the Commission are to provide through the Legislative Council Secretariat administrative support and services to the Council and to supervise the operation of the Secretariat. The Commission is the employer of all staff of the Secretariat. The establishment of the Commission as a body corporate has provided it with the legal capacity to enter into any contract or agreement with any party, be it a person to be engaged as a staff member or a contractor for the provision of service. The Commission has the powers to determine the structure and functions of the

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<sup>22</sup> Minutes of the House Committee on 13 October 1995.

<sup>23</sup> Resolution passed by the Council on 8 July 1998.

<sup>24</sup> Section 5(9) of The Legislative Council Commission Ordinance.

#### *4. Administrative support for the Legislative Council*

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Secretariat, the remuneration package for staff as well as the human resources policies. In this respect, section 10(2) of the Ordinance provides that the Commission has to ensure that the grading, remuneration and other terms and conditions of service of staff of the Secretariat are kept, subject to the Commission's discretion to make exceptions in such cases as it sees fit, broadly in line with those applicable to persons employed in the Civil Service of the Government.

##### *Provision of office accommodation*

4.16 The Commission also has the function to provide accommodation for Members of the Council and staff of the Secretariat. It is set out in the Exchange of Letters between the Government and the Commission that reasonable accommodation will continue to be provided by the Government to enable the Council to discharge its functions and office accommodation be provided for Members and staff. For these purposes, the Government provides to the Commission appropriate premises at a cost of \$1 per year to enable the Commission to carry out its functions. Details of the conference and office facilities in the first purpose-built building of the Legislative Council are provided in the latter part of this Chapter.

##### *Production of the official reports of proceedings*

4.17 Under Rule 6(6) of the Rules of Procedure, the Clerk to the Legislative Council, acting under the directions of the President, shall be responsible for the production of the Official Record of all proceedings in the Council and in the committee of the whole Council. This Official Record, generally known as the "Hansard"<sup>25</sup>, has a long history in the Hong Kong Legislature. Prior to 1968, only minutes of proceedings which recorded the Members attending, decisions taken and details of divisions held were kept. In the 1968 Standing Orders, the Clerk was given the responsibility for producing an official record of all speeches made in the Council and in the committee of the whole Council under the directions of the President. The much revamped 1968 Standing Orders<sup>26</sup>, which put great emphasis on the rules and procedures for debates, also ensured that the speeches made in the debates were duly recorded verbatim. The Government had since then provided a team of stenographers responsible for the production of the official record of the speeches made in the debates and other proceedings of the Council and committee of the whole Council. From 1985-1986 onwards, this

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<sup>25</sup> "Hansard" is the name given to the verbatim transcripts of speeches made in parliamentary debates.

<sup>26</sup> See Chapter 1.

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team was enlarged to become a *Hansard production team* comprising translators and transcribers to provide a bilingual version of all records of proceedings. In April 1994, with the merging of the Office of the Clerk to the Legislative Council and the OMELCO Secretariat, the production of the bilingual version of Hansard has since then been part of the work of the Legislative Council Secretariat.

4.18 The production of the official report<sup>27</sup> of proceedings is one of the functions of the Commission, although procedurally it is the Clerk's responsibility to produce the Official Record of Proceedings under the directions of the President. The responsibility of the Commission is more related to the timeliness, quality and resources implications, while the actual production, including the content, i.e. the words used, remains the responsibility of the Clerk, under the directions of the President. In March 2009, the Commission decided that new pledges should be laid down for the production of the confirmed floor version, i.e. the version in the original languages, and the translated version of Hansard in order that the Official Records of Proceedings could be made accessible to Members and the public more expeditiously.<sup>28</sup>

##### *Other duties determined by resolutions of the Council*

4.19 The Council may by resolution give directions of a general or specific character to the Commission in relation to the performance of its functions or the exercise of its powers.<sup>29</sup> The first time when the Council invoked this power was on 8 January 2014 when the Council passed a resolution<sup>30</sup> to direct the Commission to use social media websites to share information contained in records of the proceedings of the Council for the purpose of enhancing the public dissemination of such information. In addition to giving directions to the Commission, the Council may also by resolution determine other duties to be performed by the Commission in addition to those provided in Section 9(a) to (d) of The Legislative Council Commission Ordinance.

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<sup>27</sup> The "Official report of all proceedings in the Council and in any committee of the whole Council" in the context of section 9(d) of The Legislative Council Commission Ordinance refers to the "Official Record of all proceedings in the Council and in the committee of the whole Council" under Rule 6(6) of the Rules of Procedure of the Legislative Council.

<sup>28</sup> For a one-day Council meeting, the Commission decided that the target timeframes for the production of the draft floor version of the Hansard should be reduced from 4 to 3 working days, the confirmed floor version from 22 to 7 working days, and the translated version from 66 to 24 working days, after the date of the relevant Council meeting.

<sup>29</sup> Section 17 of The Legislative Council Commission Ordinance.

<sup>30</sup> The passed resolution was published as a general notice in the Government Gazette (GN 155/2014).

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4.20 In deciding the extent of duties which can be performed by the Commission, the Council takes into account whether such duties fall within the scope of duties consistent with the purpose of this Ordinance and whether such an arrangement will give rise to any usurpation of the functions of the Council itself. Where a delegation of function is considered, the duties which are related to the formal proceedings of the Council must be delegated to a committee of the Council or the President or the Clerk, while the administrative support to the execution of such delegation may be undertaken by the Commission. In March 2014, the Council passed a resolution to amend the Rules of Procedure in order to require the Clerk to the Legislative Council to conduct reviews on Legislative Council documents and records for the purpose of declassification and to consider requests for access to such information.

##### Financial arrangements

4.21 The Commission has autonomy in managing its finances and employing its own staff. The arrangements are set out in sections 12 - 14 of The Legislative Council Commission Ordinance and in the Exchange of Letters between the Government and the Commission.

##### *Appropriation of funding for the Commission*

4.22 The funding provided to the Commission for performing its functions primarily comes from the Government through the annual appropriation exercise<sup>31</sup>. The Commission may receive donations, fees, rent, interest, etc. but these only form a very small part of its income. Funded under a head of expenditure in the Estimates, the Commission is provided with an appropriation of fund each year to finance the operation of the Secretariat under a one-line vote. Request for new resources for the next financial year is subject to the approval of the Government in the annual Resource Allocation Exercise.

4.23 To recognize the independent and special status of the Legislature, it has been agreed between the Government and the Commission that the bids from the Commission for additional funds for new and improved services would be considered independently on their own merits although consideration will also be given to the overall government budgetary situation. After support for new resources has been ascertained, the Secretary General, who is the chief executive of the Secretariat and designated as the controlling

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<sup>31</sup> See Chapter 6.

#### *4. Administrative support for the Legislative Council*

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officer<sup>32</sup>, prepares the Commission's estimates of expenditure for incorporation in the draft Estimates of Expenditure for the following financial year. The Estimates form part of the Appropriation Bill presented to the Legislative Council each year for its approval. In other words, although it is the Council which approves the appropriation for the Commission, the proposed Estimates of the Commission come from the Government after the views of the Commission have been taken into account. This arrangement is to recognize the long-standing principle of the Government's right of financial initiative adopted in Hong Kong and embodied in the Public Finance Ordinance, discussed in Chapter 2 above.

4.24 The expenditure of the Commission is provided under a number of subheads in Head 112 for specified purposes. The two major recurrent account subheads are: a cash-limited one-line vote for the operation of the Secretariat; and a running account for the remuneration and reimbursements to Legislative Council Members. In respect of the provision for the operation of the Secretariat<sup>33</sup>, the Commission may keep any unused funds in the Reserves of the Commission. The Reserves may be spent at the discretion of the Commission provided that no such expenditure will create a commitment on Government funds without the prior approval of the Government.<sup>34</sup> Regarding the provision for Members' remuneration and reimbursements, the amount included in the Estimates is the funding required for meeting the payments and claims in that particular financial year.

4.25 In the Exchange of Letters signed between the Government and the Commission, the Government also undertakes to continue to provide the Commission with certain services such as maintenance and minor repairs, alteration and fitting-out works for the accommodation managed by the Commission, auditing of accounts, provision of staff training, procurement services, electronic services and information technology consultancy and advice, etc. as set out in the Exchange of Letters. Where the Government decides to charge the Commission for any of such services subsequently, necessary funds will be provided in the annual Estimates of Expenditure to meet the costs involved. The Commission is also responsible for taking out insurance cover in respect of its properties and third party liability; and the

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<sup>32</sup> The Secretary General is deemed to be the controlling officer for the purpose of Public Finance Ordinance in respect of the Estimates of Expenditure. To preserve the independent status of the Commission, the Secretary General is not subject to the regulation, direction of instruction given by the Financial Secretary as in the case of other controlling officers in the Government unless the Commission has been consulted.

<sup>33</sup> The Estimates for the operation of the Legislative Council Secretariat in 2014-2015 were \$717.7 M.

<sup>34</sup> Director of Audit's Report No. 40 published on 31 March 2003, Chapter 5, para. 1.10.

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provision to meet such costs is included in the Commission's Estimates of Expenditure.

##### *Auditing of accounts*

4.26 The Commission is required to keep proper accounts and records of all its financial transactions and, after the expiry of a financial year, prepare a statement of accounts and have the statement of accounts audited by such auditor appointed by the Commission<sup>35</sup>. Since 1994-1995, the Commission's report on its activities during the previous financial year as well as its statement of accounts and auditor's report are tabled in the Council.<sup>36</sup>

4.27 The Director of Audit may also conduct value for money audits and examinations into the economy, efficiency and effectiveness with which the Commission has expended its resources in performing its functions and exercising its powers, and report to the Chief Executive and the President of the Council.<sup>37</sup>

4.28 In April 2003, the Director of Audit in its Report No. 40 on the Results of Value For Money Audits commented on the funding formula for computing subvention to the Commission for staff emoluments leading to the building up of the Commission's Reserves for which no ceiling had been set. The report was referred to the Public Accounts Committee for detailed examination. In its report tabled in the Council on 9 July 2003, the Public Accounts Committee acknowledged the constitutional status of the Legislative Council and the financial and managerial autonomy of the Commission. It also recognized that the provision of the one-line vote was to enable the Commission to have the autonomy and flexibility in deploying funds among various types of expenditure without being subject to the Government's control. The Committee considered that although the Commission enjoys a high degree of financial autonomy, it should also follow as closely as possible the guidelines on the best management practices issued by the Government and any decision to deviate from the guidelines should be made with strong justifications and should be explained publicly. It recommended that the Commission should consider whether there should be a ceiling for its Reserves. The Commission, in light of the findings of the Director of Audit and the Public Accounts Committee's views, agreed to update the funding arrangements for the computation of cash allowance and contract gratuities.

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<sup>35</sup> The Director of Audit has been appointed as the auditor of the Commission's statement of accounts.

<sup>36</sup> Section 13 of The Legislative Council Commission Ordinance.

<sup>37</sup> Section 14 of The Legislative Council Commission Ordinance.

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On the matter of its Reserves, the Commission took the view that it needed adequate resources to enable the Legislative Council to perform effectively the constitutional functions stipulated in the Basic Law.<sup>38</sup> The Commission has not considered it necessary to set a ceiling for the Reserves.

##### Meetings of the Commission

4.29 The Commission usually meets once a month during a session. Meetings of the Commission are presided by the Chairman of the Commission or, in his absence or if he discloses a direct pecuniary interest on a matter under consideration by the Commission and is required by the majority of members present to vacate the chair, by the Deputy Chairman. If both the Chairman and Deputy Chairman are absent or are both required by the majority of members present to vacate the chair due to direct pecuniary interests, a member should be appointed by and from among the other members present to preside at the meeting or for a particular item of business.<sup>39</sup> Members may take into account the provision in Section 5(9) of the Ordinance when appointing a member to preside at the meeting.<sup>40</sup> The member who presides has a casting vote in addition to his original vote.

4.30 The quorum for any meeting of the Commission during the sessions of the Council is 4 members. After the dissolution of the Council, the quorum is 2 members.<sup>41</sup>

4.31 Members attending a meeting of the Commission or any of its committees must disclose the nature of any direct pecuniary interest they may have in a matter under discussion at the meeting, if such interest is greater than that which they have as a member of the general public. If so required by the majority of members present at the meeting, the member(s) who has direct pecuniary interest should withdraw from the meeting and, in any case except as otherwise determined by the majority of...members, should not vote on the matter.<sup>42</sup>

4.32 Meetings of the Commission are held in private. They are not open to other Members of the Council but the Commission may invite any Member to be present at a meeting for a particular item of business if it is considered that the presence of that Member would assist the Commission in considering the

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<sup>38</sup> Report on the Activities of The Legislative Council Commission (2003-2004).

<sup>39</sup> Section 6(2) of The Legislative Council Commission Ordinance.

<sup>40</sup> Para. 4.13.

<sup>41</sup> Section 6(2)(a) of The Legislative Council Commission Ordinance.

<sup>42</sup> Section 7 of The Legislative Council Commission Ordinance.

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matter. On occasions, the Commission may conduct consultation sessions with Members of the Council. These consultation sessions may be open to the public but Members' speeches at these sessions are not protected under the Legislative Council (Powers and Privileges) Ordinance.

4.33 Matters to be considered by the Commission may be raised by the Chairman, any member of the Commission, the Secretary General or by other Members of the Council if agreed by the Commission or the Chairman. The Secretary General and the Legal Adviser of the Secretariat are in attendance at all meetings to assist the Commission. With the agreement of the Chairman, other staff members or outside parties, including Government officials may be invited to the meetings of the Commission to assist members in their deliberation of any items of business on the agenda for the meeting.

##### Committees of the Commission

4.34 The Commission may set up committees to perform any of its functions and delegate to them any of its functions and powers. The Commission determines membership, functions, powers and procedures of its committees.<sup>43</sup>

4.35 Three committees have been established since the establishment of the Commission in 1994. They are:

- (a) ***Committee on Personnel Matters***, which deals with appointment and personnel matters;
- (b) ***Committee on Facilities and Services***, which looks after the provision of accommodation and facilities to the Council and the Secretariat; and
- (c) ***Committee on Members' Operating Expenses***<sup>44</sup>, which advises on the processing of reimbursement claims for Members' allowances.

4.36 Members of the Commission are invited to join the committees at the start of each term of office. All three committees are chaired by the Chairman of the Commission. The terms of reference of these committees are provided

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<sup>43</sup> Section 10(1)(n) and section 11(1) of The Legislative Council Commission Ordinance.

<sup>44</sup> The Committee on Members' Operating Expenses was formerly known as the Committee on Members' Allowances.

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in **Appendix 4-B**. The Commission may set up subcommittees under any of its committees to deal with specific subjects within the terms of reference of the relevant committees. In 2004-2005, the Commission set up the ***Subcommittee on Information Technology Services*** under the Committee on Facilities and Services to advise on the information technology services provided by the Secretariat.

4.37 In addition to these three committees, working groups and task forces are set up, whenever required, to deal with specific matters. A ***Working Group to Review the Organisation and Structure of the Legislative Council Secretariat*** was set up in 2001 to review the then organisation, structure, establishment and operational management procedures of the secretariat. The Working Group was dissolved in December 2003 after completion of its work. In 2002, a ***Task Force on New Legislative Council Complex*** was set up to draw up the planning and design parameters for the new Legislative Council Complex. With the shelving of the Tamar Development Project in November that year, all matters relating to the construction of the New Legislative Council Complex were taken up by the Commission itself. In 2008, the Commission set up a ***Committee on Art*** to advise it on matters relating to the acquisition of works of art for the new Complex. The Committee was dissolved in 2012 following the commissioning of the new Complex.

4.38 In 2012-2013, the Commission set up the ***Committee on the Use of the Legislative Council Square*** which considers and approves applications for the use of the Legislative Council Square and imposes conditions of use where necessary. There is also an ***Appeals Committee*** to consider appeals against decisions of the Committee on the use of the Legislative Council Square.

#### **The Legislative Council Secretariat**

4.39 The Legislative Council Secretariat was set up on 1 April 1994 when The Legislative Council Commission Ordinance came into force. Staff members of the Secretariat are directly engaged by the Commission to provide administrative support and services to the Council and its committees. Headed by the Secretary General, who is the chief executive of the Secretariat and at the same time the Clerk to the Legislative Council, the Secretariat consists of various grades of staff to provide specialist and general services to the Council. Among the various specialist grades are the Council Secretaries who serve as clerks to provide procedural advice and secretarial support to the

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Council and its committees.<sup>45</sup> Working as a team with the clerks are the research officers, who provide general and specific research support to committees and the Council as a whole, and legal advisers who provide independent legal advice to committees and Members on bills, subsidiary legislation and policy matters. The Secretary General and all staff providing support to the Council and committees are required to exhibit at all times complete impartiality and professionalism in dealing with all procedural and other matters in the Council.

4.40 Apart from servicing the business of the Council and its committees, the Secretariat also provides other supporting services, such as the translation of all papers issued by the Council which are produced in both English and Chinese, and the provision of simultaneous interpretation service in Cantonese, Putonghua and English to all open meetings of the Council and committees.<sup>46</sup> There is also a technical team to manage the conference and office facilities for supporting the work of the Council and a team of public information officers to facilitate media coverage of the Council and committee meetings and enhance public understanding of the work of the Council through the provision of visitor services and educational programmes for schools. Since the commissioning of the new Legislative Council Complex in October 2011, the Secretariat maintains a constitutional library in the Complex to provide reference materials for Members, staff and the public relating to development of the Legislature and constitutional systems in other jurisdictions. A Legislative Council Archives has also been established to preserve valuable records of and for the Council and to make them available for access by internal users and members of the public.

4.41 The Secretariat also provides support to Members in the operation of the Legislative Council Redress System. The Council Secretaries who assist Members in handling complaints from the public also assist Members in communicating with the Government and referring matters to the relevant committees of the Council upon the instructions of Duty Roster Members.<sup>47</sup>

4.42 The organisational chart of the Secretariat and the main functions of each division are provided in **Appendix 4-C**.

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<sup>45</sup> Under Rule 6(7) of the Rules of Procedure, the Clerk to the Legislative Council shall be responsible for providing every committee and subcommittee of the Council with a clerk.

<sup>46</sup> Rule 2 of the Rules of Procedure provides that a Member may address the Council in either Putonghua, Cantonese or the English language.

<sup>47</sup> Details are provided in Chapter 6.

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### **Legislative Council Complex**

#### Historical background

4.43 Originally sittings of the pre-1997 Legislative Council were held in various central offices of the Government, including the Central Government Offices from 1957 to 1985. In anticipation of the increased number of elected Members in the Legislative Council in 1985, the Government renovated the former Supreme Court Building, a declared monument on Jackson Road, to provide conference and other facilities for the 60-Member Legislature and office accommodation for staff providing services to the Council. This building, named as the Legislative Council Building until 2011, was commissioned in October 1985. The conference facilities in the Legislative Council Building included a Chamber with press and public galleries, 2 meeting rooms for the holding of the closed meetings of the OMELCO committees. Following the formalization of the OMELCO committees and the opening up of the meetings of these committees to the public from 1992 onwards, it was soon found that the restricted configuration of the Legislative Council Building had made it difficult to provide sufficient conference facilities which allowed public access to the open meetings of the committees. Coupled with the need to provide office space for Members and the growing number of staff in the Secretariat, discussions took place between the Commission and the Government for almost a decade to explore all possible options to put the meeting facilities and offices of the Council under one roof. As interim measures, conversions inside the Building took place to provide for additional conference and press facilities by moving some staff offices to nearby commercial buildings.

4.44 In April 2002, the Government finally decided to provide a purpose-built Legislative Council Complex at the Tamar site as part of the development of a civic core to house also the Central Government Complex and other facilities. The project was shelved in November 2003 in view of the impact of the SARS outbreak. With the improvement in economy, the project was re-launched in October 2005 and continued with the prequalification exercise (which started in 2003), which was the first stage of the tender exercise. With funding approved by the Finance Committee on 22 June 2006,<sup>48</sup> construction works for the Tamar Development Project commenced in mid 2007. On 18 December 2009, additional funding was approved by the Finance Committee to provide, inter alia, additional space for

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<sup>48</sup> Paper PWSC (2006-07)15 endorsed by the Public Works Subcommittee on 29 May 2006 and Paper FCR (2006-07)17 approved by the Finance Committee on 23 June 2006.

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the Legislative Council and barrier free access to all users and visitors throughout the Complex.<sup>49</sup> In September 2011, all central offices of Members and offices of the Secretariat were moved into the new Legislative Council Complex.

##### Facilities in the Legislative Council Complex

4.45 Meetings of the Council and its committees are held in the Legislative Council Complex which is situated at No. 1 Legislative Council Road in the Central District of Hong Kong. The Legislative Council Complex was officially opened in October 2011. The Complex comprises the Council Block, the Office Block and an adjacent open space area which is made up of the Legislative Council Square and the Legislative Council Garden. The 5-storey Council Block is connected to the lower floors of the Office Block providing easy access for Members and staff to commute between the two blocks. The design of the conference and office facilities in the Complex is to cater for a maximum of 120 Members in the Council although the fitting-out at the time of commissioning was only to cater for 60 Members. While the configuration of the Chamber and the conference rooms can be converted to enable more seats to be added, the expansion in space for Members' offices and the Secretariat will only be achieved through adding more floors on top of the Office Block. In September 2009, the Town Planning Board approved the potential expansion of the whole Legislative Council Complex<sup>50</sup> although only one additional floor above the Office Block was included in the Tamar Development Project for completion in 2011. The additional floor was subsequently used to accommodate the offices of 10 additional Members for the Fifth Legislative Council in 2012.<sup>51</sup> In this respect, the Director of Audit, in his Report No. 61 tabled at the Council in October 2013, said that in implementing works for expansion in future, the remaining area of expansion should preferably be provided in one phase of works.<sup>52</sup>

4.46 The Council Block houses the Chamber, where meetings of the Council take place, and four conference rooms suitable for open meetings held by committees. All rooms are provided with public and press galleries and

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<sup>49</sup> Paper PWSC (2009-10)73 endorsed by the Public Works Subcommittee on 2 December 2009 and Paper FCR (2009-10)44 approved by the Finance Committee on 18 December 2009.

<sup>50</sup> The approval of the Town Planning Board was given in response to an application submitted by the Government under section 16 of the Town Planning Ordinance. The approved potential expansion included the addition of five floors above the Legislative Council High Block and 11 floors above the Podium of the Legislative Council High Block; the additional communal facilities; and an eating place (i.e. the café) for public enjoyment.

<sup>51</sup> Some staff offices were moved to Queensway Government Offices.

<sup>52</sup> Report No. 61 of the Audit Commission on 30 October 2013, Chapter 4, para. 4.19.

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simultaneous interpretation facilities. One of the conference rooms, Conference Room 1, is designed to serve as an alternate venue for holding Council meetings if needed. Electronic voting devices are installed in the Chamber and Conference Room 1 to enable electronic voting to take place if a division is called at voting and to allow sign language interpretation of the proceedings held in those rooms. One of the conference rooms is capable of conversion into 2 separate conference rooms, each with its own press and public galleries, to enable more committee meetings to be held simultaneously. The configuration of the conference rooms also allows a larger number of deputations to be present at public hearings conducted by committees. The floor plans of the conference facilities in the Council Block are displayed in the Precincts of the Chamber and shown at **Appendix 4-D**.

4.47 The design of the conference and ancillary facilities has taken into account the need to make the work of the Council more transparent to the public. All open proceedings of the Council and its committees are recorded and televised by the Secretariat's own broadcasting team and uploaded on the Legislative Council's official website and other social media websites. Two press conference rooms are located on the same floor of the Chamber and next to a duplex Press Room which provides dedicated work stations for the reporters and photographers assigned by different newspaper agents and media organisations to work on Legislative Council matters. Television and Radio Rooms on the circumference of the Chamber with full view of the proceedings inside the Chamber itself, are assigned to individual television, radio and electronic media organisations. Between the Dining Hall and the Chamber, there is a sitting-out area for the media to meet and interview Members and Government Officials who attend meetings of the Council.

4.48 The Council Block also houses various facilities for use by members of the public. Apart from the Legislative Council Library and the Legislative Council Archives which are open to Members, staff and the public, there are also education facilities including a Children's Corner for children from 3 to 8, an Education Activity Room for the holding of mock Council meetings for students and exhibition galleries providing information on the historical development, functions and work of the Hong Kong Legislature for all visitors. Guided educational tours of the Complex are offered for members of the public on all days of the week except on certain public holidays. Visitors may also use the services of the Cafeteria and the Souvenir Shop at the Main Lobby of the Council Block.

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4.49 The Office Block houses the Public Complaints Office and offices of Members and the Secretariat. Based on the schedule of accommodation agreed between the Government and the Commission, each Member is provided with an office of 60 sq m in the Complex for the Member and his staff members. Members are provided with common conference facilities on each floor as well as a coffee corner which is connected to the Roof Garden of the Council Block.

##### Public access to the proceedings of the Council

4.50 As explained in Chapter 2, subject to any restrictions imposed in accordance with the Powers and Privileges Ordinance, sittings of the Council are open to the public. The right of persons other than members or officers of the Council to enter or remain within the precincts of the Chamber is subject to the Rules of Procedure and any resolution of the Council limiting or prohibiting the enjoyment of such right.<sup>53</sup> The President may from time to time, for the purpose of maintaining the security of the precincts of the Chamber, issue administrative instructions for regulating the admittance of person to the *Chamber* and the *precincts of the Chamber*.<sup>54</sup> In drawing up the administrative instructions, the President may take into account the views of the Commission which has a supervisory role over the performance of the Secretariat in ensuring the proper management of the Legislative Council Complex.

4.51 The expression "precincts of the Chamber" is defined in the Powers and Privileges Ordinance to mean the Chamber and offices of the Council and any adjacent galleries and places provided for the use or accommodation of members of the public and representatives of the press, and, on any days when the Council or a committee is sitting, the entire building and any forecourt, open space, etc. adjoining or appertaining to such building and used or provided for the purpose of the Council.<sup>55</sup> In anticipation of the moving of the Legislative Council to the Legislative Council Complex in October 2011, the term "*building*" in the context of the "precincts of the Chamber" in the Administration Instructions for Regulating Admittance and Conduct of Persons ("Administrative Instructions") issued by the President was amended<sup>56</sup> to mean the building or premises in which the Chamber is situated and marked as such on the plan deposited in the Office of the Clerk. This amendment allows the precincts of the Chamber to be in any location so long

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<sup>53</sup> Section 8(1) and (2) of the Legislative Council (Powers and Privileges) Ordinance.

<sup>54</sup> Section 8(3) of the Legislative Council (Powers and Privileges) Ordinance.

<sup>55</sup> Section 2(1) of the Legislative Council (Powers and Privileges) Ordinance.

<sup>56</sup> The amendment took effect on 1 October 2011.

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as the plan of such is marked and signed by the Clerk and deposited in his office.

##### Access to the precincts of the Chamber by the public and the media

4.52 Members of the public including media representatives are required to behave in an orderly manner and comply with any direction given by any officer of the Council for the purpose of keeping order, and observe the instructions and requirements set out in the Administrative Instructions. Guidelines are drawn up to facilitate the staff members of the Secretariat, who are officers of the Council <sup>57</sup>, to ensure compliance with the instructions and requirements.

4.53 Visitors to the precincts of the Chamber must obtain a pass for entry to the precincts of the Chamber and display the pass at all times. They are not allowed to enter the areas reserved for Members or the President or officers of the Council or general offices unless with the permission of authorized persons. No person is allowed to display any sign, message or banner (including on an item of clothing) in a press or public gallery. An officer of the Council may refuse admission of any person who display such items or is believed to be displaying such items to a press or public gallery.

4.54 There are approximately one hundred media representatives working inside the Legislative Council Complex on the days when the Council or its committees are sitting. These media representatives are reporters and photographers assigned by their media organisations to cover the work of the Legislative Council. It is the policy of the Commission to provide an environment which is conducive to facilitating the media representatives to report the proceedings of the Council and its committees and to interview Members inside the Legislative Council Complex. Technical support is provided where possible to minimize any disturbance to the open meetings.

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<sup>57</sup> Section 24 of the Legislative Council (Powers and Privileges) Ordinance provides that within the precincts of the Chamber, every officer of the Council shall, for the purposes of this Ordinance and of the application of the criminal law, have all the powers and enjoy all the privileges of a police officer.

### Legal position of The Legislative Council Commission

4.55 Through the Exchange of Letters with the Government, it has been established that the Commission is exempted from payment of taxes and rates. Where appropriate, amendments to the relevant legislation are made to give statutory effect to the exemptions. Exemptions for obtaining licences are also sought where the Commission is required by law to obtain a licence for undertaking certain activities within its premises. In January 2011, an order made by the Secretary for Home Affairs was tabled in the Council (in the form of subsidiary legislation) to exempt places under the management of the Commission from the requirement to obtain a licence under the Places of Public Entertainment Ordinance (Cap. 172) to hold activities/services which may constitute "entertainment" as defined in section 2 of the Ordinance. These activities/services include guided education tours for members of the public, story-telling and activity sessions for young children, exhibition on the activities of the Legislative Council, etc. which are directly related to the work of the Council.

4.56 The Commission is a body corporate which has the legal capacity to sue or be sued in its name. As the Legislative Council is not a body corporate but the legislature of HKSAR, it does not have the legal capacity to be named as a respondent or defendant in judicial review proceedings<sup>58</sup>, any judicial reviews or legal proceedings to be taken against the Council in respect of its proceedings may only be taken by naming the Members of the Council or members of the committee or subcommittee concerned, as respondents. Under such circumstances, it has been the practice of the Commission to engage a legal team on the recommendation of the Secretariat or the committee/subcommittee concerned to represent the individual Members and to bear the legal costs. In the event that individual Members may wish to opt out and seek separate legal representation, the Commission will determine on a case-by-case basis whether to accept liability, taking into account the nature and extent of possible legal costs involved, the justifications put to the relevant committee and/or the Commission for seeking separate legal representation, the extent of monitoring over the incurring of costs, the liabilities of the Commission for separate representation and other relevant factors. The legal costs incurred by individual Members in relation to a criminal charge or civil proceedings unrelated to the Members' service in the

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<sup>58</sup> See *Glory Success Transportation Limited v Secretary for Justice*, HCAL 93/2006 and *Cheng Yin Fung v Legislative Council*, CACV 378/2008; but note section 186 of the Copyright Ordinance (Cap. 528) provides that for the purposes of holding, dealing with and enforcing copyright, and in connection with all legal proceedings relating to copyright, the Legislative Council is to be treated as having the legal capacity of a body corporate.

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legislature are not to be borne by the Commission. As expenditure arising from judicial proceedings cannot be estimated in advance, there is a commitment on the part of the Government to bear any such costs which cannot be borne by the Commission from its budget for the year but subject to appropriate justifications.

#### **Financial and administrative support for individual Members**

4.57 Members of the Legislative Council are provided with a monthly remuneration, an annual medical allowance and a gratuity at the end of their 4-year term of office. In addition to being provided with an office in the Legislative Council Complex, each Member may claim reimbursements for the operating expenses arising out of their Council duties, subject to various reimbursement guidelines and ceilings on the types of expenses incurred. The updated levels of remuneration and reimbursement are published on the Legislative Council website.

4.58 The President of the Legislative Council receives a monthly remuneration twice of that received by a Member. The President's Deputy, who is the Chairman of the House Committee, receives a monthly remuneration one and a half times of that received by a Member. The above arrangements are to recognize the additional responsibilities of the President and the President's Deputy.

4.59 The provision of remuneration or reimbursements for operating expenses is not stipulated in law or in the Rules of Procedure of the Legislative Council. It is a Government policy to provide a remuneration package for Members so as to enable a wide spectrum of quality individuals from different sectors of the community to serve the public in the capacity of Legislative Council Members vis-à-vis other pursuits and to reimburse their staffing and other operating expenses for the conduct of their legislative duties. The determination of the remuneration package and any changes to it requires the approval of the Finance Committee but the proposals for such changes must come from the Government.

4.60 Reviews of the remuneration package are undertaken by the Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under the Political Appointment Systems of the HKSAR ("Independent Commission") appointed by the Chief

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Executive. Under normal circumstances, the Independent Commission conducts a comprehensive review once every 3 to 5 years and normally about one year before the commencement of a new term. In the course of its work, the Independent Commission may meet with Members (whose views may also be represented by the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement) and take into account the views of Members and other stakeholders in coming up with its own recommendations. Its recommendations are then put to the Government which, after seeking endorsement of the Chief Executive-in-Council, puts forward its proposal to the Finance Committee for implementation in the new term. There are however precedents that changes to the remuneration package may be made in the middle of a legislative term.<sup>59</sup>

4.61 The Subcommittee on Members' Remuneration and Operating Expenses Reimbursement ("the Subcommittee") is a subcommittee of the House Committee. It was first set up on October 1995 in the pre-1997 Legislature to review the use of Members' operating expenses reimbursement and allowances. Before the Subcommittee came into existence, there was a Working Group under the House Committee responsible for the review of Members' allowances and it communicated with the Independent Commission on matters relating to Members' remuneration and reimbursement. The same Subcommittee was set up by the House Committee of the First Legislative Council on 10 July 1998. The Subcommittee conducts its own reviews of Members' remuneration package and studies of overseas practices, and submits views to the Independent Commission as and when required after seeking support from the House Committee. It may also invite the Director of Administration to its meetings to check the progress of specific issues and request him or her to relay the Subcommittee's views to the Independent Commission.

4.62 The historical development of the package of remuneration and reimbursements for Members of the Legislative Council is provided in **Appendix 4-E**.

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<sup>59</sup> In July 2001, the Government proposed modifications to the package of remuneration and allowances for Members with effect from 1 October 2001 to give Members more resources and greater flexibility in the use of their accountable allowances for office operating expenses. The proposal was approved by the Finance Committee on 6 July 2001.

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##### Monthly remuneration

4.63 Members receive a monthly remuneration which is taxable. During the 4-year term of the Legislative Council, the level of remuneration for Members is adjusted in October each year according to the average movement of the Consumer Price Index (C) in the previous 12 months up to August in the same year.<sup>60</sup>

##### End-of-service gratuity

4.64 An end-of-service gratuity pitched at 15% of the total remuneration received during the term is payable on completion of a term. In the case of a Member returned at a by-election, the gratuity is calculated at 15% of the total remuneration received from the day the election result is declared to the end of the term. A Member who resigns in the middle of a term is not entitled to this gratuity, unless he accepts a government appointment and becomes a public servant; or unless the President is satisfied, if necessary after consulting a body comprising Members of the Council, that the Member has resigned as a result of serious illness or any other valid reasons. In such cases the President has the discretion to have the gratuity paid to the Member. The gratuity is taxable.

##### Operating expenses reimbursement

4.65 Each Member is provided with reimbursements to cover expenses arising out of his Legislative Council duties. The governing principles of the reimbursement system, as set by the Independent Commission at the time when the system was established, are as follows:

- "(a) that Legislative Council Members must be accountable in respect of all their claims;
- (b) that their claims should be credible and reasonable; and
- (c) that all their accounts should be transparent and properly documented."

4.66 These governing principles are reflected in *A Guide for Reimbursement of Operating Expenses for Members of the Legislative Council* ("Reimbursement Guide") drawn up by the Legislative Council

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<sup>60</sup> Secretary for Financial Services and the Treasury is authorized by the Finance Committee to adjust the level of remuneration in accordance with the movement of CPI(C).

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Secretariat. In the Reimbursement Guide, Members are reminded of the need to avoid any conflict of interest when applying for reimbursements and to make the appropriate declaration if such a conflict of interest has arisen.

4.67 All applications for claims are to be certified by the Members concerned and are processed by the Legislative Council Secretariat in accordance with the Reimbursement Guide under the supervision of the Secretary General. If a Member does not agree with the Secretariat's handling of a reimbursement claim, an appeal may be lodged with the Committee on Members' Operating Expenses of The Legislative Council Commission. The Committee comprises the three ex-officio members of the Commission, i.e. the President, the Chairman and Deputy Chairman of the House Committee. The Committee is responsible for formulating policies on administering the processing of reimbursement claims submitted by Members and advising on the related practices and procedures.

4.68 Reimbursement claims made by Members are subject to compliance audit annually. All claim forms, declaration forms and supporting documents except employment contracts, consultancy agreements and separately provided personal data are available for public inspection at the Legislative Council Library.<sup>61</sup>

4.69 There are different types of reimbursements under the operating expenses reimbursement as explained below.

(a) *Office operation*

4.70 The office operating expenses reimbursement is provided on an annual basis to enable Members to reimburse their expenses on the employment of staff, office equipment and furniture, general office expenses, office rentals and insurance, consultancy service, activities, etc. Staff should be recruited through an open process as stipulated in the Reimbursement Guide. Where a staff member is required to undertake duties which are not related to Legislative Council work, a declaration should be made on the percentage of work related to Legislative Council business and only that portion of the staff remuneration can be claimed. Each staff member is required to observe a code of conduct for staff. A Member is not allowed to employ his relatives as staff.

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<sup>61</sup> In November 2004, the Subcommittee on Members' Remuneration and Operating Expenses Reimbursement invited the ICAC to conduct a review on the administration of Legislative Council Members' operating expenses reimbursement claims. ICAC's report was presented to the Subcommittee on 1 March 2005.

#### *4. Administrative support for the Legislative Council*

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4.71 A Member may claim reimbursements for office accommodation expenses arising from his district offices, including rentals, rates, government rents, management fees and utility charges. Where the office is shared with another party, only the portion of rental in proportion to the area used for Legislative Council business can be reimbursed unless other more equitable bases are available.

4.72 Any unused balances in the annual reimbursable amount for office operation can be carried forward for use until the end of the legislative term.

*(b) Entertainment and travelling*

4.73 Reimbursement for entertainment and travelling is non-accountable. However up to 50% of the amount for this type of claims can be used to meet staff expenses on an accountable basis. Any unused balances of one year cannot be carried forward to another year.

*(c) Postage*

4.74 Apart from claiming expenses on postage under the office operation expenses reimbursement, Members may also claim reimbursement direct from the Secretariat for postage expenses incurred on correspondence related to Legislative Council business except bulk mailing.

*(d) Setting up and information technology*

4.75 Members may claim reimbursement for setting up their offices, including the one provided in the Legislative Council Complex, and for the purchase and use of information technology and communication equipment. However, a Member who has claimed any setting up expenses reimbursement in the previous term may only claim 50% of the reimbursable amount for setting up expenses in the current term for the purposes of renovation, removal, expansion and/or setting up of additional offices and for the addition or replacement of equipment and furniture.

*(e) Winding up*

4.76 Winding up expenses reimbursement is claimable when a Member ceases to be a Member of the Legislative Council, either because he chooses

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not to stand for re-election or for reasons over which he has no control, such as death, defeat in an election or dissolution of the Council. A Member who resigns or who is removed from office under Article 79(6) or Article 79(7) is not eligible for this reimbursement.

(f) *Medical allowance*

4.77 Each Member is eligible for an annual accountable medical allowance to pay for the premium of their personal medical and/or dental insurance policies or to use the allowance to pay for the actual medical and dental expenses.

Advance of operating funds

4.78 Members may obtain advance of operating fund to finance their office operation, entertainment and travelling expenses, as well as setting up and information technology expenses subject to the ceilings set out in the Reimbursement Guide.

Mechanism for handling complaints and allegations concerning Members' operating expenses reimbursement claims

4.79 Following the conduct of a study by a subcommittee<sup>62</sup> of the House Committee of the Third Legislative Council, a mechanism was put in place in July 2006 to handle complaints and allegations concerning Members' operating expenses reimbursement claims. This mechanism includes the following:

- (a) stipulation in Rule 83AA of the Rules of Procedure that a Member when making operating expenses reimbursement claims or applying for advance of operating funds should ensure that any information provided or any declaration or certification made is true, accurate and complete, and should act according to any undertaking he has given;
- (b) expansion of the terms of reference of the Committee on Members' Interests in Rule 73(1) of the Rules of Procedure to

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<sup>62</sup> The Subcommittee to Consider a mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims was set up on 15 October 2004 by the House Committee. On 17 June 2005, the Subcommittee reported to the House Committee with its recommendations. On 5 July 2006, the Council passed a resolution to amend the relevant rules in the Rules of Procedure.

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include the consideration and investigation of any complaint made in relation to the conduct of Members referred to in (a) above; and

- (c) expansion of the scope of sanctions in Rule 85 of the Rules of Procedure to include non-compliance with the requirements stipulated in (a) above.

4.80 Upon the receipt of a complaint, the Committee on Members' Interests may consider the complaint in accordance with the Committee's procedure for handling complaints and, if it thinks fit after consideration, investigate such complaint in accordance with its investigation procedure. In considering or investigating such a complaint, the Committee should, in addition to considering any other relevant matter, have regard to the provisions of the Reimbursement Guide. The procedure and rules governing the operation of the Committee, which is a standing committee of the Council with the power to summon witnesses, are set out in Rule 73 of the Rules of Procedure. Any other practices and procedure are determined by the Committee itself. The Committee reports the results of its investigation to the Council. Where the Committee considers that the alleged Member has failed to comply with the Members' obligations under Rule 83AA, it may move a motion in the Council to admonish, reprimand or suspend the Member.

## Chapter 5

### The Executive Authorities and the Legislature

5.1 The relationship between the executive authorities and the legislature under the political structure of the HKSAR established by the Basic Law has been described as "*of regulation and co-ordination*".<sup>1 2</sup> This Chapter explains how the Chief Executive, as head of the executive authorities, and the Legislative Council interact with each other in the performance of their respective functions, and how the Chief Executive accounts to the Legislative Council for the work of the Government. Since a large part of this interaction is modelled on practices which existed before July 1997, this Chapter also provides a comprehensive account of the historical development of such practices and the reasons for some of the significant changes which have taken place in past years. It is hoped that this approach will assist in a better understanding of the rationale behind the practices.

#### **Relationship between the Chief Executive and the Legislature under the Basic Law**

5.2 The relationship between the Government of the HKSAR, headed by the Chief Executive, and the Legislative Council is regulated by the Basic Law; in practice they interact with each other in the course of performing the powers and functions conferred on them respectively in Chapter IV of the Basic Law.

5.3 As regards policy-making, it is the Government's function to formulate and implement policies. The Chief Executive, assisted by the Executive Council, decides on public policies. Through regular policy addresses to the Legislative Council and answering questions raised by its Members, the Chief Executive and his Government are accountable to the Legislative Council. The Legislative Council correspondingly has the power and function to receive and debate the Chief Executive's policy addresses and raise questions on the work of the Government. It also has the power and function to debate any issue concerning public interests.<sup>3</sup>

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<sup>1</sup> The Address by Mr Ji Pengfei, Chairman of the Drafting Committee for the Basic Law of the HKSAR, at the Third Session of the Seventh NPC on 28 March 1990.

<sup>2</sup> Secretary for Constitutional Affairs' response to a Member's question at the Council meeting on 27 January 2010. *Hansard*.

<sup>3</sup> Articles 64 and 73(4), (5) and (6) of the Basic Law.

## 5. *The Executive Authorities and the Legislature*

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5.4 Regarding law-making, the Legislative Council has the power and function to enact, amend and repeal laws, while the Government has the power and function to draft bills, motions and subordinate legislation and introduce them into the Legislative Council. The Chief Executive is required to consult the Executive Council before introducing bills or making subordinate legislation. The President of the Legislative Council, who presides over meetings and decides on the agenda, must give priority to government bills for inclusion on the agenda. The Legislative Council is required to proceed with bills and subordinate legislation in accordance with the provisions of the Basic Law and legal procedures.<sup>4</sup>

5.5 Once a bill is passed, the Chief Executive must sign the bill and promulgate the enacted law; and the Government must implement the laws passed by the Legislative Council and already in force.<sup>5</sup> However, if the Chief Executive considers that a bill passed by the Legislative Council is not compatible with the overall interests of the HKSAR, he may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all its Members, the Chief Executive must sign and promulgate it within one month, and if he refuses to sign and consensus cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council after consulting the Executive Council.<sup>6</sup> If the original bill in dispute is passed again by the new Legislative Council by a two-thirds majority of all its Members, and the Chief Executive still refuses to sign it, the Chief Executive must resign.<sup>7</sup>

5.6 Also if the Legislative Council refuses to pass an "important" <sup>8</sup> bill introduced by the Government and consensus cannot be reached after consultations, the Chief Executive may dissolve the Council after consulting the Executive Council. If the new Legislative Council refuses to pass the original bill in dispute, the Chief Executive must resign.

5.7 Individual Members of the Legislative Council may also introduce bills in accordance with the Basic Law and legal procedures, provided that they do not relate to public expenditure or political structure or the operation

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<sup>4</sup> According to *LEUNG Kwok Hung v The President of the Legislative Council of the HKSAR*, CACV 123/2012, the court ruled that "legal procedures" are interpreted as the Rules of Procedure of the Legislative Council.

<sup>5</sup> Articles 48(3), 64 and 76 of the Basic Law.

<sup>6</sup> Articles 73(1), 56, 62(5), 72(1), 48(3), 64, 49 and 50 of the Basic Law.

<sup>7</sup> Article 52(2) of the Basic Law.

<sup>8</sup> Articles 50 and 52(3) of the Basic Law.

of the government.<sup>9</sup> If a bill relates to government policies, the written consent of the Chief Executive must be obtained before it can be introduced. If a Member's bill is included on the agenda of the Council, the Legislative Council shall proceed with it in the same way as any government bills except as regards voting procedures and priority on the agenda being given to government bills under Article 72(2) of the Basic Law. After the bill is passed by the Legislative Council, it can only take effect if the Chief Executive signs the bill and promulgates it. Once that is done, the government must implement the newly promulgated law.<sup>10</sup>

5.8 Under the Basic Law, financial initiative rests with the Government. This principle has been in existence since before 1997.<sup>11</sup> It is the Government's power and function to draw up and introduce budgets and final accounts. Any motions regarding revenues or expenditure must first be approved by the Chief Executive who also needs to consult the Executive Council if such motions involve legislation. Legislative Council's approval must be obtained for taxation and public expenditure. The Legislative Council has the power and function to examine and approve the budgets, taxation and public expenditure. If the Legislative Council refuses to pass a budget<sup>12</sup>, and if consensus cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council after consulting the Executive Council. If the new Legislative Council still refuses to pass the original budget in dispute, the Chief Executive must resign.<sup>13</sup>

5.9 Under the Basic Law, the power to appoint and remove judges lies with the Chief Executive, and the respective procedures are prescribed in Articles 88 and 89. In the case of appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court, under Article 90, the Chief Executive is required, apart from following the procedures in Articles 88 and 89, to obtain the endorsement of the Legislative Council. The Legislative Council has the power and function to endorse the appointment or removal of these judges. Once endorsed, the Chief Executive will proceed with their appointment or removal.<sup>14</sup>

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<sup>9</sup> Article 74 of the Basic Law.

<sup>10</sup> Articles 48(3) and 64 of the Basic Law.

<sup>11</sup> *LEUNG Kwok-hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* [2007] 1 HKLRD 387, Judgment, para. 87-88. The practice reflects a long standing convention in the UK House of Commons that financial initiative rests with the Government.

<sup>12</sup> In the context of Articles 50, 51 and 52, "budgets" is interpreted as the Appropriation Bill.

<sup>13</sup> Articles 62, 48(10), 64, 73(2) and (3), 48(3), 50, and 52 of the Basic Law.

<sup>14</sup> Articles 73(7) and 48(6) of the Basic Law.

## 5. *The Executive Authorities and the Legislature*

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5.10 The Chief Executive designates Government officials to attend meetings of the Council and its committees and to speak on behalf of the government. In exercising its powers and functions, the Legislative Council may summon, as required, persons concerned to testify and give evidence. These persons may include designated Government officials or other personnel in charge of government affairs. The Chief Executive may decide, in the light of security and vital public interests, whether these persons should testify or give evidence before the Legislative Council or its committees.<sup>15</sup>

5.11 Under Article 72, the President of the Legislative Council also has the power and function to call emergency sessions of the Legislative Council on the request of the Chief Executive.

### **Chief Executive's attendance at meetings of the Legislative Council**

5.12 To be accountable to the Legislative Council, the Chief Executive, as head of the Government of the HKSAR, has the obligation to attend meetings of the Legislative Council, including delivering his policy addresses and responding to questions from Members of the Council. For this purpose, Rule 8 of the Rules of Procedure has provided that the Chief Executive may at his discretion attend meetings of the Council, or any committee or subcommittee of the Council for the following purposes:

- (a) addressing the Council at any time as he shall think fit, including during a special meeting;
- (b) answering Members' questions put to him on the work of the Government; and
- (c) proposing any policy, measure, bill, resolution, motion or question for debate by and in the Council or any such committee or subcommittee.

5.13 The meetings attended by the Chief Executive are not subject to the normal notice requirement for Council meetings. Rule 14 of the Rules of Procedure provides that in cases of emergency and meetings held for the purpose of Rule 8 (Attendance of the Chief Executive), the President may dispense with the 14 clear days written notice to Members and in that event

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<sup>15</sup> Articles 62, 73(10) and 48(11) of the Basic Law.

the longest possible notice of the meeting should be given.<sup>16</sup> Rule 18 also provides flexibility for determining the order of business at a meeting attended by the Chief Executive.

5.14 The Chief Executive, when present at a meeting of the Legislative Council or a committee of the Council, shall enjoy the same privileges and immunities as those provided in or conferred on the Members of the Council by sections 3, 4 and 5 of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), i.e. freedom of speech and debate, immunity from legal proceedings and freedom from arrest. The Chief Executive, when lawfully ordered to appear before the Council or a committee as a witness to give evidence, is also entitled to the same rights and privileges as in a court of law. There has been discussion between the Government and the Legislative Council on whether the Chief Executive is subject to Legislative Council's power to summon witnesses under section 9 of the Ordinance. Further details are provided in the latter part of this Chapter.

### **Policy Addresses**

#### Historical background

5.15 The policy addresses referred to in Articles 64 and 73(4) are historically the addresses given by the head of the Government of Hong Kong to the Legislative Council at the start of a legislative session. Prior to 1929, before a provision was made in the Standing Orders to enable the Governor to address the Council at any time, it had been the practice of the Governor, who presided at sittings of the Legislative Council, to invite an Official Member to read out messages on his behalf at the sittings. Even after 1929, the addresses or statements made by the Governors were made only when needed and were mostly in response to incidents of public concern. There was an interruption of proceedings between 1941 and 1946 due to the Second World War. When the Council resumed proceedings in May 1946, the then Governor Sir Mark Young addressed the Council on those matters of first importance in Hong Kong, and he linked his address to the Appropriation Bill to be introduced on 25 July 1946.

5.16 The first "policy address" of the Governor was made by Sir Alexander Grantham on 19 March 1948. This address provided a macro view on the economic performance of Hong Kong and highlighted the pressing issues

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<sup>16</sup> Rule 14(2) of the Rules of Procedure.

## 5. *The Executive Authorities and the Legislature*

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which required Government's immediate actions. Again, this address of the Governor was linked to the Appropriation Bill which was introduced by the Financial Secretary at the same sitting. This practice continued until February 1969.

5.17 A major change took place in 1968. In October, the Standing Orders<sup>17</sup> were amended to provide that there should be a session of the Council once in every year. Prior to that, as the then Governor Sir David Trench said in his policy address on 1 October 1969 at the start of the 1969-1970 legislative session, "our previous Standing Orders gave us a remarkably long last session. Arguably, it might be said to have started in 1844!"<sup>18</sup>

5.18 Another significant change effected by the 1968 Standing Orders was the putting in place of an explicit provision that at the first sitting of the session, "[t]he Governor, if he so wishes, shall deliver a speech to the Council", and that a motion may be moved without notice for an address of thanks to the Governor for his speech. Following delivery of the first such speech on 1 October 1969, a motion of thanks was moved, debated and passed by the Council on 8 October 1969. The practice of the Governor to deliver a speech at the start of a new session and the moving of a motion of thanks on the Governor's speech then developed and became a key feature of the constitutional relationship between the head of the Government and the Legislative Council. This speech of the Governor delivered at the first sitting of a session covered a wider range of subjects and from October 1972 onwards<sup>19</sup> was known as the Governor's Address (or "Policy Address"). These policy addresses were all delivered at the first sitting of the session<sup>20</sup>.

### Timing for the delivery of the Policy Address

5.19 The arrangement for the head of the Government to deliver a policy address in the Council and for the Council to debate the address was written into the Basic Law as one of the powers and functions of the Legislative Council of the HKSAR.<sup>21</sup> The First Legislative Council of the HKSAR

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<sup>17</sup> Standing Order No. 6(3) of the 1968 Standing Orders of Hong Kong.

<sup>18</sup> Though not explicitly provided in the Standing Orders, sessions were at one time adopted during the office of Governor Bowen from 1884 and before Governor Des Vouex took over in 1887. Governor Bowen did give an opening address at the start of each session.

<sup>19</sup> Standing Order No. 6(3): the Governor to "deliver a speech" was amended on 3 November 1971 to "address" the Council.

<sup>20</sup> In the 1995-1996 legislative session, as there was a need to elect the President at the first sitting of the Council, the delivery of the Policy Address took place in the afternoon after the Council suspended in the morning after election of the President which took place after oath-taking.

<sup>21</sup> Article 73(4) of the Basic Law.

adopted the pre-1997 arrangements for the delivery of the Policy Address in the Legislature and provided Rule 8 of the Rules of Procedure for the purpose. There is no stipulation in the Rule that the Chief Executive must address the Council at the first meeting of the session; it is a matter of discretion for him to decide when he wishes to address the Council. This was a conscious decision made by the First Legislative Council since at that time the term of office of the Legislative Council commenced on 1 July while by convention the Policy Address was delivered in October.

5.20 As explained in Chapter 2, the six-week break which took place shortly after the First Legislative Council commenced office in July 1998 had prompted the Committee on Rules of Procedure to undertake a study of the best timing for the commencement of a legislative session. In the study, it was noted that the working mechanism within the Government had for a long time been designed to facilitate the Policy Address to be delivered in October, which was the starting time of a new session in the pre-1997 Legislative Council, followed by presentation of the budget in March. The Committee on Rules of Procedure recommended that a legislative session should commence in October. This recommendation had the support of all Members and was accepted by the Government.

5.21 With the legislative session to commence in October, the Committee on Rules of Procedure also recommended the addition of Rule 13(1A). The new rule provided that "[t]he Chief Executive shall deliver a Policy Address to the Council, if he so wishes, at the first meeting of a session". The recommendation was made after consulting all Members. The majority of Members considered that the requirement for the delivery of the Policy Address at the first meeting of a session needed to be provided for explicitly in the Rules of Procedure. The Government maintained the view that the new rule was unnecessary and the best approach was to leave sufficient flexibility for the Chief Executive to decide when to deliver the Policy Address. Notwithstanding, the Council passed the motion to add Rule 13(1A) to its Rules of Procedure on 28 April 1999. The Policy Addresses from 1999 to 2001 were delivered in October.

5.22 In July 2002, following Chief Executive TUNG Chee-hwa's commencement of his second term of office with a new team of Principal Officials appointed at the start of his new term, Mr TUNG decided to defer the delivery of his Policy Address to January 2003 and to deliver subsequent Policy Addresses in January each year. The decision was conveyed to the Chairman of the House Committee by the Chief Secretary for Administration who was invited to attend a meeting of the House Committee on 5 July 2002 to explain the reasons for the decision. The Government considered that the narrowing of the time gap between the delivery of the Policy Address and the

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presentation of the Budget (scheduled for March 2003) would help ensure speedy implementation of new initiatives announced in the Policy Address which required new funding, to the benefit of the community at large. The general view among Members was that the delivery of the Policy Address at the start of a session was a long standing convention which had been followed with good reasons. The implication on the operation of the Legislature of having the Policy Address deferred to January of the following year should be carefully considered before a decision was made.

5.23 To address Members' concern<sup>22</sup>, the Government conducted a review of the future timetable for the delivery of the Policy Address and the Budget. In April 2003, it concluded that the delivery of the Policy Address and that of the Budget should not be separated by more than two months, so as to enable the Government to reflect promptly in the Budget the priorities and policies pledged in the Policy Address and Policy Agenda, thereby enhancing the overall efficiency of policy formulation and implementation. Since the timing of the Budget could not be changed, all future Policy Addresses would be delivered in January so as to keep the time gap between the two speeches to about two months. The majority of Members, however, still considered that the delivery of the Policy Address in October was a more suitable arrangement for the operation of the Legislative Council. Nevertheless, the Government maintained that on balance, the delivery of the Policy Address in January was the best arrangement and should be adopted for the coming years. The two subsequent Policy Addresses of Mr TUNG before he resigned on 10 March 2005 were delivered on 7 January 2004 and 12 January 2005.

5.24 In July 2005, after Mr Donald TSANG became Chief Executive on 21 June 2005, he decided that for his two-year term of office, he would deliver his first policy Address in October 2005 and the following Address in October 2006 at the beginning of the legislative session, to respond to Members' preference. When Mr TSANG was re-elected as Chief Executive in 2007, all his five Policy Addresses in his second term were delivered in October.

5.25 In July 2012, after Mr LEUNG Chun-ying became Chief Executive, he attended the second meeting of the newly elected Fifth Legislative Council to elaborate his concept of governance, review progress made in the first three months of the Fourth Term Government, and outlined his policy direction and

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<sup>22</sup> A special House committee meeting was held on 5 July 2002 to discuss the Government's decision to change the delivery of Chief Executive's Policy Addresses to January each year. Discussions on the future timetable of delivery of Policy Address and Budget continued to take place in the Committee on Rules of Procedure and the House Committee between September 2002 and June 2003.

work priorities in 2013. As for the Policy Address, he decided that his first Address would be delivered in January 2013 to allow sufficient time for his new team of Principal Officials to conduct a full-fledged consultation with Members of the new term Legislative Council so as to foster a constructive partnership with the Council. Mr LEUNG's first Policy Address was delivered on 16 January 2013.

5.26 Mr LEUNG's decision to defer his first Policy Address to January 2013 met with opposition from some Members who considered that there would not be sufficient time for the public views on the Policy Address delivered in January to be taken into account by the Financial Secretary for reflection in the Budget. The Government advised the Legislative Council that the Chief Executive's intention to deliver his Policy Addresses in January for the rest of the term of the Government would not be changed. The Government reiterated the need to ensure that initiatives announced in the Policy Address which required new funding could be implemented at the earliest possible opportunity.

### Special arrangements for the Policy Address

5.27 To recognize the importance of the Policy Address, there was a convention during the days of the pre-1997 Legislature that no other business would be transacted by the Council at the meeting at which the Policy Address was delivered. This practice was shown in the way other business was avoided for the first sitting of the session and was reflected in the Standing Orders. Although these arrangements still exist in the current Rules of Procedure, such as no questions may be asked at the meeting when the Chief Executive delivers a Policy Address<sup>23</sup>, and the order of business of the Council need not follow the Agenda set out in Rule 18 of the Rules of Procedure, etc., there were occasions in recent years when some business of the Council was put on the Agenda for those meetings due to the need to comply with the legislative timetable for processing subsidiary legislation tabled in the Council in the previous session.<sup>24</sup> The change of the timing for the delivery of the Policy Address from October to January has made it more difficult to avoid scheduling any other business on the day when the Policy Address is delivered. In addition, Part E of the Rules of Procedure on questions to the Government, other than Rule 25 (contents of questions) is

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<sup>23</sup> Rule 23(1) of the Rules of Procedure.

<sup>24</sup> Examples are the resolution to respectively amend the Air Pollution Control (Volatile Organic Compounds) (Amendment) Regulation 2009 on 14 October 2009 and the resolutions to amend the Country Parks (Designation) (Consolidation) (Amendment) Order 2010 and extend the scrutiny period of two pieces of subsidiary legislation on 13 October 2010.

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also not applicable to questions put to the Chief Executive<sup>25</sup> if he is attending the meeting of the Council under Rule 8 of the Rules of Procedure. Part E sets out the notice requirements and the manner in asking and answering questions to the Government.

### **Motion of Thanks**

#### Historical background

5.28 As mentioned earlier in this Chapter, in 1968 the Standing Orders were amended to provide for a motion to be moved without notice for an address of thanks to the Governor for his speech. The Standing Orders also provided the prescribed wording and that Members could move amendments to the motion only by way of adding words at the end of the motion. The convention until 1988 was that this motion was moved by the Chief Secretary; it then became the responsibility of the most senior Unofficial Member of the Legislative Council to move the Motion of Thanks. In 1992, with the setting up of the House Committee under the formal committee structure of the Legislative Council, it was decided that the Chairman of the House Committee should be responsible for moving the motion which has become the standard practice.

#### Format and procedures

5.29 Although there is no requirement in the Basic Law that there should be a motion to thank the Chief Executive for his Policy Address, Article 73(4) of the Basic Law stipulates that it is the Legislative Council's function "to receive and debate the policy addresses of the Chief Executive". For a debate to be held in the Council, there is a need for a motion to be moved. Discussion on the subject took place in the Committee on Rules of Procedure of the First Legislative Council. Although there was a suggestion to review whether the motion to facilitate a debate on the Policy Address should be a motion to thank the Chief Executive, i.e. a Motion of Thanks, or a more neutrally worded motion or a motion not requiring any voting, the majority of Members considered that in the absence of a better alternative, it would be more appropriate to maintain the status quo.<sup>26</sup>

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<sup>25</sup> Rule 27 of the Rules of Procedure provides that Part E of the Rules of Procedure, other than Rule 25 (Contents of Questions) does not apply to questions put to the Chief Executive under Rule 8 (Attendance of the Chief Executive).

<sup>26</sup> Progress report (October 2000 to June 2001) of the Committee on Rules of Procedure.

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5.30 The procedure for the moving of the Motion of Thanks is provided in Rule 13 of the Rules of Procedure, which comprises the following components:

- (a) At a meeting not less than 14 days after the Chief Executive has presented a Policy Address to the Council, a motion may be moved with not less than 7 clear days' notice for an address of thanks to the Chief Executive for his address;
- (b) The motion in (a) above shall be in the following form: "That this Council thanks the Chief Executive for his address."
- (c) Amendments may be moved to the motion only by way of adding words at the end of the motion and notice of the amendments should be given no later than 5 clear days before the meeting in question but the President may give leave to dispense with such notice.

### Notice requirement

5.31 The 7 clear days' notice for the Motion of Thanks is a special arrangement provided in April 2000 by amending Rule 13 of the Rules of Procedure which originally was modelled on Standing Order No. 6(3), (5) and (6) of the Pre-1997 Legislature. Under the original Rule 13, the motion and amendments could be moved without notice. Members were allowed to propose amendments at any time during the debate leading to the difficulties in the conduct of proceedings. However, it was also not practicable to adopt the normal notice period of 12 clear days for other motions as the debate on the Motion of Thanks by convention took place 2 weeks after the delivery of the Policy Address. The shorter notice period of 7 clear days was therefore adopted, while the standard notice period of 5 clear days for amendments was maintained as it was thought that there should be sufficient time for the President to consider the admissibility of the proposed amendments and for Members to consider the amendments when preparing for the debate.

5.32 In January 2013, in the course of reviewing the arrangements for debating the 2013 Policy Address, concern was expressed in the House Committee that the holding of the debate just 2 weeks after the delivery of the Policy Address had not allowed sufficient time for Members, especially those returned from the new District Council (Second) Functional Constituencies, to conduct consultation at district level. In response to Members' request, the Government agreed that the debate on the Motion of Thanks be held 4 weeks after the delivery of the 2014 Policy Address taking into account the

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intervening public holidays to enable Members to have more time to consult their constituencies before speaking on the Motion.

### Speaking time

5.33 Prior to 2001, the debate on the Motion of Thanks was similar to other motion debates in the Council, in which each Member spoke for no more than 15 minutes and could speak only once, except the mover who could speak for another 15 minutes in making his reply. Where notice of amendments had been given, a joint debate would be held. Members were first invited to speak, and after all Members who wished to speak had spoken, the Council was adjourned. This part of the debate was held on two consecutive days of the same meeting. When the Council resumed at the next meeting, public officers were invited to speak, followed by the Mover's reply and voting on the amendments and on the motion or the amended motion. This second part of the debate was usually completed within one day. This two-part process was often called the "2+1" model.

5.34 In the 2000-2001 session, in the course of reviewing the procedure for debating the Policy Address, the Committee on Rules of Procedure proposed to structure the debate in such a way that Members would speak on specific policy areas on specific days of the debate period with the designated public officers responsible for the respective policy areas to attend that part of the debate. During the term of the Second Legislative Council, two models had been tried out, including the "3+1" model<sup>27</sup> used in the debate in October 2001 with each Member speaking for not more than 15 minutes in total, and the "3-day-5-session" model used to debate the Policy Addresses delivered in January 2003 and January 2004 with Members' speaking time increased to 20 minutes in total. The "3-day-5-session" model worked in the following manner:

- (a) The Government and the House Committee should agree on the grouping of policy areas for 5 debate sessions immediately after the Policy Address is delivered;
- (b) The 5 debate sessions would take place over 3 days, with each Member to speak not more than once in each session subject

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<sup>27</sup> In the "3+1" model, the meeting at which Members spoke was extended from two days to three days, with a total of six sessions on specific policy areas held over three days and a general debate on general policies on the last day. Members could speak not more than once in each session and in the general debate, up to not more than 7 minutes in each speech and a total speaking time of 15 minutes. Public officers were invited to respond at the end of each session.

to not exceeding a total speaking time of 20 minutes in the entire debate;

- (c) At the end of each session, public officers will each speak for 15 minutes subject to not exceeding 45 minutes in total for each session; and
- (d) Voting on the amendment(s) and the Motion to take place immediately after the Mover has made his reply on the last day of the debate.

5.35 In December 2004, the House Committee agreed that the total speaking time for each Member should be extended to 25 minutes. On 7 October 2005, the House Committee further extended the total speaking time for each Member to 30 minutes which is the present limit.

5.36 No amendments to the Rules of Procedure have been made to reflect the changes in the total speaking time and the number of occasions a Member is allowed to speak on the Motion of Thanks. The various models which had been adopted in previous debates were given effect by the President by exercising his discretion in accordance with the specific arrangements recommended by the House Committee.

#### Grouping of policy areas for a debate session

5.37 The debates were arranged to mirror the policy areas underpinning the Policy Agenda for the year. As the grouping neither followed the policy portfolios of the Bureaux nor the policy areas of Panels, it was noticed in the debate on the 2007 Policy Address that more Members wished to speak on subjects which straddled policy areas of various sessions or on various areas in one speech. This contradicted the original intention of having a more structured and focused debate whereby relevant public officers could immediately respond to Members' views on their policy areas at the end of each debate session. Following discussion with the Government, it was concluded that the session attended by the Chief Secretary for Administration and the Financial Secretary would be scheduled towards the end of the debate so that any issues not otherwise responded to by the relevant designated public officers in earlier sessions could still be raised and responded to by these officers.

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5.38 During the 10 years from 2002 to 2012, the five sessions basically covered five general areas including economy, social needs, education and culture, development and environment as well as corporate governance. From 2013 onwards, the subject matters are grouped according to the specific policy areas which correspond to the policy portfolios of the Directors of Bureaux.

5.39 As to whether the President may allow a Member to speak on subjects which do not fall under the specified policy areas of the respective session, it will be for the President to exercise discretion, as he deems fit, to remind the Member that the relevant designated public officers are not present to listen to his views and to respond at the end of the session.

5.40 The grouping of policy areas to facilitate a more meaningful debate on the Motion of Thanks is not prescribed in the Rules of Procedure or in the House Rules. It is given effect by the President by exercising his discretion in accordance with the recommendations of the House Committee after it has taken into account the views of the Government.

### **Chief Executive's Question and Answer Sessions**

#### Historical background

5.41 In his Policy Address on 7 October 1992, Governor Christopher Patten announced his proposal to create an office of Legislative Council President, to be elected from amongst Members. He, as the Governor, would no longer preside over sitting of the Legislative Council, but to be answerable to the Council in practice, he would make himself available once every month when the Council was in session to answer Members' questions and to discuss government policies and proposals, as well as to report on major official trips abroad and other important developments. The Governor was invited to attend a sitting of the Council on 8 October 1992 to answer Members' questions arising from the Policy Address. This Question and Answer Session (or "Session") lasted for one hour. Members generally considered that this kind of Session should each last for one and a half hours, but the Governor insisted on keeping each Session to one hour. From October 1992 to June 1997, a total of 36 Question and Answer Sessions were held, at about 7 per legislative session.

5.42 The practice of holding Question and Answer Sessions at formal meetings of the Council has been adopted by each Chief Executive of the HKSAR with variations in respect of their frequency and duration. It has been a practice that the Chief Executive would address the Council at the start of the Session before Members are called by the President to raise questions with the Chief Executive.

### Frequency and duration

5.43 The logistical arrangements in respect of the holding of Question and Answer Sessions are usually discussed at the House Committee. Questions are then generally related to the frequency and duration of these Sessions. Members considered that these Question and Answer Sessions should be held more frequently and each Session should last longer. In July 1998, the Chief Executive decided that he would attend these Sessions 3 times a year: one in October after his policy address, one in February before the Budget and one in June. In July 2002, after the Chief Executive introduced the Principal Officials Accountability System, he decided, "*in a bid to strengthen the relationship between the executive and the legislature*"<sup>28</sup>, to come to the Legislative Council 4 times a year, to meet with all Members. Since October 2002, it has been the practice that 4 Sessions are held in each legislative session, with one immediately after the Policy Address and 3 others to be scheduled at suitable intervals.

5.44 Where needed, special Question and Answer Sessions may be held. In the 2011-2012 session, in response to the request of the House Committee, then Chief Executive Donald TSANG agreed to attend a special Session on 1 March 2012 to answer questions in relation to the series of events surrounding his acceptance of hospitality from friends and his renting of a residential unit in Shenzhen. This special Session was in addition to the 4 Question and Answer Sessions in that legislative session and it lasted for one hour.

5.45 While the frequency of the Chief Executive's Question and Answer Sessions has not been laid down in the Rules of Procedure, Rule 4(a) of the House Rules provides that each Session lasts for "about one hour". Since November 2005, these Sessions have usually lasted for about one and a half hours which has remained the practice.

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<sup>28</sup> Address by the Chief Executive at the Question and Answer Session on 8 July 2002.

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### Date and time

5.46 It has been the practice that the Chief Executive indicates the time he prefers for the Questions and Answers Sessions, with the formal decision made by the President. These Sessions were originally held on Thursday afternoon, starting at 3:00 pm. However, due to the Legislative Council's longer meetings, which on occasions have continued beyond Thursday afternoons, the President has decided that where a Question and Answer Session has been scheduled, the Council meeting which continues on the day of the Session would be suspended before the scheduled starting time of the Session and would resume afterwards. Since the commencement of the 2012-2013 legislative session, more flexibility has been exercised in determining the starting time of the Question and Answer Sessions so as to meet the needs of the Council and also of the Chief Executive himself.

### Topics of questions to be asked

5.47 While the Chief Executive may address the Council at the start of the Question and Answer Session on a topic of his choice, Members are also invited to suggest any specific topics on which questions would be raised at the Session. Views on the topics are invited at a meeting of the House Committee before the Session and Members' views are conveyed to the Chief Secretary for Administration by the Chairman of the House Committee after the meeting.<sup>29</sup> Generally speaking, the Chief Executive will also respond to any questions put to him apart from those under the specific topics.

### Manner of asking questions

5.48 Rule 4(c) of the House Rules also provides that Members who have asked the least number of questions within the term of the Legislative Council are given priority to ask questions. The accumulated total number of questions asked by each Member is used in determining the priority. Where there are Members with equal priority, the President will have the discretion to decide whom to be called first. It has been the practice of the President to give regard to the order in which Members indicated their intention to ask questions and the political grouping to which the Members belong to ensure that those of different groupings would have a fair and equitable chance of

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<sup>29</sup> Rule 4(b) of the House Rules

asking questions. This rule was not applied to the special Question and Answer Session held on 1 March 2012.<sup>30</sup>

5.49 Rule 4(d) of the House Rules provides the manner in which Members are invited to raise their questions with the Chief Executive. When a Member is called by the President to ask his question, and after the Chief Executive has answered his question, he is allowed to ask a short supplementary question for the purpose of elucidation. If it is in the opinion of the President that the supplementary question infringes any of the provisions of Rule 25 (Contents of Questions), the President shall refuse to allow the supplementary question to be asked.

## **Other addresses and statements**

### Historical background

5.50 In the pre-1997 Legislature, there were occasions when the Governor considered it necessary to deliver an address, other than a Policy Address, or to make a statement in the Council; mostly in response to incidents of public concern. This practice was adopted by the Chief Executive after reunification<sup>31</sup>.

5.51 As Rule 8(a) of the Rules of Procedure provides that the Chief Executive may address the Council at any time as he shall think fit, there were occasions when the Chief Executive addressed the Council at the start or in the course of a Council meeting. No notice is required for a Chief Executive's address; nor is it subject to Rule 19 which requires that all items of business for a meeting shall be placed on the Agenda for that meeting in the order required by Rule 18 (Order of Business at a meeting). Accordingly, the President would take into account the wish of the Chief Executive in deciding where the address is to be placed on the Agenda for the meeting concerned.

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<sup>30</sup> For the Special Question and Answer Session on 1 March 2012, the President considered it fair to allow Members from all political parties and groupings to raise questions and so did not use the accumulative number of questions asked by individual Members in the legislative term to decide the priority of asking questions.

<sup>31</sup> Examples are Mr TUNG Chee-hwa's address on the new Principal Officials Accountability System on 17 April 2002; Mr Donald TSANG's address on the Political Appointment System on 26 June 2008; and Mr LEUNG Chun-ying's address on his concept of governance, work progress and policy direction on 17 October 2012.

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### Seeking elucidation or asking questions

5.52 On the question of whether Members may seek elucidation of the Chief Executive's addresses, it has been ruled<sup>32</sup> that Rule 8(a), (b) and (c) are to be dealt with separately. For the addresses delivered by the Chief Executive under Rule 8(a), they are not subject to request for elucidation or questions from Members. On 17 April 2002, the Chief Executive addressed the Council without making any specific reference to a particular rule. On that occasion, the Chief Executive took questions from Members after delivering the address<sup>33</sup>. For two other addresses delivered at the Council meetings of 25 June 2008 and 17 October 2012, the Chief Executive indicated that he attended the meeting under Rule 8(a). The Presidents at the time ruled that no questions could be asked of the Chief Executive in any part of the proceedings that followed on that day on his address delivered at that meeting. As the Chief Executive is not a designated public officer, Rule 28 (which allows short and succinct questions to be put to a designated public officer making a statement) and Rule 39 (which allows interruption of a Member's speech for elucidation) do not apply to addresses delivered by the Chief Executive.

### Designated public officers to make statements on behalf of the Government

5.53 The Chief Executive may assign a designated public officer, such as the Chief Secretary or the relevant Policy Secretary, to make a statement in the Council on behalf of the Government for the purpose of announcing a new public policy or reporting on the progress of a major project or study.

## **Chief Executive's attendance at committee meetings**

### Historical background

5.54 Although the pre-1997 Standing Orders provided that the Governor might at his discretion attend sittings of committees or subcommittees of the Council (after he was no longer President of the Council), there was no record that the Governors had attended any meetings of the committees or subcommittees of the Legislative Council.

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<sup>32</sup> President's Ruling on address by the Chief Executive under Rule 8(a) of the Rules of Procedure in respect of the Address on 17 October 2012. (22 October 2012).

<sup>33</sup> Total time for address and questions was kept within 45 minutes.

5.55 The question of whether the Chief Executive should also attend meetings of the committees of the Legislative Council other than on his own initiative has arisen from time to time since reunification. Under the Basic Law, the Chief Executive, who has the power and function to lead the HKSAR government<sup>34</sup>, is also accountable to the Legislative Council. It is for individual committees to decide whether the Chief Executive should be invited to the committees or subcommittees of the Council for purposes other than those provided in Rule 8(c) of the Rules of Procedure, i.e. proposing any policy, measure, bill, resolution, motion or question for debate by and in the Council or any such committee or subcommittee. Each case is dealt with on a case-by-case basis.

### *The SARS Inquiry*

5.56 In May 2004, in the course of the inquiry into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority, the Select Committee concerned considered it necessary to take evidence from the Chief Executive TUNG Chee-hwa who set up and personally chaired a steering committee to direct and coordinate the Government's response to the epidemic. Having regard to the Chief Executive's position as recognized by the Legislative Council (Powers and Privileges) Ordinance<sup>35</sup>, Rule 8 of the Rules of Procedure of the Legislative Council and the legal provisions relating to the power of the Legislative Council to require a witness to give evidence before it, the Select Committee was of the view that the Council had been conferred with the power to summon any person including the Chief Executive to give evidence before it. The Government however did not share this view. As more time was needed to study the question as to whether it is "constitutionally appropriate" for the head of the HKSAR to be subject to such summonses, the Select Committee subsequently requested the Chief Executive to provide written responses to its questions and had a closed door meeting with the Chief Executive in Government House on 22 May 2004 outside the formal proceedings of the Select Committee. The relevant information obtained from the Chief Executive was taken into account by the Select Committee in its deliberations and a record of the meeting was incorporated into its Report.

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<sup>34</sup> Article 48(1) of the Basic Law.

<sup>35</sup> Under section 8A of the Legislative Council (Powers and Privileges) Ordinance, the Chief Executive when present at a sitting of the Legislative Council or a committee shall enjoy the same privileges or immunities as those provided in or conferred on the members [Members of the Council] by section 3, 4 or 5 of the Ordinance, i.e. freedom of speech and debate, immunity from legal proceedings and freedom from arrest.

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### *Inquiry on Mr LEUNG Chun-ying's involvement as a Jury member in the West Kowloon Reclamation Concept Plan Competition*

5.57 In another case the Legislative Council resolved on 29 February 2012 to appoint a select committee with power to summon witnesses to study Mr LEUNG Chun-ying's involvement as a member of the Jury in the West Kowloon Reclamation Concept Plan Competition and related issues. When Mr LEUNG Chun-ying was summonsed as a witness to give evidence to the Select Committee, he was a candidate in the Chief Executive Election. Mr LEUNG attended public hearings on 20 March and 21 April 2012. Although Mr LEUNG was elected as the Fourth Term Chief Executive of HKSAR on 25 March 2012<sup>36</sup>, no question was raised as to whether any constitutional difficulty would arise from the Chief Executive (Designate)'s attendance at the meeting on 21 April 2012 in giving evidence to the Select Committee.

### Whether the Chief Executive is subject to Legislative Council's power to summon witnesses under Article 73(10)

5.58 On 7 December 2012, in relation to two proposals from Members to inquire into the Government's handling of the allegedly unauthorized building works at the Chief Executive LEUNG Chun-ying's properties, the House Committee considered the issues concerning the Legislative Council's power to summon witnesses and the constitutional, legal and other related considerations for the Chief Executive to be subject to the Legislative Council's power to summon. Members took the view that the Chief Executive bears the constitutional responsibility to find the appropriate means through which the Council could properly perform its powers and functions under the Basic Law. The Committee's opinion was that Rule 8 of the Rules of Procedure was an example of such means.

5.59 Article 48(11) of the Basic Law empowers the Chief Executive "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". This power of the Chief Executive is also reflected in Section 14(2) of the Legislative Council (Powers and Privileges) Ordinance. Whether the Chief Executive's power under Article 48(11) also applies to himself is a matter to be further discussed and considered on a case-by-case basis.

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<sup>36</sup> Mr Leung Chun-ying was appointed by the Central People's Government as Chief Executive of the HKSAR on 28 March 2012.

## **Impeachment of the Chief Executive**

### Procedure for implementing Article 73(9)

5.60 Article 73(9) of the Basic Law provides the Legislative Council with the following power and function<sup>37</sup>:

"如立法會全體議員的四分之一聯合動議，指控行政長官有嚴重違法或瀆職行為而不辭職，經立法會通過進行調查，立法會可委托終審法院首席法官負責組成獨立的調查委員會，並擔任主席。調查委員會負責進行調查，並向立法會提出報告。如該調查委員會認為有足夠證據構成上述指控，立法會以全體議員三分之二多數通過，可提出彈劾案，報請中央人民政府決定"。

(English translation)

"If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision".

5.61 In summary, Article 73(9) of the Basic Law is a provision to enable the Legislative Council to pass a motion to impeach the Chief Executive if he/she is charged with serious breach of law or dereliction of duty, and the charge is found to be substantiated by an investigation committee chaired by the Chief Justice. In 2006 the Committee on Rules of Procedure of the Third Legislative Council started deliberations on the need to provide specific rules in the Rules of Procedure to deal with the implementation of Article 73(9) given the important nature of the provision. The Committee considered that notwithstanding the specific rules to be made for the purpose, the general rules governing motions, rules of speaking, etc. should apply where

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<sup>37</sup> Both the Chinese and English versions of Article 73(9) are provided as it has been considered by the Committee on Rules of Procedure that the original version, i.e. the Chinese version, ought to be referred to when discussing any issues relating to the implementation of this Article.

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appropriate. Members and the Government were consulted on the options and implementation details.

5.62 In 2008, during the term of the Fourth Legislative Council, the Committee on Rules of Procedure revisited the subject and produced a proposal for a second-round consultation with Members and the Government. In this proposal, the Committee highlighted that Article 73(9) comprises three stages:

### Stage I: Initiation of the impeachment procedure and motion for investigation

Not less than one-fourth of all Legislative Council Members jointly sign a notice of motion for investigation, which contains charges against the Chief Executive of serious breach of law or dereliction of duty, to give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee to investigate the charges.

### Stage II: Investigation of charges

If the Chief Executive refuses to resign, a motion for investigation will be moved and debated in Council and if passed by a majority vote of each of the two Groups of Members present, the Legislative Council may give a mandate to the Chief Justice to investigate the charges.

When the investigation committee has completed its work, it reports its findings to the Legislative Council.

### Stage III: Motion of Impeachment

A motion of impeachment may be moved in the Council if the investigation committee considers the evidence sufficient to substantiate charges.

If the motion is passed by a vote of two-thirds majority of all Legislative Council Members, the resolution so passed must be reported to the Central People's Government for decision.

5.63 In the course of consultation and further discussion on the matter, the Committee considered that specific rules were only required for the two motions which concerned the Council as a whole, namely the motion for investigation (which contains the initiating step of charging the Chief Executive with the charges included as part of the motion) and the motion of impeachment. The Committee noted the Government's request for a longer notice period for the motion for investigation, to allow the Chief Executive adequate time to consider the motion and decide whether or not to resign. The Committee also noted the concerns raised by some Members about how the investigation committee set up by the Chief Justice would conduct its investigation and what would constitute "serious breach of law" and "dereliction of duty" referred to in the context of Article 73(9). Since the absence of specific rules in the Rules of Procedure would not prevent a motion of investigation being moved in accordance with Article 73(9), it was agreed that pending further discussion to deal with the issues raised and other technical arrangements, the rules in the current Rules of Procedure governing motions, rules of speaking, etc., should apply to any motions moved by Members in accordance with Article 73(9).

Actions initiated under Article 73(9)

5.64 In May 2012, 23 Members jointly initiated action under Article 73(9) of the Basic Law, with one of them being named as mover of the motion for investigation, to charge the incumbent Chief Executive with serious dereliction of duty. The motion was to give a mandate to the Chief Justice for forming and chairing an investigation committee to investigate into the alleged dereliction of duty and report to the Council in accordance with the Basic Law. Details of the alleged dereliction of duty were set out in a Schedule attached to the motion. Although no rules were provided in the Rules of Procedure for motions moved under Article 73(9), the format adopted by these Members was similar to that used for moving motions under Article 79(6) and 79(7) of the Basic Law for disqualification of Legislative Council Members from office. The notice of the motion was received on 26 April 2012 for debate at the Council meeting of 16 May 2012. On 8 May 2012, the President directed that the motion be placed on the Agenda of the Council. For this debate, the general rules on motions would apply. These rules included Rule 33 on speaking order, Rule 36(5) on time and manner of speaking, and Rule 46(2) on voting on a Member's motion. However, due to the bunching of business towards the end of the 2011-2012 session, there was no chance for the Members' motion, which was placed after

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all Government bills and motions on the Agenda of the Council, to be moved at a meeting before the end of the term of office of the then incumbent Chief Executive on 30 June 2012.

5.65 On 20 December 2012, notice was received of a motion jointly initiated by 27 Members for investigation under Article 73(9) of the Basic Law to be moved at the Council meeting of 9 January 2013. The motion, to be moved by one of the 27 Members, who was named as mover, sought to charge the incumbent Chief Executive with serious breaches of law and/or dereliction of duty, and to give a mandate to the Chief Justice to form and chair an investigation committee to investigate the alleged dereliction of duty and report to the Council. Details of the alleged dereliction of duty were set out in a Schedule attached to the motion. The motion was placed on the Agenda for the Council meeting of 9 January 2013 and was moved and debated. The general rules on speaking order, time and manner of speaking applied. The motion was put to vote in accordance with Rule 46(2). It was not passed.

5.66 Under Rule 46(2), a motion moved under Article 73(9) in respect of a motion of impeachment by a Member is a motion which is exempted from the application of the voting method for the passage of a Member's motion. However, as the motion voted on at the Council meeting of 9 January 2013 was a motion for investigation and not the motion of impeachment, the voting method which requires a majority vote of each of the two groups of members from the functional constituencies and from geographical constituencies was used for this motion. It is only if the Chief Justice's investigation committee has found the evidence sufficient to substantiate the charges and a motion is moved to impeach the Chief Executive, that the voting requirement of "a two-thirds majority of all its members" as stipulated in Article 73(9) would apply.

### **Motions relating to the Chief Executive**

5.67 From time to time, motions are moved by individual Members seeking the Council's approval to set up a select committee to inquire into matters relating to an incumbent Chief Executive's performance of duty or personal conduct and/or seeking authority to order the attendance of the incumbent Chief Executive at meetings of the committees of the Council in relation to such matters. Such motions are placed on the Agenda of the Council, and are

debated and voted on in the same manner as other motions<sup>38</sup>, provided that the relevant notice and other requirements set out in the Rules of Procedure are complied with.

### Motions of no confidence in the Chief Executive

5.68 A motion to express no confidence in the Chief Executive or to call upon him to resign is different from that set out in Article 73(9) of the Basic Law. These kinds of motions have no legislative effect and are therefore an expression of opinion. The convention of the Council in debating a motion to express no confidence in the head of the Government can be dated back to July 1995 when a Member moved a motion to express no confidence in the then Governor of Hong Kong<sup>39</sup>. The motion was dealt with in the same manner as other motions not intended to have legislative effect. After reunification, there were motions to call upon the Chief Executive to resign or to express no confidence in him.<sup>40</sup> These motions were also dealt with in the same manner as other motions not intended to have legislative effect.

5.69 Similar to bidding for a debate slot for moving a motion to express an opinion, a Member who wishes to move a motion of no confidence in the Chief Executive must first secure a slot for debate through the allocation mechanism set out in House Rules No. 13 and 14, and give not less than 12 clear days' notice in accordance with Rule 29(1) of the Rules of Procedure for the motion to be moved. This type of motion is subject to amendments. All the rules governing motions and amendments under Part G and those governing the rules of speaking under Part H of the Rules of Procedure shall apply. As this type of motion is subject to Rule 37 the House Committee would recommend a specified time limit for the President's acceptance. The times specified by the House Committee as set out in House Rules No. 17(b) also apply to motions of no confidence in the Chief Executive unless recommended otherwise by the House Committee. The motion is a Members' motion and is therefore voted on in accordance with Rule 46(2) of the Rules of Procedure, requiring a majority vote of both groups of Members present.

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<sup>38</sup> Council meetings on 22 November 2000, 21 March 2012, 11 July 2012, 19 December 2012 and 20 February 2013. The relevant motions moved at these Council meetings were all negatived.

<sup>39</sup> Council sitting on 12 July 1995. The motion was negatived.

<sup>40</sup> Council meetings on 14 May 2003, 8 October 2003, 18 April 2012 and 12 December 2012.

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### **Rules relating to the making of references to the Chief Executive's conduct**

5.70 In the current Rules of Procedure, there are two provisions, namely Rule 41(7) and Rule 25(1)(j), which restrict the raising of the conduct and/or character of the Chief Executive. The two rules are as follows:

*Rule 41 (Contents of Speeches)*

- (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.*

*Rule 25 (Contents of Questions)*

- (a) *A question shall conform to the following rules;*  
(j) *A Question shall not be asked about the character or conduct of any person mentioned in Rule 41(7) (Contents of Speeches) and a question shall not be asked about the character or conduct of any other person except in his official or public capacity.*

5.71 The intention of Rule 41(7)<sup>41</sup> is that unless the conduct of the Chief Executive is the subject of a motion moved for the purpose of impeachment, Members may not raise in Council speeches the conduct of the Chief Executive other than in the performance of his official duties. This rule is referred to by the President when considering the acceptability of a proposed motion or amendment.

5.72 Rule 25(1)(j) of the Rules of Procedure has imposed a more stringent restriction on Members when asking a question in the Council. Strictly speaking, no question can be asked about the character or conduct of the Chief Executive, not even in relation to the performance of his official duties. The next paragraphs illustrate the practical application of Rules 25(1)(j) and 41(7).

5.73 In February 2012, following a spate of media reports containing allegations against the then Chief Executive regarding acceptance of

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<sup>41</sup> Part JA (Procedures for Particular Motions) is mentioned in Rule 41(7) as this Part is intended to cover motions moved in accordance with provisions in the Basic Law, such as a motion for the disqualification of a Member from office under Article 79(6) or Article 79(7), as well as other motions for which the general rules on motions may not apply. Should a procedure be devised for the moving of a motion of impeachment under Article 73(9), the procedure would be likely to be included under this Part.

entertainment and hospitality, the President allowed 8 urgent questions to be raised at the Council meeting of 29 February 2012 under Rule 24(4) of the Rules of Procedure in relation to those allegations. The questions were allowed to be moved on the ground that they were of an urgent character and related to a matter of public importance.<sup>42</sup> At the same meeting, the President had also allowed an adjournment motion to be moved without notice under Rule 16(2) of the Rules of Procedure on the following issue: "The integrity and probity of the Chief Executive and his responsibility for upholding the fairness and impartiality of the next Chief Executive Election to be held on 25 March". Rule 16(2) deals with adjournment motions for the purpose of discussing a specific issue of urgent public importance. In considering whether this motion might cause difficulty in respect of compliance with Rule 41(7), the President's Deputy<sup>43</sup> accepted that the motion itself did not target the Chief Executive's personal conduct, but rather the expectation of the public over the integrity and probity of the person occupying the post of Chief Executive, and his responsibility to uphold the fairness and impartiality of the upcoming election. The scope of debate could therefore be wide-ranging. Approval was accordingly given for the motion to be placed on the Agenda of the Council. Nevertheless, Members were reminded during the debate to note the restrictions under Rule 41(7) when speaking on the motion.

5.74 At the same meeting of 29 February 2012, for which 8 urgent oral questions and an adjournment debate were scheduled, the President allowed the meeting to be suspended on the second day to enable the holding of a Special Question and Answer Session upon the Chief Executive's request. The Chief Executive had responded to the request of the House Committee and considered it an opportunity for him to address the Council on those allegations which, according to the Chief Executive, had cast doubts on his integrity and character, and to answer Members' questions. Before suspending the Council meeting for the special Session, the President took the opportunity to state his views on how Rule 41(7) applied to Members' speeches at the adjournment motion debate and how Rule 25(1)(j) applied to the questions to be raised at the Special Question and Answer Session. His views are summarized as follows:

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<sup>42</sup> With the consent of the Members concerned, the House Committee decided that if the Chief Executive agreed to attend a Question and Answer Session, the urgent questions to be raised on 29 February 2012 could be changed to written questions. The 8 urgent questions subsequently became written questions after the Chief Executive agreed to attend a special Question and Answer Session on 1 March 2012.

<sup>43</sup> The President's Deputy was requested in accordance with Rule 3(2) and (3) to rule on the admissibility of the motion which related to the election of the Chief Executive as the President had announced earlier that he was considering whether he would stand as a candidate for the election and had decided that he was unable to act, i.e. to make the ruling.

- (a) Rule 41(7) provides that "the conduct of the Chief Executive ... other than in the performance of his official duties shall not be raised". The President, in presiding over the debate on "the integrity and probity of the Chief Executive and his responsibility for upholding the fairness and impartiality of the next Chief Executive Election", was mindful of whether those acts of the Chief Executive mentioned by Members in their speeches were related to the topic being debated. As he noted that no Member had referred to acts not related to the topic of the debate or acts of the Chief Executive when he was not performing his official duties, he considered that the Council had struck a reasonable balance between enforcing the Rules of Procedure and permitting Members to engage in a meaningful debate;
- (b) Rule 25(1)(j) applies to the content of questions asked and it provides that Members shall not ask questions about the character or conduct of the Chief Executive. The President considered that since the Chief Executive had agreed to attend this Question and Answer Session to enable Members to raise questions regarding his acceptance of hospitality from friends and the residential flat leased to him in Shenzhen, Members were not bound by the restrictions imposed on them by virtue of Rule 25(1)(j), as the purpose of the Question and Answer Session would otherwise be defeated.

### **Reconsideration of returned bill**

5.75 As briefly described in paragraph 5.5, under Article 49 of the Basic Law, if the Chief Executive considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he may return it to the Legislative Council within three months for reconsideration. If the returned bill is passed again by not less than a two-thirds majority of all the Members, the Chief Executive must sign and promulgate it within one month. If he refuses to do so, and if consensus cannot be reached after consultation, under Article 50, the Chief Executive may dissolve the Legislative Council. If the new Legislative Council again passes by a two-thirds majority of all the Members the original bill in dispute, but the Chief Executive still refuses to sign it, under Article 52, the Chief Executive must resign.

Provisional Legislative Council's views on the procedure

5.76 The provision of a mechanism to cater for the situation set out in Articles 49 and 50 of the Basic Law was studied by the Committee on Rules of Procedure of the Provisional Legislative Council. The Committee came to the following view, which was recorded in its report on 1 April 1998 and referred to the First Legislative Council through the Secretariat:

- (a) The returned bill and the Chief Executive's reasons for the return of the bill should be carefully examined by a committee unless the majority of Members decide otherwise;
- (b) The procedure should allow the returned bill to be amended after taking into account the views from all parties concerned, including the Government, the Member (who could be a public officer) in charge of the bill and other interested parties;
- (c) Members should be allowed to debate the bill in the Council and amend it in committee of the whole Council if considered necessary; and
- (d) The bill, irrespective of its being amended or not, should be voted on upon a motion "That the bill do pass after reconsideration". If the bill is passed in its original form by a two-thirds majority of all the Members of the Council, Article 50 shall be triggered off.

Rule 66 of the Rules of Procedure

5.77 When Members-elect of the First Legislative Council considered the matter in June 1998, they agreed to provide for the time being a procedural framework in the Rules of Procedure, which would require detailed discussion at a later stage. The procedural framework was reflected in Rule 66 of the Rules of Procedure passed by the Council on 2 July 1998. From May 1999 to June 2000, the Committee on Rules of Procedure continued to examine the technical aspects of Rule 66 with particular emphasis on the process of "reconsideration", the mechanism to "reach consensus" and how amendments could be made to the returned bill. The Committee considered that procedural arrangement should be provided to enable Members to consider any new proposal from the Government and, if such proposal was found acceptable, to be able to amend the original bill. The Government accepted this arrangement as a way to facilitate compromises and to reach consensus.

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5.78 On 9 June 2000, the Committee on Rules of Procedure put forward its proposed mechanism to the House Committee for consultation and its proposal was agreed. A motion was moved and passed at the Council meeting of 21 June 2000 to amend Rule 66. In gist, the approved mechanism is as follows:

- (a) Upon receipt of a bill certified by the Chief Executive to be returned to the Council for reconsideration (which should be done within 3 months of the passage of the bill), the Clerk shall send a copy of the returned bill to every Member and arrange to publish the text of the bill in the Gazette;
- (b) The short title of the bill shall be placed on the Agenda of a Council meeting and read in the Council. A designated public officer may speak on the return of the bill, whereupon the bill shall be referred to the House Committee unless the Council, on a motion which may be moved without notice, otherwise orders. If such a motion is passed, a motion to vote on the returned bill is deemed to have been ordered to be moved, and the Council shall proceed to debate and vote on the motion;
- (c) The Government may at the time introduce another bill to the Council for the purpose of amending the returned bill. Where the returned bill is referred to the House Committee, the Committee may arrange for the bill to be considered in whatever manner it deems appropriate, and where a parallel bill has been introduced, may order that the returned bill be considered in conjunction with that other bill;
- (d) After deliberation of the returned bill is completed in House Committee and if no parallel bill to amend the returned bill is passed, a motion may be moved in the Council for the returned bill to be passed. No amendment may be moved to the motion;
- (e) If the motion to pass the returned bill is moved and supported by not less than a two-thirds majority of all the Members, a true copy of the bill passed for a second time by the Council shall be certified by the Clerk and submitted to the Chief Executive.

**Refusal to pass a budget or other important bills**

5.79 Article 50 also provides for the situation where the Legislative Council refuses to pass a budget or other important bill introduced by the Government. A study of the procedural arrangements for dealing with the situation was also conducted by the Committee on Rules of Procedure of the First Legislative Council in the 1999-2000 legislative session. The question of interpretation of the term "budget" and "important bill" was referred to the Panel on Constitutional Affairs for discussion with the Government. The Panel agreed with the Government's view that in the context of Articles 50 and 51, "budget" refers to the Appropriation Bill introduced by the Government for approval of the annual estimates of expenditure, while "important bills" are bills which are specified by the Government as important bills at the time when they are introduced into the Council. The Committee noted the view of the Panel.

5.80 On the consultation process for reconsidering the "budget" (the Appropriation Bill), if the bill is rejected in the Council, the Committee on Rules of Procedure considered that the mechanism for dealing with a returned bill was also applicable to a new Appropriation Bill to be submitted for the Council's consideration. However the introduction of a new Appropriation Bill in the same legislative session would be caught by Rule 51(7)(a) of the Rules of Procedure which provides that a bill which contains substantially the same provisions as another bill on which the Council has taken a decision at second reading shall not be further proceeded with in the same session. To enable a new Appropriation Bill to be presented to the Council in the same session, the Committee proposed to amend Rule 51 to provide specifically that where the motion for second or third reading of an Appropriation Bill is negated another Appropriation Bill containing the same or substantially the same provisions may be presented within the same session. This amendment was approved at the Council meeting of 21 June 2000.

**Designation of public officers for attending meetings of the Legislative Council**

5.81 To be accountable to the Legislative Council, the Government designates officials to attend meetings of the Council and to speak on behalf of the Government in accordance with Article 62(6) of the Basic Law. This

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includes responding to Members' oral questions<sup>44</sup> on the work of the Government and participating in the motion debates initiated by Members during Council meetings. By virtue of the power provided by this Article, the Chief Executive, being the Head of the Government, designates officials to attend meetings of the Council or of any committee or subcommittee of the Council. The list of the officials designated by the Chief Executive is set out in the Schedule under **Appendix 5-A**.

5.82 The designations are applicable to officials who from time to time either substantively occupy or act in the posts specified. They are usually made at the start of the term of office of the Chief Executive or following major changes in the organisational structure of the Government, and continue in force unless revoked by the Chief Executive. Under Section 8A of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), a designated public officer enjoys the same privileges and immunities enjoyed by Legislative Council Members by virtue of sections 3, 4 and 5 of the Ordinance, i.e. freedom of speech and debate, immunity from legal proceedings and freedom from arrest. For those public officers who are not designated public officers but are invited to attend meetings of any committee or subcommittee of the Legislative Council, the usual practice is that the public officers concerned would seek designation from the Chief Executive on a case-by-case basis.<sup>45</sup>

### Relevant rules in the Rules of Procedure

5.83 In order to give effect to Article 62(6) of the Basic Law, Rule 9(1) of the Rules of Procedure provides that designated public officers may attend meetings of the Council, committees of the whole Council, the Finance Committee or subcommittees of the Finance Committee and to speak on behalf of the Government. In addition, Rule 9(2) provides that a designated public officer may give notice to the Clerk to the Legislative Council of items of business to be included in the Agenda of the Council. Such items of business include the introduction of Government bills and resumption of Second Reading debates, tabling of papers and addressing the Council thereon, making of statements and moving of Government motions. Where an item of

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<sup>44</sup> Rules 22 and 23 of the Rules of Procedure provide that no more than 22 questions may be asked at any one meeting and no more than 6 questions of which shall require an oral reply unless there is no debate on a motion not intended to have legislative effect at a meeting, in which case no more than 10 oral questions may be asked.

<sup>45</sup> An example is the designation of Ms Elsie LEUNG Oi-sie, Member of the Constitutional Development Task Force, to attend meetings of the committees and subcommittees from 20 October to 31 December 2005.

business has been placed on the Agenda, after obtaining the President's approval, the name of the office of the public officer attending for that item will be shown on the Agenda. In practice, the Director of Administration informs the Clerk of the name of the office of the public officer attending for the item.

5.84 Under Rule 10(2) of the Rules of Procedure, in attending meetings of the Legislative Council, designated public officers are treated as Members of the Legislative Council, although the following rules do not apply to them:

- Rule 1 (Oath or Affirmation)
- Rule 3 (Presiding in Council and in Committee of the Whole Council)
- Rule 8 (Attendance of the Chief Executive)
- Rule 17 (Quorum)
- Rule 20 (Presentation of Petitions)
- Rules in Part J (Voting)
- Rule 71(2), (5A), (5B) and (5C) (Finance Committee)

5.85 In addition to the designated public officers attending a Council meeting for specific items of business on the Agenda, Rule 10(3) provides that the Chief Secretary for Administration, the Financial Secretary and the Secretary for Justice, who are also designated public officers, may attend any meeting of the Council, committees of the whole Council and all other committees and subcommittees, unless directed otherwise by the Chief Executive.

#### Temporary absence of a Principal Official

5.86 In April 2002, Chief Executive TUNG Chee-hwa introduced the Principal Officials Accountability System. Under this System, Principal Officials are not civil servants and they are appointed on contract. These Principal Officials are appointed to attend full Council meetings to speak on behalf of the Government, and to respond to Members' questions, initiate bills and motions, and carry out other related duties. In April 2002, the Principal Officials included 3 Secretaries of Departments and 11 Directors of Bureaux. The number of Directors of Bureaux was increased to 12 in July 2007. As the Directors of Bureaux are underpinned by the Permanent Secretaries who are not Principal Officials, in the temporary absence of a Director of Bureau, arrangements were made at that time for another Director of Bureau to attend

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the Council meeting and speak on behalf of the Government on established policies under the portfolio of the absent Bureau Director. These arrangements were considered not satisfactory especially during the question time at Council meetings.

5.87 In 2007, Chief Executive Donald TSANG introduced under the Political Appointments System a new layer of officials to underpin the Directors of Bureaux, named Under-Secretaries, to assist the Directors of Bureaux in handling a full range of political responsibilities (including the Legislative Council business). From May 2008 onwards, during the temporary absence of a Director of Bureau and where an Under Secretary has been appointed, the Under Secretary of the relevant Bureau acts for the Director of Bureau during the latter's absence. For any bureau in which the position of the Under Secretary is vacant, if the attendance of the Director of Bureau is required at any meeting, the practice has been for another Director of Bureau to speak on behalf of the absent Director of Bureau. An exception is the stand-in arrangement for the Secretary for the Civil Service who is not provided with a politically appointed Under Secretary or a Political Assistant. The Permanent Secretary for the Civil Service will attend meetings of the Council or committees during the absence of the Secretary for the Civil Service.

### **Means to enhance communication between the executive authorities and the Legislature**

5.88 Since 1997 and even before reunification, many changes have taken place to open up discussion with the executive authorities to keep the public informed of new policies and legislative or financial proposals that may cause concern either generally or to any sector of the population. More public hearings are conducted by individual committees so that public views on any legislative proposals or new public policies can be channeled to the policy-makers in a timely manner. In this respect, the Government and the Legislature have from time to time agreed on standing arrangements to enhance communication and co-operation, some of which are highlighted below.

#### Consultation with the Legislative Council on public policies

5.89 There is an established understanding between the Government and the Legislature that where practicable the Government should announce its

important policies at the Legislative Council, either at meetings of the Council or its committees, at the earliest opportunity and should consult Members when formulating such policies.

5.90 Discussion of policy issues usually takes place at meetings of the 18 Panels of the Legislative Council. All important legislative and financial proposals should be brought to the relevant Panels for initial discussion before they are formally presented to the Council or the Finance Committee respectively. Papers should be provided well in advance. The corresponding Bureau Secretary and/or his or her Under-Secretary are expected to be present at each meeting of the relevant Panel to respond to Members' questions and requests for information relating to items on the agenda.

5.91 For the Policy Address and the annual budget the Government consults Members of the Legislative Council before making its decisions on new policy initiatives, proposed taxation and public expenditure.

Sufficient time for detailed scrutiny of legislative proposals

5.92 There is also an established understanding between the Government and the Legislature that ample time should be allowed for the Legislative Council to study and scrutinize a bill or item of subsidiary legislation. A legislative programme setting out the timetable of the legislation to be presented to the Council should be published at the start of a new session and an updated programme be provided within the session. A meeting between the chairman of a Panel and the corresponding Bureau Secretary is held at the start of a session to consider the best timing for consultation with the Panel on the legislative proposals. A Legislative Council brief is expected to be provided by the Government on every bill and item of subsidiary legislation to be presented to or laid before the Council.

5.93 For subsidiary legislation which requires a motion to be moved in the Council for approval, the Government will normally withdraw the notice of motion if it is decided that the proposed subsidiary legislation should be studied in detail by a subcommittee of the House Committee. For subsidiary legislation subject to amendment by the Legislative Council within the 28-day scrutiny period after the tabling of the subsidiary legislation (plus extension of 21 days<sup>46</sup> by resolution of the Legislative Council), the commencement date

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<sup>46</sup> The Legislative Council may by resolution extend the scrutiny period to the first Council meeting held not earlier than 21 days after the expiry of the scrutiny period.

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should be set after the extended scrutiny period unless there are urgent and exceptional grounds for not doing so.

### House Committee's role

5.94 In addition to its formal terms of reference as stipulated in the Rules of Procedure House Committee provides a forum for Members to exchange views on matters which concern the relationship between the Legislature and the Government. Following each regular meeting of the House Committee, the Chairman and Deputy Chairman of the House Committee normally meet with the Chief Secretary for Administration to follow up issues raised by Members at the House Committee meeting. The Chairman of the House Committee reports back to the Committee at its next meeting.

### Communication with the Chief Secretary for Administration and the Financial Secretary

5.95 It has also been the practice for the Chief Secretary for Administration to attend meetings of the House Committee periodically to explain important policies and to respond to questions from Members, and for the Financial Secretary to attend meetings of the Panel on Financial Affairs<sup>47</sup> at least twice each year to provide an update on Hong Kong's economic situation and macro economic issues. The Financial Secretary also briefs the Finance Committee on the annual budget and attends the regular meetings of the Finance Committee as required.

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<sup>47</sup> Following a decision of the House Committee on 23 October 1998, the Panel on Financial Affairs has been given the duty to invite the Financial Secretary to its meetings on a regular basis. All Members of the Legislative Council are invited to attend the meetings.

## Chapter 6

### Committee System

6.1 The Legislature of Hong Kong has a long history of establishing committees of various kinds to assist it in performing its constitutional powers and functions. The roles of these committees are set out either in the Rules of Procedure or are approved by resolutions of the Council for specific purposes at the time when such committees are required. The committee system in the Hong Kong Legislature is unique. It has inherited the pre-1997 committee structure which was modelled on that adopted by British colonial legislatures during the early 1900s, and has also incorporated into it a committee structure which was found to be effective in Hong Kong during the 1970s and 1980s when Unofficial Members of the Hong Kong Legislature began to take an active role engaging with the Government on public policies and proposed legislation. The integrated committee system then evolved over the years to cater for the needs of the Council in light of public expectation for greater transparency and accountability and to provide for the implementation of provisions in the Basic Law after 1997.

6.2 This Chapter outlines how the Council carries out part of its functions through its committees. It also illustrates the historical development of the committee system in the Hong Kong Legislature and explains the reasons for the different nature of the various types of committees in the Council and the different modes of operation in these committees. The detailed operation of the committees is examined in Chapter 12.

#### **Historical development of the committee system**

6.3 On a regular basis, there may be more than 50 committees working at the same time during a session. Due to the different origins and purposes of these committees, their modes of operation may differ but they are guided by the same principles, which may be written down in the Rules of Procedure, or through established practices which are reflected in the House Rules or other procedural rules of individual committees. To understand how the various committees assist the Legislature in performing its functions, it is useful to understand the historical development of the committee system in particular during the 1980s when discussions had begun on the future of Hong Kong and how it would operate as a Special Administrative Region of the People's Republic of China under the "one country, two systems" principle.

## 6. Committee System

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### *From 1843 to 1968*

6.4 In the pre-1997 Hong Kong Legislature committees of the Council (other than a Committee of the whole Council to which a bill was referred after second reading) were first mentioned in the 1884 Standing Orders. There were at that time 3 ***Standing Committees***, namely the Finance Committee, Law Committee and Public Works Committee, all headed by Official Members. There were also ***Special Committees*** comprising at least three Members and they were set up as and when required. At that time, it was common for bills to be referred to the Law Committee headed by the Attorney General or to a special committee if considered necessary.

6.5 In 1929, there was a major revision of the Standing Orders to align with those of other colonial legislatures. While the 3 Standing Committees remained unchanged, ***select committees*** were provided for in the Standing Orders to replace the Special Committees; and any matters before the Council could be referred by the President, or upon a motion duly passed by the Council, to a select committee. It was also in the same Standing Orders that a provision was made for a petition to be referred to a select committee on the moving of an appropriate motion. The 1929 Standing Orders continued in force until 1968 when it was found that some provisions were no longer followed and others were no longer effective. A detailed examination of the Standing Orders was then conducted by the Attorney General, together with Unofficial Members and Clerks. On 9 October 1968, the 1929 Standing Orders were revoked and replaced by the much modernized 1968 Standing Orders.

### *From 1968 to 1991*

6.6 The 1968 Standing Orders provided for only one standing committee, the ***Finance Committee***, in the Council. The Council could appoint one or more select committees to consider matters or bills which it might refer to such select committees. Detailed procedures for the Finance Committee and select committees were provided in the Standing Orders. At that time, the sittings of the Finance Committee and select committees were held in private unless the committees otherwise ordered. However, when the Finance Committee sat for the examination of the Estimates, public officers responsible for the services provided under any head of the Estimates were called to give evidence, and these meetings were open to the public.

6.7 In 1978, the Council approved the setting up of another standing committee, the *Public Accounts Committee*, to examine the Director of Audit's reports. Meetings of the Committee were held in private unless ordered otherwise by the Committee. It was not until July 1991 that the Council set up its third standing committee, the *Committee on Members' Interests*, to examine the arrangements relating to the registration of Members' interests, to conduct investigation into complaints made in relation to Members' registration and declaration of interests, and to consider matters of ethics in relation to Members' conduct, etc.<sup>1</sup>

6.8 During the 1970s and 1980s, although the formal structure of the Council provided for only 2 (later increased to 3) standing committees and occasional select committees, there in fact existed a substantial number of *Ad Hoc Groups*, *Panels* and *Working Groups* under the informal committee structure of UMELCO<sup>2</sup>. Ad Hoc Groups consisting only of Unofficial Members of the Legislative Council were formed to examine individual items of legislation and to discuss issues of topical interest. They reported to the *LegCo In-house meetings*<sup>3</sup> after completion of work. In the late 1970s, standing groups (which were renamed as "*Panels*" in 1980) were formed to deal with topics of continuing importance such as housing, transport, education, security, health services, social services, etc. Membership of Panels was open to Members of both the Executive and Legislative Councils. They reported to the *UMELCO In-house meetings*. Panels continued to play an important role to enable the Unofficial Members of the two Councils to monitor Government policies and examine issues of public concern more effectively, although their meetings, like those of other committees under the formal structure of the Council, were held in private.

6.9 Following publication of the Green Paper on The Further Development of Representative Government in Hong Kong<sup>4</sup> in July 1984, further changes took place to enable more meetings of the Legislative Council to be open to the public. In July 1984, the Standing Orders were amended to enable the Public Accounts Committee to meet ordinarily in public for hearing of evidence. In February 1985, the Standing Orders were again amended to

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<sup>1</sup> The relevant amendments to the Standing Orders took effect on 12 September 1991.

<sup>2</sup> UMELCO stands for Office of the Unofficial Members of the Executive and Legislative Councils. See Chapter 4.

<sup>3</sup> There were two kinds of in-house meetings in UMELCO: LegCo In-house meetings which met weekly when the Legislative Council was in session to discuss matters relating to forthcoming Council sittings; and UMELCO In-house meetings which met bi-weekly to consider reports of complaint cases and issues of interest to Members of both the Executive and Legislative Councils.

<sup>4</sup> See Chapter 3.

## 6. Committee System

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enable the Finance Committee to meet in public. In June 1985, the Council passed the *Legislative Council (Powers and Privileges) Bill* which codified the immunities and privileges enjoyed by the Council and by its Members.<sup>5</sup> The Bill also provided power to the Council and some of its committees to summon witnesses and to receive evidence on public matters. However, the Ad Hoc Groups, panels, other working groups and in-house meetings under the UMELCO structure were outside the Standing Orders. Since they were not established under the Legislative Council they did not come within the meaning of "committees" under the Legislative Council (Powers and Privileges) Ordinance. When conducting their business these UMELCO committees were guided by their own long-standing practices and guidelines (which subsequently became the House Rules in 1988). They continued to hold their meetings in private although press briefings were usually conducted after meetings.

6.10 In 1986, with the return in the previous year of 12 Members from functional constituencies and another 12 Members elected from an electoral college, the term "Unofficial" when referring to a non-Government Member of the Legislative Council was removed. The name of UMELCO was changed to OMELCO<sup>6</sup>.

6.11 In July 1991, following a review of the Standing Orders by an Ad Hoc Group comprising non-Government Members, substantial changes were put forward for the Council's endorsement, including the introduction of a register of Members' interests and the setting up of a Committee on Members' Interests based on the new arrangements in the United Kingdom House of Commons.<sup>7</sup> The Committee on Members' Interests was set up as a standing committee under the Council, thus enjoying the same powers as other standing committees under the Legislative Council (Powers and Privileges) Ordinance.<sup>8</sup>

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<sup>5</sup> In his Policy Address on 4 October 1984, the Governor explained that the purpose of the Legislative Council (Power and Privileges) Bill was to confirm the privilege of Members' statements in debate; provide assurances that Members could perform their duties according to their conscience; and introduce powers to hear evidence on matters of public interest.

<sup>6</sup> OMELCO stands for Office of the Members of the Executive and Legislative Councils.

<sup>7</sup> See Chapter 3.

<sup>8</sup> Section 9(1) of the Legislative Council (Powers and Privileges) Ordinance provides that the Council or a standing committee may order any person to attend before the Council or before such committee to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

*From 1991 to 1997*

6.12 In September 1991, the direct election of Members from geographical constituencies was held for the first time. 18 directly-elected Members and 21 Members elected from functional constituencies were returned to the 60-Member Legislature in October 1991. There was strong support from Members for all meetings of the committees under the OMELCO structure to be open to the public in order to enhance the transparency of the operation of the Legislature. As a result, a Working Group on the Committee Structure of the Legislative Council was set up in January 1992 at a LegCo In-house Meeting<sup>9</sup>. Its remit was to develop a new committee structure by formalizing the arrangements under the OMELCO system. On 8 July 1992, the Legislative Council approved amendments to the Standing Orders to provide for a new **House Committee** to take over the duties of the former LegCo In-House. In addition to discussing business of the Legislative Council and matters of particular concern to Members, the House Committee was empowered to set up **Bills Committees** (which replaced the OMELCO Ad Hoc Groups) to scrutinize proposed legislation. Bills Committees, which might receive representations from the public and, after completion of work, would be required to report their recommendations to the House Committee. Both the House Committee and Bills Committees would be committees of the Council but not standing committees. They might summon witnesses when authorized to do so by the Council.

6.13 Following the announcement by Governor Christopher Patten in his Policy Address on 7 October 1992 on the separation of the Executive Council and the Legislative Council, all Non-Government Members of the Executive Council withdrew from membership of Panels. The OMELCO In-house meetings also ceased to function. As directed by the House Committee in October 1992, the Working Group on the Committee Structure of the Legislative Council continued to study how far the Panel system could be incorporated into the committee structure of the Council. In mid-1993, the Working Group reported back to the House Committee which agreed that all **Panels** should be made formal committees of the Council and subcommittees should be formed under the House Committee to take over the work of non-bill related Ad hoc Groups. The House Committee also agreed that Panels should not be tasked with the scrutiny of bills already introduced to the Council. Their work should be confined to the monitoring of Government policies. The House Committee further endorsed that Panels

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<sup>9</sup> The LegCo In-house Meetings were open to the public from September 1991 onwards although such meetings were not covered by the Legislative Council (Powers and Privileges) Ordinance.

## 6. Committee System

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could summon witnesses if authorized by the Council. The Standing Orders were amended accordingly on 13 October 1993. The formalization of the OMELCO committees was then complete.

### *1997 to present*

6.14 The committee system adopted by the Provisional Legislative Council was similar to that provided in the Standing Orders before reunification. A new Committee on Rules of Procedure was set up under the Council on 10 September 1997 with responsibility for reviewing the Rules of Procedure of the Council and the committee system, and to examine matters of practice and procedure relating to the Council referred by the Council or its committees, or by the President or raised by its own members. With the setting up of this Committee the former Subcommittee on Procedural Issues (which was a subcommittee of the House Committee before reunification) became defunct.

6.15 When the Members-elect of the First Legislative Council met in June 1998 to consider the draft Rules of Procedure it was agreed that the same committee system should be retained. The Rules of Procedure which set out the functions and procedures of the various committees would continue to be in force until that date. The only new committee added to the committee system and included in the Rules of Procedure was an *investigation committee* to investigate charges against a Member for misbehaviour or breach of oath under Article 79(7).<sup>10</sup>

6.16 In respect of the mode of operation of committees, those which were formerly committees under the OMELCO structure are guided by some general rules in the Rules of Procedure, supplemented by some common practices reflected in the House Rules. It had been the intention of the Working Group on the Committee Structure of the Legislative Council, which drew up the relevant Standing Orders for these committees, to provide flexibility for them to develop their own practices and mode of operation over time, and to keep much of the common practices in the House Rules for general guidance. The deliberations in Panels, Bills Committees and subcommittees on subsidiary legislation and on policy issues are, as a result, more interactive and less restrictive by way of formalities than in the Council itself. This facilitates communication among Members and exchange of views with the Government and other invited parties. For standing committees, the

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<sup>10</sup> New rule 73A was added to the Rules of Procedure on 28 April 1999.

procedures are set out more comprehensively in the Rules of Procedure but committees are left to develop their own practices. For select committees, the procedures set out in the Rules of Procedure are both formal and restrictive as they are often set up to conduct inquiries. With the continuous call for greater transparency and accountability in public administration, changes to the operation of the committees are being made in order to facilitate increased public engagement and at the same time enhance the effectiveness of the committees in the deliberation of public policies as well as legislative and funding proposals.

### **Types of committees under the current committee system**

6.17 There are the following types of committees in the Legislative Council:

- (a) standing committees, namely the Finance Committee, Public Accounts Committee and Committee on Members' Interests;
- (b) select committees which may be appointed by resolution of the Council to consider matters or bills;
- (c) committees of a standing nature with specific functions included in the Rules of Procedure, namely the House Committee, 18 Panels, Committee on Rules of Procedure and a committee of the whole Council (see paragraph 6.28);
- (d) Bills Committees and subcommittees of the House Committee which are set up by the House Committee to study legislative proposals and are dissolved upon completion of work;
- (e) Subcommittees set up by the House Committee with specific functions, such as the Parliamentary Liaison Subcommittee, or for assisting the House Committee in considering any items relating to the business of the Council, such as the Subcommittee on Review of Operating Expenses for Members of the Legislative Council;
- (f) Subcommittees set up by the House Committee and by Panels to study policy issues for a period not exceeding one year unless with the approval of the House Committee; and

## 6. Committee System

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- (g) Investigation committee appointed upon a motion moved to disqualify a Member from office under Article 79(7).

6.18 A chart showing the various types of committees is provided in **Appendix 6-A**.

### **How committees assist the Council in performing its powers and functions**

6.19 As explained in Chapter 2, the powers and functions of the Legislative Council as set out in Article 73 of the Basic Law can be categorized into the following main areas:

- (a) making of laws, which includes passing new laws and amending or repealing existing laws; laws in this context include ordinances and subordinate legislation;
- (b) approval of budgets, taxation and public expenditure;
- (c) monitoring of the work of the Government;
- (d) endorsement of the appointment and removal of senior judges; and
- (e) handling of complaints from the public.

6.20 In the performance of these powers and functions the Legislative Council may summon witnesses and receive evidence, so may standing committees and, if so authorized by the Council, other committees<sup>11</sup>.

### Making of laws

6.21 Article 8 of the Basic Law stipulates that "[t]he laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law [Basic Law], and subject to any amendment by the

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<sup>11</sup> Standing committees, by virtue of section 9(1) of the Legislative Council (Powers and Privileges) Ordinance, may order any person to give evidence, while all other committees may also have this power, where so authorized by the Council, under section 9(2) of the Ordinance.

legislature of the Hong Kong Special Administrative Region." By resolution of the Standing Committee of the NPC on 23 February 1997, all ordinances and subsidiary legislation that were in force as part of the Laws of Hong Kong, with the exception of a few items, were adopted as those which would continue in force upon the establishment of the HKSAR on 1 July 1997.

### *Bills*

6.22 Under the Basic Law, initiatives to make new laws or amend existing laws may come from the Government or individual Legislative Council Members. A proposal to make a new principal ordinance is called a **bill**, while a proposal to amend an existing ordinance is also a bill but is usually referred to as an **amendment bill**. Sometimes proposed legislative amendments which do not involve major policy changes but concern a number of areas may be grouped as an **omnibus bill**. A bill introduced by a public officer on behalf of the Government is a **government bill**.

6.23 Individual Legislative Council Members may also introduce bills but such introduction is subject to Article 74 of the Basic Law which provides that only bills which do not relate to public expenditure or political structure or the operation of the government may be introduced by Members. For bills which relate to government policies, written consent of the Chief Executive is required. If a bill presented by a Member provides primarily for the particular interest or benefit of any individual, association or body corporate and is not a Government measure, it is defined as a "**private bill**" in the Private Bills Ordinance (Cap. 69). As private bills are initiated by Members, they are **Members' private bills**<sup>12</sup>.

### *Subsidiary legislation*

6.24 Whilst the essential principles and provisions of a legislative proposal are set out in the main ordinance there are often supporting technical details which are not appropriate for enactment in the main ordinance but which need to have the force of law if the ordinance is to be effectively implemented. These details are often set out in **subsidiary legislation** in the form of a proclamation, rule, regulation, order, resolution, notice, rule of court, or bylaws. As subsidiary legislation is a form of delegated legislation, it is subject to supervision and intervention by the Legislative Council through one

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<sup>12</sup> Bills introduced by individual Members were traditionally known as "Private Members' Bills", i.e. "PMB" which could be on both public and private matters. "Private Members" refers to the Unofficial Members during the pre-1997 period. The term "PMB" is still used up to this date when referring to the private bills introduced by individual Members.

## 6. Committee System

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of the two procedures as provided in Sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) respectively. Section 34 provides the commonly known "*negative vetting procedure*", and section 35 provides the "*positive vetting procedure*".

### *Legislative proposals referred to committees for scrutiny*

6.25 *Whether the legislative proposal is a bill or subsidiary legislation, the study of the proposal requires an understanding of its purposes, its objectives, and how such objectives can be achieved through the provisions in the proposal. Meeting with stakeholders is necessary to ensure that the impact of the proposal can be fully explained and carefully assessed, and any concerns arising from it can be addressed before the proposal is enacted into law for implementation of the relevant public policy. Hence in the case of bills, there is a requirement under Rule 54(4) of the Rules of Procedure that when a bill is presented to the Council, after the Member or public officer in charge of the bill has spoken on a motion that the bill be now read the second time, the debate shall be adjourned<sup>13</sup> and the bill shall be referred to the **House Committee**.*

6.26 The House Committee is a committee of the Council comprising all Members of the Council except the President. It normally meets every week while the Council is in session to deal with any matters relating to the business of the Council. The House Committee provides a forum for Members to decide how a legislative proposal is to be dealt with. Where detailed scrutiny of a bill is required, the House Committee may decide to refer it to a **Bills Committee**. If a piece of subsidiary legislation needs to be studied, it will be allocated to a **subcommittee of the House Committee**. The Bills Committee and subcommittees on subsidiary legislation report back to the House Committee upon completion of their work. With the consent of the House Committee, the Government will be informed and in respect of bills, it may give notice for the resumption of the second reading debate. The House Committee therefore plays a crucial role in monitoring the progress in the scrutiny of legislative proposals.

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<sup>13</sup> Rule 54(4) also provides that the Council may, on a motion which may be moved without notice, order that the debate shall not be adjourned. The Council shall then continue with the Second Reading debate. This practice, known as the "previous question" is a long standing one in the UK House of Commons. So far no such motion has been moved in the Legislative Council. See Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 24<sup>th</sup> Edition, p. 404.

6.27 The call for greater transparency and accountability of the Government has made it necessary for increased public engagement in the study of any legislative proposal before it is passed into law. As the Legislature, with its open meetings, provides a forum for the general public to acquire a deeper understanding of the purposes and impact of a legislative initiative, it has been the practice since 1996<sup>14</sup> that important legislative proposals are first brought to the relevant policy *Panels* of the Legislative Council for discussion. Where considered necessary, in particular in the case of a complex bill or subsidiary legislation, the House Committee may set up a *subcommittee* to study the legislative proposal before the bill is formally presented to the Council or the subsidiary legislation is made in accordance with the empowering provision in the principal ordinance. Early consultation with the Legislature enables the subject matter to be more openly and thoroughly discussed by the community before the details of the bill are finalized and put to the Chief Executive-in-Council for endorsement. The deliberations of the Bills Committee are set out in its report to the House Committee and then to the Council in the form of a paper under Rule 21(4A) of the Rules of Procedure.

6.28 After a motion for the second reading of a bill has been agreed to, the bill shall stand committed to a *committee of the whole Council*, or to a *select committee* if so decided by the President or by the Council upon a motion moved without notice.<sup>15</sup> The function of the committee of the whole Council or the select committee is to discuss the details of the bill rather than its principles. It has power to make such amendments as it shall think fit. Details of this part of the legislative process, well known as the "*committee stage*" are set out in Part K of the Rules of Procedure. It has not been the practice in recent years for bills to be referred to a select committee, although the Rules of Procedure provide for it.

### Approval of public expenditure and taxation

6.29 Under Article 62 of the Basic Law, it is the Government's power and function to draw up and introduce budgets and final accounts. Under Article 73(2) and (3), it is the Legislative Council's power and function to examine and approve budgets introduced by the government, and to approve taxation and public expenditure.

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<sup>14</sup> Following the decision of the House Committee on 19 January 1996, Rule 22(q) of the House Rules was added in October 1996.

<sup>15</sup> Rule 55 of the Rules of Procedure.

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6.30 As explained in Chapter 5, the term "budget" in the context of Articles 50 and 51 of the Basic Law is interpreted as meaning the **Appropriation Bill**. The Appropriation Bill, which is usually introduced into the Legislative Council in late February or early March each year, seeks the Council's authorization of an appropriation from the general revenue up to a specified sum in a manner detailed in a Schedule to the Bill, for the services of the Government in the upcoming financial year. Under the Public Finance Ordinance (Cap. 2)<sup>16</sup>, the Financial Secretary is required to prepare in each financial year estimates of the revenue and expenditure of the Government for the next financial year which commences on 1 April and to table the Estimates of Expenditure before the Council at the same time as the Appropriation Bill is introduced. The estimates for each individual bureau and department under the respective heads of expenditure are set out in the Schedule to the Appropriation Bill.

6.31 After the Financial Secretary has delivered his speech (which is often known as the "Budget Speech") when moving the second reading of the Appropriation Bill, the debate is adjourned and the Estimates are referred by the President to the **Finance Committee** for examination. The Finance Committee, which comprises all Members of the Council except the President, holds special meetings during the following 4 to 6 weeks to examine the Estimates of Expenditure before the Council resumes debate on the second reading of the Appropriation Bill. The purpose of the examination is to ensure that the provision sought is no more than is necessary for the execution of the approved policies.

### *Vote on Account*

6.32 Prior to the passage of the Appropriation Bill, the Legislative Council may by resolution authorize the Government to incur expenditure during the interim period from the start of the financial year on 1 April to the enactment of the Appropriation Ordinance.<sup>17</sup> This resolution, generally known as the **Vote on Account Resolution**, is usually moved after the proposed Estimates of Expenditure have been tabled and before the start of the next financial year. The amount sought for a recurrent operating account subhead is usually not more than 20% of the relevant provision shown in the Estimates in respect of that subhead, and in respect of a non-recurrent operating account subhead or a capital account subhead, the amount sought is not to exceed 100% of the

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<sup>16</sup> Sections 5 and 6 of the Public Finance Ordinance.

<sup>17</sup> Section 7(1) of the Public Finance Ordinance.

provision shown in the Estimates.<sup>18</sup> In respect of funding for specific initiatives under planning or capital projects pending approval the Government will recommend a definitive sum on a need basis. Upon the Appropriation Ordinance coming into operation, the expenditure charged on the general revenue pursuant to the Vote on Account Resolution shall be set off against the amounts respectively provided in the Appropriation Ordinance.<sup>19</sup>

6.33 The Vote on Account is a resolution, i.e. subsidiary legislation subject to the positive vetting procedure. For a resolution of this nature, where it is considered that the subsidiary legislation requires further study, the House Committee will set up a *subcommittee* for the purpose and the Government will be asked to withdraw the notice given for the motion. However, due to the limited time available for the scrutiny of the Vote on Account Resolution, the House Committee usually would not require the notice to be withdrawn. Consequently the subcommittee would have to work under a very tight timetable, reporting back to the House Committee after completion of its work.

### *Changes to the approved Estimates*

6.34 Following the passage of the Appropriation Bill, the Financial Secretary may propose changes to the approved Estimates of Expenditure for certain purposes which were not anticipated or could not be included in the Estimates at the time when they were prepared. Such proposed changes are submitted to the *Finance Committee* for approval.<sup>20</sup> The Finance Committee is assisted by two subcommittees, namely the *Establishment Subcommittee* and the *Public Works Subcommittee*, in examining proposals relating respectively to establishment changes (in particular changes in directorate posts) and public works items under the Capital Works Reserve Fund. The Finance Committee may delegate to the Financial Secretary the power to approve such changes but subject to the conditions, exceptions and limitations it may specify in the delegation. When the changes are approved, expenditure for such purposes will be met from the general revenue and charged to the relevant head of expenditure.

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<sup>18</sup> See Report of the Subcommittee on Proposed Resolution under Section 7(1) of the Public Finance Ordinance, Cap. 2, para. 16-19.

<sup>19</sup> Section 7(3) of the Public Finance Ordinance.

<sup>20</sup> Section 8(1) of the Public Finance Ordinance.

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### *Supplementary Appropriation Bill*

6.35 At the close of account for each financial year, if it is found that expenditure charged to any head of expenditure is in excess of the sum appropriated for that head in the Appropriation Ordinance for that year, the excess shall be included in a **Supplementary Appropriation Bill** introduced into the Legislative Council for its approval.<sup>21</sup> The Supplementary Appropriation Bill is usually introduced in June in the following financial year. Where detailed study is required, a **Bills Committee** will be formed by the House Committee.

### *Auditing of public accounts*

6.36 Within 7 months after the close of the financial year, the Director of Audit, appointed by the Chief Executive to examine, inquire into and audit all public accounts, must prepare and submit to the President of the Legislative Council a report in respect of his examination and audit of the Government accounts.<sup>22</sup> The Director of Audit must report to the President any serious irregularities in the accounting for the receipt, expenditure or custody of public moneys or any assets of the Government and which come to his notice in the performance of his duties. Within one month after receipt of the report and certified statements from the Director, a copy of the report must be laid before the Legislative Council. The Director's report shall be referred to the **Public Accounts Committee** for consideration. The Committee studies the report of the Director of Audit and tables its report in the Council within 3 months (or such longer period as the President may determine<sup>23</sup>) after the tabling of the Director's report. Since July 1987, the Director of Audit has also submitted to the President reports on "value for money" audits of the Government and other organisations which are within the purview of public audit.<sup>24</sup> The Public Accounts Committee is also required to table its report on these value for money audit reports within 3 months (or such longer period as the President may determine) after the tabling of the Director's report.

### *Taxation*

6.37 While the Budget Speech of the Financial Secretary covers both the revenue and expenditure proposals, the Appropriation Bill contains only the

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<sup>21</sup> Section 9 of the Public Finance Ordinance.

<sup>22</sup> Sections 8, 12 and 13 of the Audit Ordinance (Cap. 122).

<sup>23</sup> Section 12 of the Audit Ordinance (Cap. 122).

<sup>24</sup> See Chapter 12.

expenditure proposals. Any measures to generate new revenue in the form of taxes or modification of existing charges have to be dealt with separately through other legislative means, such as a bill or subsidiary legislation.

6.38 Any proposals to seek changes to taxation or charges need to be submitted to the Legislative Council through **enactment of laws**,<sup>25</sup> i.e. in the form of bills or subsidiary legislation, as the case may be. It is usual practice that these proposals are put to the relevant **Panels** for discussion on the policy aspects before the proposals are formally introduced to the Council for endorsement. Once the proposals are formally introduced, the matters will be considered by the House Committee which will decide whether any **bills committees** or **subcommittees on subsidiary legislation**, as the case may be, should be set up to study the proposals in detail.

### Monitoring of government policies and operation

6.39 In exercising its powers and functions as stipulated in Article 73(4), (5) and (6) of the Basic Law and in ensuring the Government's accountability to the Legislative Council under Article 64, the Legislature monitors the work of the Government and reflects the opinions of the community on specific issues of public interests for consideration and action by the executive authorities. The committee system assists this process as summarized below.

### *Briefings on the Policy Address*

6.40 Article 73(4) refers to the Legislative Council's power and function to receive and debate the policy addresses of the Chief Executive. Following the delivery of a policy address by the Chief Executive, a motion is moved by a Member of the Council, by convention the Chairman of the House Committee, for a **Motion of Thanks** to the Chief Executive at a meeting normally 2 to 4 weeks after the delivery of the policy address.<sup>26</sup> During this period, a series of policy briefings are held by the Directors of Bureaux at meetings of the respective **Panels**<sup>27</sup> of the Legislative Council. At these open meetings, the Directors of Bureaux explain in detail those new initiatives within their policy portfolios introduced in the policy address and also respond to questions from Members in relation to any policy issues about which the community is concerned. At the meeting set down for the moving of the Motion of Thanks

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<sup>25</sup> Article 64 of the Basic Law.

<sup>26</sup> Rule 13 of the Rules of Procedure.

<sup>27</sup> Panels are committees of the Council to monitor and examine policy matters and consider issues of public concern.

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the debate on the policy address will take place and Members will vote on the motion and any amendments for which notice has been given.

### *Motion debates*

6.41 All decisions of the Council are made by way of motions. To facilitate the Council to form an opinion on a particular issue, Members may move motions (not intended to have legislative effect) at Council meetings. For this type of motion, the President may shorten the time of speaking upon the recommendation of the **House Committee**<sup>28</sup>. Where a motion is passed, the Government is requested to provide a report on the actions taken by the Government in relation to the motion passed within 2 months. The relevant **Panel** is also required to follow up with the Bureau concerned and monitor the actions taken by the Government.

6.42 It has been the practice<sup>29</sup> that no more than two debates with no legislative effect initiated by Members should be held at each regular Council meeting, except with the permission of the President under special circumstances upon the recommendation of the **House Committee**. There is a mechanism in the House Rules<sup>30</sup> to ensure that all Members of the Council are given an equal opportunity to initiate such non-legislative motion debates during the term.

6.43 From time to time, there is also a need for the Council to express views in response to Government consultation papers, reports, etc. The House Rules<sup>31</sup> provide a mechanism for the allocation of a Council "slot" to the chairman of the relevant committee, usually the relevant **Panel**, to initiate a motion debate on such matters.

### *Adjournment debates*

6.44 The expression of views on public affairs may also be effected through adjournment debates, which have a long history in the Hong Kong Legislature. Before debates on substantive motions became a regular form of debate initiated by individual Members in 1992, most debates on public issues took place in the form of adjournment debates. Adjournment debates are

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<sup>28</sup> Rule 37 of the Rules of Procedure.

<sup>29</sup> It was first included in the House Rules of October 1992 that no more than two debates should be held at each regular Council sitting. Further details are provided in Chapter 11.

<sup>30</sup> Rules 13 and 14 of the House Rules.

<sup>31</sup> Rule 14A of the House Rules.

initiated upon a motion that "the Council do now adjourn" under Rule 16 of the Rules of Procedure. Where it is not desired to formulate a motion in express terms, as in the case of a motion debate, for the purpose of debating an issue or issues, an adjournment debate may be held. Under Rule 16(2), such a motion may be moved without notice between two items of business at a Council meeting by a Member or a designated public officer if the President is satisfied that the adjournment is for the purpose of discussing a specific issue of urgent public importance. The President may also allow such a motion to be moved under Rule 16(4), which requires a notice of 7 clear days, for the purpose of raising any issue concerning public interest with a view to eliciting a reply from a designated public officer, but this type of adjournment debate may only take place at the conclusion of all business on the Agenda. Individual Members who wish to initiate an adjournment debate under Rule 16(4), if two motion debates have already been scheduled for the same meeting, must first seek the support of the *House Committee*.<sup>32</sup>

### *Panels*

6.45 Under the Rules of Procedure and resolutions passed by the Council, *Panels*, which are committees of the Legislative Council, have been established with the specific function of monitoring and examining Government policies and issues of public concern. They also provide a forum for the exchange and dissemination of views on policy matters and formulation of views on any major legislative or financial proposals prior to formal introduction to the Council or Finance Committee. The number of Panels to be formed and their terms of reference are approved by the Council based on the recommendations of the *House Committee*. The House Committee also determines the manner and timing of signification of membership. Since the First Legislative Council, 18 Panels have been formed. Each takes responsibility for a specific policy area(s), which may be changed by resolution in the Council to correspond with changes in the division of responsibilities of the Directors of Bureaux in the Government.

6.46 A Panel usually allocates time at its regular meeting for the deliberation of specific policies or issues which are raised for discussion either by the Panel itself or are referred to it by the Council or the House Committee. A Panel may invite their corresponding Director(s) of Bureau(x) to brief members on any subject matter within its terms of reference. Where

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<sup>32</sup> Rule 13(a) of the House Rules provides that the holding of an adjournment debate pursuant to Rule 16(4) of the Rules of Procedure in addition to not less than two motion debates may be allowed by the President under special circumstances upon the recommendation of the House Committee.

## 6. *Committee System*

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considered necessary, special meetings may be held to receive views from the public and to exchange views with the Bureau(x) or other parties concerned. Sometimes a *subcommittee* may be formed by a Panel (either on its own or jointly with other relevant Panels) to monitor the work of the Government on a major policy or issue. If the Panel considers it necessary to seek the views of other Members on a particular matter, it may invite non-Panel Members to its meetings or refer the matter to the *House Committee* to consider the way forward. Substantial policy issues are not discussed at the regular meetings of the House Committee.

### *Subcommittees on policy issues*

6.47 The *House Committee* may also set up a *subcommittee* for the purpose of studying a major issue if the subject matter of the issue straddles the portfolios of a number of Panels and Members who are not members of those Panels also wish to take part in the study of the issue. The subcommittee is expected to complete its work within 12 months and report back to the House Committee upon completion.<sup>33</sup>

### *Select Committees*

6.48 A *select committee* is appointed by the Council for a particular purpose<sup>34</sup> and dissolves when its work is completed or at the end of the Council term whichever is earlier. Generally speaking, if it is considered that an inquiry ought to be conducted into a particular matter, a select committee may be set up to look into the matter. The procedure and mode of operation of a select committee is set out in detail in the Rules of Procedure. Where it is considered that the select committee should be given the power to summon witnesses, a motion to that effect should also be put to the Council for its approval. A select committee must report back to the Council upon completion of its work.

### Appointment and removal of judges

6.49 In considering the appointment and removal of judges of the Court of Final Appeal and the Chief Judge of the High Court, the Legislative Council has put in place a mechanism to assist it to perform its constitutional role of endorsing the proposals effectively.

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<sup>33</sup> Rule 26(c) of the House Rules.

<sup>34</sup> Rule 20(6) of the Rules of Procedure provides that a petition shall be referred to a select committee if not less than 20 Member rise in support of a request that the petition be referred to a select committee.

6.50 For the appointment of these judges, the Government first advises the **House Committee** of the Chief Executive's acceptance of the recommendation of the Judicial Officers Recommendation Commission for appointment, and provides sufficient information on the recommended judicial appointee(s). The House Committee then decides whether the matter ought to be referred to a **subcommittee** under the House Committee for discussion. If a subcommittee is to be formed, it must report its deliberations to the House Committee after completion of its work. The Government will then give notice of a motion in the Council for the endorsement of the recommended appointment. The motion will be moved, debated and voted on at a Council meeting.<sup>35</sup> If the motion is passed, the appointment by the Chief Executive will take effect and must be reported by him to the Standing Committee of the NPC for the record.<sup>36</sup>

6.51 In considering the removal of judges, the same mechanism will apply. As the Basic Law provides that the recommendation for the removal of a judge should be made by a tribunal appointed by the Chief Justice of the Court of Appeal, and the recommendation for the removal of the Chief Justice of the Court of Final Appeal should be made by a tribunal appointed by the Chief Executive, the **House Committee** would be advised of the Chief Executive's acceptance of the recommendation from the relevant tribunal before making any public announcement. It is then for the House Committee to decide whether a **subcommittee** should be formed to discuss the Chief Executive's acceptance of the recommendation. If a subcommittee is to be formed, it must report its deliberations to the House Committee after completion of its work. The Administration will then give notice of the motion seeking the Legislative Council's endorsement of the recommended removal. The motion will be moved, debated and voted on at the Council meeting. If the motion is passed, the Chief Executive must report such removal to the Standing Committee of the NPC for the record.<sup>37</sup>

### Handling of complaints from the public

6.52 The handling of complaints and petitions from members of the public has long been an important part of the work of the Members of the Legislative Council. While the committees under the current committee system do not directly deal with individual complaints, policy issues which have given rise to such complaints are often referred to **Panels** for further examination or, in

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<sup>35</sup> The mechanism was endorsed by the House Committee on 16 May 2003 and 28 May 2004.

<sup>36</sup> Article 90 of the Basic Law.

<sup>37</sup> Article 90 of the Basic Law.

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the case of petitions against certain proposed legislation, such matters are referred to the *bills committees* or *subcommittees* set up to study the related legislative proposals.

### *Redress System*

6.53 The handling of complaints from the public has been an important function of the Members of the Legislative Council since the early 1960s as mentioned in paragraph 6.8 above. Under the *redress system* operated by UMELCO/OMELCO<sup>38</sup>, Members received complaints from members of the public aggrieved by Government policies and operations as well as petitions and representations on bills or legislative proposals under the scrutiny of the Legislature. The mode of operation of the redress system has remained largely the same over the years. In groups of seven, Members take turn to be on "ward duty" at the Public Complaints Office during their duty week to meet deputations and individual complainants. Where considered appropriate, these *Duty Roster Members* may hold *case conferences* and discuss the issues with the government departments concerned. The Duty Roster Members also give directions to staff of the Legislative Council Secretariat on the way to deal with individual cases.

### *Complaints against Government policies and operation*

6.54 In the course of handling individual complaint cases, where it is considered by Duty Roster Members that there is a need to review certain legislation or public policy of the Government, a request will be made to the relevant *Panel* for the matter to be brought up for discussion by the Panel. By exchanging views with the Government at an open meeting of the Panel, any inadequacies of legislation or policy will come under public scrutiny. The commitment or agreement on the part of the Government to review or change the policy or legislation concerned will be relayed back to the complainant through the Duty Roster Members and followed up by the Panel.

### *Petitions on proposed legislation*

6.55 Petitions and representations on legislative proposals are referred to the *bills committees* or *subcommittees on subsidiary legislation* set up to study the legislative proposals concerned. It is now common practice for these committees or subcommittees to conduct open hearings to receive views from

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<sup>38</sup> See Chapter 4.

stakeholders and members of the public on the legislative proposals under their scrutiny.

### *Policy issues over the redress system*

6.56 Matters which relate to the scope of complaints that can be handled under the redress system as well as the working mechanism of the redress system are considered by the **House Committee**. The operation of the system itself does not come within the House Committee or other committees of the Council. It is not uncommon that individual Members take up the issues identified in the course of handling complaints by raising questions to the Government in the Council or moving motion or adjournment debates on such issues at Council meetings.

### **Relationship between the Council and its committees**

6.57 Committees report to the Council according to the terms of references and practices. Decisions of a committee are not binding on the Council but a committee may make recommendations to the Council for its endorsement. Different ways of reporting back to the Council have been adopted by the various types of committees according to their own special circumstances. It is common practice that committees such as Panels, Committee on Rules of Procedure, etc. which carry out their work on a continuous basis, report to the Council at the end of each session or as and when necessary. Finance Committee reports to the Council after the examination of the Estimates and Expenditure. The Public Accounts Committee reports to the Council in accordance with the requirements under the Audit Ordinance. The Committee on Members Interests reports to the Council at the end of the legislative term and each time when an investigation is undertaken. Bills Committees, select committees and investigation committees, which are formed for undertaking specific tasks, report to the Council upon completion of their work. It is common practice for those committees which are authorized by the Council to summon witnesses for the purpose of conducting an inquiry to initiate a debate in the Council through a neutrally worded motion, such as "to take note of the report". For other motions initiated by committees, Rule 14A of the House Rules provides a mechanism to facilitate timely expression of views on public consultation exercises conducted by the Government and on major policy issues.

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6.58 The effectiveness of the committee system in assisting the Council in performing its powers and functions is reviewed by the ***Committee on Rules of Procedure***. The ***House Committee*** provides a forum for Members to deliberate the recommendations of the Committee on Rules of Procedure. Where changes to the Rules of Procedure are considered necessary, a proposal by way of motion must be put to the Council for its approval before such changes may be implemented. If the changes are of a minor nature and only involve amendments to the House Rules, or simply a change in practice, the decision may be made by the House Committee.

**Court proceedings involving the Legislative Council since 1 July 1997  
(as at May 2014)**

<b>Court (Case No.) <i>Filing date</i></b>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
<p>Court of First Instance (HCAL 71 of 1998)</p> <p><i>7 Sep 1998 (Application for leave to apply for judicial review)</i></p>	<p>CHIM Pui Chung v President of the Legislative Council</p>	<p>The applicant questioned the proper construction of Article 79(6) of the Basic Law on disqualifying a Member upon the Member being convicted and sentenced to imprisonment of one month or more and challenged the decision of the President to place on the Agenda of LegCo a motion seeking to relieve CHIM of his duties as Legislative Council Member</p>	<p>8 Sept 1998 / <u>8 Sept 1998</u> (<u>Keith J.</u>)</p>	<p>Application dismissed</p>
<p>Court of First Instance (HCA 1189 of 2004)</p> <p><i>15 May 2004 (Originating Summons for a civil claim against the Legislative Council)</i></p>	<p>CHAN Yuk Lun v The Legislative Council of the HKSAR</p>	<p>The plaintiff sought an order to compel the Legislative Council to substitute the expression of "Crown" and other similar terms in legislation with other terms, and claimed damages against the Legislative Council</p>	<p>13 Oct 2004 / 24 Nov 2004 (Master Wong in Chambers)</p>	<p>Originating summons struck out</p>

<b>Court (Case No.) <i>Filing date</i></b>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
<p>Court of First Instance (HCA 1189 of 2004)</p> <p><i>27 Oct 2004 (Notice of Appeal)</i></p>	<p>CHAN Yuk Lun v The Legislative Council of the HKSAR</p>	<p>The plaintiff sought to appeal against the decision of Master Wong in HCA 1189 of 2004</p>	<p>21 Mar 2005 / 1 Jun 2005 (Yam J.)</p>	<p>Appeal dismissed</p>
<p>Court of First Instance (HCAL 112 of 2004)</p> <p><i>4 Oct 2004 (Application for leave to apply for judicial review)</i></p>	<p>LEUNG Kwok Hung v Clerk to the Legislative Council</p>	<p>The applicant sought an order to compel the Clerk to the Legislative Council to administer the applicant's own version of oath when he assumed his office as a Member of Legislative Council; and sought a declaration that his version of oath was in accordance with the requirements of Article 104 of the Basic Law</p>	<p>5 Oct 2004 / <u>6 Oct 2004</u> (<u>Hartmann J</u>)</p>	<p>Application dismissed</p>
<p>Court of First Instance (HCAL 87 of 2006)</p> <p><i>5 Aug 2006 (Application for leave to apply for judicial review)</i></p>	<p>LEUNG Kwok Hung v The President of the Legislative Council of the HKSAR</p>	<p>The applicant sought a declaration that Rule 57(6) of the Rules of Procedure which imposed restrictions on moving amendments with charging effect contravened Articles 73(1) and 74 of the Basic Law</p>	<p>13-15 Nov 2006 / <u>22 Jan 2007</u> (<u>Hartmann J</u>)</p>	<p>Application dismissed</p>

<b>Court (Case No.) <i>Filing date</i></b>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
Court of Appeal (HCMP 1227 of 2007)  <i>28 Jun 2007</i>	LEUNG Kwok Hung v The President of the Legislative Council of the HKSAR	The applicant applied for an extension of time to appeal against the judgment of Hartmann J in HCAL 87/2006	20 July 2007 / <u>10 Aug</u> <u>2007</u> ( <u>Tang VP</u> )	Application dismissed
Court of First Instance (HCAL 93 of 2006)  <i>29 Aug 2007</i> <i>(summons to join the Legislative Council as a party to the proceedings)</i>	Glory Success Transportation Limited v Secretary for Justice	The applicant sought to join the Legislative Council as a party to the proceedings  (summons served on the Secretary General)	18 Sept 2007 and 21 Feb 2008 (with no written judgment) (Chu J) <u>31 Mar 2008</u> ( <u>Ruling on costs by Chu J</u> )	Application dismissed  Application withdrawn by Applicant on 8 Dec 2008
Court of Appeal (HCMP 2059 of 2008)  <i>20 Oct 2008</i> <i>(Summons for leave to appeal out of time)</i>	Glory Success Transportation Limited v Secretary for Justice & President of the Legislative Council of HKSAR	The applicant sought to appeal against the order of Chu J. on 21 Feb 2008 in HCAL 93 of 2006 out of time	10 Nov 2008 / <u>10 Nov</u> <u>2008</u> ( <u>Rogers VP</u> <u>and Le</u> <u>Pichon JA</u> )	Application dismissed

<b>Court (Case No.) <i>Filing date</i></b>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
<p>Court of First Instance (HCA 1293 of 2008)</p> <p><i>11 July 2008 (Filing of writ of summons)</i></p>	<p>Cheng Yin-fong v The Legislative Council</p>	<p>The plaintiff claimed for damages against the Legislative Council for certain alleged conducts which purportedly amounted to the destruction of the People's Republic of China</p>	<p><u>14 Nov 2008</u> (<u>Yam J</u>)</p>	<p>Plaintiff's claim struck out</p>
<p>Court of Appeal (CACV378/2008 on appeal from HCA 1293 of 2008)</p> <p><i>29 Dec 2008 (Notice of Appeal)</i></p> <p>Court of Appeal (CACV378/2008)</p> <p><i>29 Jan 2013 (Application for leave to appeal to the Court of Final Appeal)</i></p>	<p>Cheng Yin-fong v The Legislative Council</p>	<p>The plaintiff applied for leave to appeal against the decision of Yam J on 14 Nov 2008 in HCA 1293 of 2008</p> <p>The applicant applied for leave to appeal to the Court of Final Appeal on the Court of Appeal's decision</p>	<p><u>14 Jan 2013</u> (<u>Yuen JA,</u> <u>Kwan JA and</u> <u>Chu JA</u>)</p> <p>9 Apr 2013 / <u>12 Apr 2013</u> (<u>Yuen JA,</u> <u>Kwan JA and</u> <u>Chu JA</u>)</p>	<p>Application dismissed.</p> <p>Application dismissed</p>
<p>Court of First Instance (HCAL 79 of 2009)</p> <p><i>10 Jul 2009 (Application for leave to apply for judicial review)</i></p>	<p>CHENG Kar-shun and LEUNG Chi-kin v The Hon LI Fung-ying &amp; others</p>	<p>The applicants sought a review of the orders of a Select Committee of the Legislative Council requiring the applicants to appear before a hearing of that Committee to give evidence and to produce documents</p>	<p>17-20 Aug 2009 / <u>24 Sep 2009</u> (<u>Andrew Cheung J</u>)</p>	<p>Application dismissed</p>

<b>Court (Case No.) <i>Filing date</i></b>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
Court of Appeal (CACV 246 of 2009 on appeal from HCAL79/2009)  <i>22 Oct 2009</i>	CHENG Kar-shun and LEUNG Chi-kin v The Hon LI Fung-ying & others	The applicants sought to appeal against the judgment of Cheung J. in HCAL 79 of 2009		Application withdrawn
Court of First Instance (HCAL 64 of 2012)  <i>17 May 2012 (Application for leave to apply for judicial review)</i>	LEUNG Kwok-hung v President of the Legislative Council of the HKSAR	The applicant sought a review of the decision of the President to close the committee stage debate on amendments to a Bill	17 – 19 May 2012 / <u>25 May 2012</u> ( <u>Lam J</u> )	Application dismissed
Court of Appeal (CACV 123 of 2012 on appeal from HCAL 64 of 2012)  <i>10 Jan 2013 (Notice of Appeal)</i>	LEUNG Kwok-hung v President of the Legislative Council of the HKSAR	The applicant sought to appeal against the refusal by Lam J to grant leave to apply for judicial review in HCAL 64 of 2012	10 Jan 2013 / <u>1 Feb 2013</u> ( <u>Cheung CJHK, Kwan JA and Jeremy Poon J</u> )	Appeal dismissed

<b>Court (Case No.)</b> <i>Filing date</i>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
Court of Appeal (CACV 123 of 2012, on appeal from HCAL 64/2012)  <i>16 May 2014 (Notice of Motion to appeal to the Court of Final Appeal)</i>	LEUNG Kwok-hung v President of the Legislative Council of the HKSAR	The applicant sought leave to appeal to the Court of Final Appeal against the decision of the Court of Appeal in dismissing his appeal	(No oral hearing) <u>18 Jul 2013</u> ( <u>Cheung</u> <u>CJHC, Kwan</u> <u>JA and</u> <u>Jeremy Poon</u> <u>J</u> )	Application refused
Appeal Committee of the Court of Final Appeal (FAMV 37 of 2013 on Appeal from CACV 123 of 2012)  <i>13 Aug 2013 (Notice of motion for leave to appeal to the Court of Final Appeal)</i>	LEUNG Kwok-hung v President of the Legislative Council of the HKSAR	The applicant sought leave to appeal to the Court of Final Appeal from CACV 123 of 2012	16 Dec 2013	Application granted  Appeal to be heard on 10 Sept 2014 with 11 Sept reserved.

<b>Court (Case No.)</b> <i>Filing date</i>	<b>Parties</b>	<b>Description of Court Proceedings</b>	<b>Date of Hearing / Judgment</b>	<b>Outcome</b>
Court of Final Appeal (FACV 1 of 2014)  <i>21 Jan 2014 (Notice of Appeal to the Court of Final Appeal)</i>	LEUNG Kwok-hung v President of the Legislative Council of the HKSAR	<p>The applicant has been granted leave to appeal the dismissal of his appeal against the decision of Lam J. by the Court of Appeal. Two questions have been posed for the determination by the Court of Final Appeal –</p> <p>(1) Having regard to the Basic Law and the Rules of Procedure of the Legislative Council, under what circumstances may a decision of the President of the Legislative Council made during the legislative process be judicially reviewed?</p> <p>(2) In light of the answer to the 1<sup>st</sup> Question above, is the decision of the President of the Legislative Council on 17 May 2012 to close the debate of the Committee of the Whole Council on the amendments to the Legislative Council (Amendment) Bill 2012, purportedly pursuant to Article 72(1) of the Basic Law and Rule 92 of the Procedure of the Legislative Council, amenable to judicial review?</p>	10 Sept 2014 with 11 Sept reserved	

Instrument:	A208	<b>DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS ON ISSUES RELATING TO THE METHODS FOR SELECTING THE CHIEF EXECUTIVE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION IN THE YEAR 2007 AND FOR FORMING THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION IN THE YEAR 2008</b>	Gazette Number	Version Date
			S. S. No. 5 to Gazette Extraordinary No. 8/2004	26/04/2004

## Remarks:

1. This instrument was not given a chapter number in the Loose-leaf edition of the Laws of Hong Kong. An unofficial reference number, however, is assigned to this instrument in BLIS for identification purposes. This also enables users to carry out a search in relation to this instrument by reference to the unofficial reference number.
2. This English translation text is prepared by the Department of Justice, Government of the Hong Kong Special Administrative Region.

This is an English translation of the original instrument in Chinese and is published for information—

**DECISION OF THE STANDING COMMITTEE  
OF THE NATIONAL PEOPLE' S CONGRESS ON  
ISSUES RELATING TO THE METHODS FOR  
SELECTING THE CHIEF EXECUTIVE OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
IN THE YEAR 2007 AND FOR FORMING  
THE LEGISLATIVE COUNCIL OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION IN THE YEAR 2008**

Adopted by the Standing Committee of the  
Tenth National People' s Congress at its  
Ninth Session on 26 April 2004

The Standing Committee of the Tenth National People' s Congress examined at its Ninth Session the "Report on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008" submitted by Tung Chee-hwa, the Chief Executive of the Hong Kong Special Administrative Region, on 15 April 2004 and, before the Session, had consulted the Hong Kong deputies to the National People' s Congress, the Hong Kong members of the National Committee of the Chinese People' s Political Consultative Conference, different sectors of Hong Kong, the Hong Kong members of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People' s Congress, and the Constitutional Development Task Force of the Government of the Hong Kong Special Administrative Region, and had also sought the views of the Hong Kong and Macao Affairs Office of the State Council. The Standing Committee of the National People' s Congress was, in the course of the examination, fully aware of the recent concerns of the Hong Kong society about the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007, including the views of some bodies and people that they wish to see the selection of the Chief Executive by universal suffrage in the year 2007 and the election of all the members of the Legislative Council by universal suffrage in the year 2008.

The Session is of the view that Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "Hong Kong Basic Law") already expressly provide that the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress, and that the ultimate aims are the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and the election of all the members of the Legislative Council by universal suffrage. The methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to the above principles and provisions of the Hong Kong Basic Law. Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.

The Session is of the view that since the establishment of the Hong Kong Special Administrative Region, Hong Kong residents have enjoyed democratic rights that they have never had before. The first Chief Executive was elected by the Selection Committee, which was composed of 400 members. The second Chief Executive was elected by the Election Committee, which was composed of 800 members. Out of the 60 members of the Legislative Council, the number of members returned by geographical constituencies through direct elections increased from 20 in the Legislative Council in the first term to 24 in the Legislative Council in the second term and will reach 30 in the Legislative Council in the third term to be formed this September. Hong Kong does not have a long history of practising democratic elections. Until now, Hong Kong residents have exercised the democratic right to participate in the selection of the Chief Executive of the Special Administrative Region for less than 7 years. Since the reunification of Hong Kong with the motherland, the number of members of the Legislative Council returned by geographical constituencies through direct elections has already substantially increased. When the set-up is such that half of the members are returned by geographical constituencies through direct elections and half of the members are returned by functional constituencies, the impact on the operation of the Hong Kong society as a whole, especially the impact on the executive-led system, remains to be examined through practice. Further, at present, different sectors of the Hong Kong society still have considerable differences on how to determine the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007 and have not come to a broad consensus. In the circumstances, conditions do not exist for the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures as provided for in Article 45 of the Hong Kong Basic Law and the election of all the members of the Legislative Council by universal suffrage as provided for in Article 68 of the Hong Kong Basic Law.

In the light of the above and pursuant to the relevant provisions of the Hong Kong Basic Law and "The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China", the Standing Committee of the National People's Congress makes the following decision on the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2008:

1. The election of the third Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage. The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged. The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.

2. Subject to Article 1 of this Decision not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive

of the Hong Kong Special Administrative Region in the year 2007 and the specific method for forming the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.

The Session is of the view that developing democracy in the Hong Kong Special Administrative Region in the light of the actual situation and in a gradual and orderly manner according to the provisions of the Hong Kong Basic Law has all along been the resolute and firm stance of the Central Authorities. With the development and progress in all aspects of the Hong Kong society and through the joint endeavours of the Government of the Hong Kong Special Administrative Region and Hong Kong residents, the democratic system of the Hong Kong Special Administrative Region will certainly be able to progress forward incessantly, and ultimately attain the aims of selecting the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures and electing all the members of the Legislative Council by universal suffrage provided for in the Hong Kong Basic Law.

Instrument:	A211	<b>DECISION OF THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS ON ISSUES RELATING TO THE METHODS FOR SELECTING THE CHIEF EXECUTIVE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION AND FOR FORMING THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION IN THE YEAR 2012 AND ON ISSUES RELATING TO UNIVERSAL SUFFRAGE (ADOPTED BY THE STANDING COMMITTEE OF THE TENTH NATIONAL PEOPLE'S CONGRESS AT ITS THIRTY-FIRST SESSION ON 29 DECEMBER 2007)</b>	Gazette Number	Version Date
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			S. S. No. 5 to Gazette Extraordinary No. 48/2007	29/12/2007
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## Remarks:

1. This instrument was not given a chapter number in the Loose-leaf edition of the Laws of Hong Kong. An unofficial reference number, however, is assigned to this instrument in BLIS for identification purposes. This also enables users to carry out a search in relation to this instrument by reference to the unofficial reference number.
2. This English translation is prepared by the Department of Justice, Government of the Hong Kong Special Administrative Region.

This is an English translation of the original Decision in Chinese and is published for information—

**DECISION OF THE STANDING COMMITTEE OF THE  
NATIONAL PEOPLE' S CONGRESS ON ISSUES RELATING  
TO THE METHODS FOR SELECTING THE CHIEF EXECUTIVE  
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION  
AND FOR FORMING THE LEGISLATIVE COUNCIL OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION IN  
THE YEAR 2012 AND ON ISSUES RELATING TO  
UNIVERSAL SUFFRAGE**

Adopted by the Standing Committee of the Tenth National People' s  
Congress at its Thirty-first Session on 29 December 2007

The Standing Committee of the Tenth National People' s Congress considered at its Thirty-first Session the "Report on the Public Consultation on Constitutional Development and on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2012" submitted by Tsang Yam-kuen, the Chief Executive of the Hong Kong Special Administrative Region, on 12 December 2007. The Session is of the view that appropriate amendments may be made to the specific method for selecting the fourth Chief Executive and the specific method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012; that the election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage; that after the Chief Executive is selected by universal suffrage, the election of the Legislative Council of the Hong Kong Special Administrative Region may be implemented by the method of electing all the members by universal suffrage. Pursuant to the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People' s Republic of China and "The Interpretation by the Standing Committee of the National People' s Congress of Article 7 of Annex I and Article III

of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" , the Standing Committee of the National People's Congress hereby makes the following decision:

1. The election of the fourth Chief Executive of the Hong Kong Special Administrative Region in the year 2012 shall not be implemented by the method of universal suffrage. The election of the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012 shall not be implemented by the method of electing all the members by universal suffrage. The half-and-half ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections shall remain unchanged. The procedures for voting on bills and motions in the Legislative Council shall remain unchanged. Subject to the aforementioned, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the specific method for selecting the fourth Chief Executive of the Hong Kong Special Administrative Region in the year 2012 and the specific method for forming the fifth term Legislative Council of the Hong Kong Special Administrative Region in the year 2012 in accordance with the provisions of Articles 45 and 68, and those of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

2. At an appropriate time prior to the selection of the Chief Executive of the Hong Kong Special Administrative Region by universal suffrage, the Chief Executive shall make a report to the Standing Committee of the National People's Congress as regards the issue of amending the method for selecting the Chief Executive in accordance with the relevant provisions of the Hong Kong Basic Law and "The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" ; a determination thereon shall be made by the Standing Committee of the National People's Congress. The bills on the amendments to the method for selecting the Chief Executive and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region to the Legislative Council; such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive and they shall be reported to the Standing Committee of the National People's Congress for approval.

3. At an appropriate time prior to the election of all the members of the Legislative Council of the Hong Kong Special Administrative Region by universal suffrage, the Chief Executive shall make a report to the Standing Committee of the National People's Congress as regards the issue of amending the method for forming the Legislative Council and the issue of whether any corresponding amendment should be made to the procedures for voting on bills and motions in the Legislative Council in accordance with the relevant provisions of the Hong Kong Basic Law and "The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" ; a determination thereon shall be made by the Standing Committee of the National People's Congress. The bills on the amendments to the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region to the Legislative Council; such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive and they shall be reported to the Standing Committee of the National People's Congress for the record.

4. If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council or its procedures for voting on bills and motions in accordance with the legal procedures, the method for selecting the Chief Executive used for the preceding term shall continue to apply, and the method for forming the Legislative Council and the procedures for voting on bills and motions used for the preceding term shall continue to apply.

The Session is of the view that in accordance with the provisions of Article 45 of the Hong Kong Basic Law, in selecting the Chief Executive of the Hong Kong Special Administrative Region by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee may be formed with

reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the Chief Executive, who is to be elected through universal suffrage by all registered electors of the Hong Kong Special Administrative Region, and to be appointed by the Central People' s Government.

The Session is of the view that with the joint efforts of the Government of the Hong Kong Special Administrative Region and the people of Hong Kong, the democratic system of the Hong Kong Special Administrative Region will definitely make progress continuously, and that the aim of the selection of the Chief Executive and the election of all the members of the Legislative Council by universal suffrage will be realized in accordance with the Hong Kong Basic Law and this Decision.

**Composition of the Legislative Council of Hong Kong  
(from October 1985 to June 1997)  
and the Legislative Council of HKSAR (from July 1997 onwards)**

Term	Composition	President
1985-1988	<p>57 Members:</p> <p>(a) 4 Ex-officio Members The Governor; the Chief Secretary; the Financial Secretary; and the Attorney General</p> <p>(b) Not more than 7 Members holding offices under the Crown in the Colony as the Governor may appoint</p> <p>(c) Not more than 22 Appointed Members</p> <p>(d) 12 Members elected by electoral college constituencies (433 registered electors who were popularly elected) Urban Council; Provisional Regional Council; Hong Kong Island (East); Hong Kong Island (West); Kwun Tong; Wong Tai Sin; Kowloon City; Sham Shui Po; South Kowloon; New Territories (East); New Territories (West); and New Territories (South)</p> <p>(e) 12 Members elected by functional constituencies (46 645 registered electors) First Commercial; Second Commercial; First Industrial; Second Industrial; Financial; Labour (2 Members); Social Services; Medical; Teaching; Legal; and Engineering, Architectural, Surveying</p>	<p>His Excellency the Governor Sir Edward Youde, GCMG, GCVO, MBE (as President up to the sitting on 9 July 1986)</p> <p>His Excellency the Acting Governor Sir David Akers- Jones, KBE, CMG, JP (as President from the sitting on 16 July 1986 to the sitting on 8 April 1987)</p> <p>His Excellency the Governor Sir David Clive Wilson, KCMG (as President from the sitting on 6 May 1987 to the sitting on 1 July 1992)</p>

Term	Composition	President
1988-1991	<p>57 Members:</p> <ul style="list-style-type: none"> <li>(a) 4 Ex-officio Members The Governor, the Chief Secretary, the Financial Secretary and the Attorney General</li> <li>(b) Not more than 7 Members holding offices under the Crown in the Colony as the Governor may appoint</li> <li>(c) Not more than 20 Appointed Members</li> <li>(d) 12 Members elected by electoral college constituencies (466 registered electors who were popularly elected) Urban Council; Provisional Regional Council; Hong Kong Island (East); Hong Kong Island (West); Kwun Tong; Wong Tai Sin; Kowloon City; Sham Shui Po; South Kowloon; New Territories (East); New Territories (West); and New Territories (South)</li> <li>(e) 14 Members elected by functional constituencies (61 396 registered electors) First Commercial; Second Commercial; First Industrial; Second Industrial; Finance; Accountancy; Labour (2 Members); Social Services; Medical; Health Care; Teaching; Legal; and Engineering, Architectural, Surveying</li> </ul>	<p>His Excellency the Governor Sir David Clive Wilson, KCMG (as President up to the sitting on 1 July 1992)</p>

Term	Composition	President
1991-1995	<p>60 Members (since February 1993) <sup>1</sup>:</p> <p>(a) 3 Ex-officio Members<sup>2</sup> The Chief Secretary; the Financial Secretary; and the Attorney General</p> <p>(b) 18 Appointed Members</p> <p>(c) 21 Members elected by functional constituencies (68 862 registered electors) Accountancy; Commercial (2 Members); Engineering, Architectural, Surveying and Planning (2 Members); Finance and Financial Services (2 Members); Health Services; Industrial (2 Members); Labour (2 Members); Legal; Medical; Real Estate and Construction; Regional Council; Rural; Social Services; Teaching, Tourism; and Urban Council</p> <p>(d) 18 Members elected by geographical constituencies through direct elections (1 916 925 registered electors) Hong Kong Island East (2 Members); Hong Kong Island West (2 Members); Kowloon Central (2 Members); Kowloon East (2 Members); Kowloon West (2 Members); New Territories East (2 Members); New Territories North (2 Members); New Territories South (2 Members); and New Territories West (2 Members)</p>	<p>His Excellency the Governor Sir David Clive Wilson, KCMG (as President up to the sitting on 1 July 1992)</p> <p>His Excellency the Governor the Right Honourable Christopher Francis Patten (as President from the sitting on 7 October 1992 up to February 1993)</p> <p>The Honourable Sir John Joseph SWAINE, CBE, LL.D., QC, JP, (as Deputy President presiding over Council sittings from 17 October 1991 and as President from the sitting on 19 February 1993 up to end of term)</p>

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<sup>1</sup> Since the 1991-1992 session, the Governor remained President and Member but systematically absented himself from sittings. Starting from February 1993, the Governor ceased to be a Member of the Legislative Council and handed over the Presidency in February to a Member elected from among the non-official Members. The number of LegCo Members had since been reduced to 60.

Term	Composition	President
1995 -1997	<p>60 Members:</p> <p>(a) 30 Members elected by functional constituencies (1 147 107 registered electors) Accountancy, Architectural, Surveying and Planning, Commercial (First), Commercial (Second), Community, Social and Personal Services, Education, Engineering, Finance, Financial Services, Financing, Insurance, Real Estate and Business Services, Health Services, Hotels and Catering, Import and Export, Industrial ( First), Industrial (Second), Labour (2 Members), Legal, Manufacturing, Medical, Primary Production, Power and Construction, Real Estate and Construction, Regional Council, Rural, Social Welfare, Textiles and Garments, Tourism, Transport and Communication, Urban Council; and Wholesale and Retail</p> <p>(b) 20 Members returned by geographical constituencies through direct elections (2 572 124 registered electors) Hong Kong Island Central; Hong Kong Island East; Hong Kong Island South; Hong Kong Island West; Kowloon Central; Kowloon North-east; Kowloon East; Kowloon South-east; Kowloon South; Kowloon South-west; Kowloon West; New Territories Central; New Territories North-west; New Territories North; New Territories North-east; New Territories East; New Territories South; New Territories South-west; and New Territories West</p>	The Honourable Andrew WONG Wang-fat, JP

<sup>2</sup> The Governor was an ex-officio Member up to January 1993.

Term	Composition	President
	(c) 10 Members elected by the Election Committee Constituency comprising 283 elected members of district boards	
Provisional Legislative Council (From 1 July 1997 to 30 June 1998)	60 Members elected by the Selection Committee for the First Government of the Hong Kong Special Administrative Region	The Honourable Mrs Rita FAN HSU Lai-tai, GBM, GBS, JP
First Legislative Council (From 1 July 1998 to 30 June 2000)	<p>60 Members:</p> <p>(a) 30 elected by functional constituencies (138 984 registered electors)  Urban Council; Regional Council; Heung Yee Kuk; Agriculture and fisheries; Insurance; Transport; Education; Legal; Accountancy; Medical; Health Services; Engineering; Architectural, Surveying and Planning; Labour (3 Members) Social Welfare; Real Estate and Construction; Tourism; Commercial (First); Commercial (Second); Industrial (First); Industrial (Second); Finance; Financial Services; Sports, performing arts, culture and publication; Import and export; Textiles and garment; Wholesale and retail; and Information Technology</p> <p>(b) 20 Members elected by geographical constituencies through direct elections (2 795 371 registered electors)  Hong Kong Island (4 Members), Kowloon East (3 Members) Kowloon West (3 Members); New Territories East (5 Members); New Territories West (5 Members)</p>	The Honourable Mrs Rita FAN HSU Lai-tai, GBM, GBS, JP

Term	Composition	President
	(c) 10 Members elected by an Election Committee comprising 800 elected representatives of the community	
Second Legislative Council (1 October 2000 to 31 September 2004)	<p>60 Members:</p> <p>(a) 30 Members elected by functional constituencies (175 606 registered electors)  Heung Yee Kuk; Agriculture and fisheries; Insurance; Transport; Education; Legal; Accountancy; Medical; Health Services; Engineering; Architectural, Surveying and Planning; Labour (3 Members); Social Welfare; Real Estate and Construction; Tourism; Commercial (First); Commercial (Second); Industrial (First); Industrial (Second); Finance; Financial Services; Sports, performing arts, culture and publication; Import and export; Textiles and garment; Wholesale and retail; Information Technology; Catering; and District Council</p> <p>(b) 24 Members elected by geographical constituencies through direct elections (3 055 378 registered electors)  Hong Kong Island (5 Members); Kowloon East (4 Members); Kowloon West (4 Members); New Territories East (5 Members); and New Territories West (6 Members)</p> <p>(c) 6 Members elected by an Election Committee comprising 798 elected representatives of the community</p>	The Honourable Mrs Rita FAN HSU Lai-tai, GBM, GBS, JP

Term	Composition	President
<p>Third Legislative Council (1 October 2004 to 30 September 2008)</p>	<p>60 Members:</p> <p>(a) 30 Members returned by functional constituencies (199 539 registered electors)  Heung Yee Kuk; Agriculture and fisheries; Insurance; Transport; Education; Legal; Accountancy; Medical; Health Services; Engineering; Architectural, Surveying and Planning; Labour (3 Members); Social Welfare; Real Estate and Construction; Tourism; Commercial (First); Commercial (Second); Industrial (First); Industrial (Second); Finance; Financial Services; Sports, performing arts, culture and publication; Import and export functional; Textiles and garment; Wholesale and retail; and Information Technology; Catering; and District Council</p> <p>(b) 30 Members returned by geographical constituencies through direct elections (3 207 227 registered electors)  Hong Kong Island (6 Members); Kowloon East (5 Members); Kowloon West (4 Members); New Territories East (7 Members); and New Territories West (8 Members)</p>	<p>The Honourable Mrs Rita FAN  HSU Lai-tai, GBM, GBS, JP</p>

Term	Composition	President
<p>Fourth Legislative Council (1 October 2008 to 30 September 2012)</p>	<p>60 Members:</p> <p>(a) 30 Members returned by functional constituencies (229 861 registered electors) Heung Yee Kuk; Agriculture and fisheries; Insurance; Transport; Education; Legal; Accountancy; Medical; Health Services; Engineering; Architectural, Surveying and Planning; Labour (3 Members); Social Welfare; Real Estate and Construction; Tourism; Commercial (First); Commercial (Second); Industrial (First); Industrial (Second); Finance; Financial Services; Sports, performing arts, culture and publication; Import and export; Textiles and garment; Wholesale and retail; Information Technology; Catering; and District Council</p> <p>(b) 30 Members elected by geographical constituencies (3 372 007 registered electors) Hong Kong Island (6 Members); Kowloon East (4 Members); Kowloon West (5 Members); New Territories East (7 Members); and New Territories West (8 Members)</p>	<p>The Honourable Jasper TSANG Yok-sing, GBS, JP</p>

Term	Composition	President
<p>Fifth Legislative Council (1 October 2012 to 30 September 2016)</p>	<p>70 Members:</p> <p>(a) 35 Members elected by functional constituencies (3 488 201 including 240 735 registered electors for constituencies other than District Council (second))  Heung Yee Kuk; Agriculture and fisheries; Insurance; Transport; Education; Legal; Accountancy; Medical; Health Services; Engineering; Architectural, Surveying and Planning; Labour (3 Members); Social Welfare; Real Estate and Construction; Tourism; Commercial (First); Commercial (Second); Industrial (First); Industrial (Second); Finance; Financial Services; Sports, performing arts, culture and publication; Import and export; Textiles and garment; Wholesale and retail; Information Technology; Catering; District Council (first); and District Council (second) (5 Members)</p> <p>(b) 35 Members elected from geographical constituencies (3 466 201 registered electors)  Hong Kong Island (7 Members); Kowloon East (5 Members); Kowloon West (5 Members); New Territories East (9 Members); and New Territories West (9 Members)</p>	<p>The Honourable Jasper TSANG Yok-sing, GBS, JP</p>

**Advisory Guidelines on Matters of Ethics  
in relation to the Conduct of Members of the Legislative Council  
of the Hong Kong Special Administrative Region  
in their capacity as such**

*(Issued by the Committee on Members' Interests under  
Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)*

1. A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
2. A Member should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.
3. A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.
4. A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
5. A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.
6. A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.
7. A Member should ensure that the personal information (e.g. qualifications) he provides to the Council (including the Legislative Council Secretariat) is correct and true.

***LEGISLATIVE COUNCIL OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION***



***Registration Form on Members' Interests***



***January 2014***

## **Category**

1. Directorships
2. Remunerated Employment, Offices, etc.
3. Clients
4. Election Donations/Financial Sponsorships
5. Overseas Visits
6. Payments, benefits and advantages received from any government or organization of a place outside Hong Kong or from any person who does not qualify as a “Hong Kong permanent resident”
7. Land and Property
8. Shareholdings
9. Miscellaneous

Name of Member: \_\_\_\_\_

***Registrable Interest***

***Remunerated Directorships***

1. Do you have any remunerated directorships in any public or private company?

**YES/NO** (*Please delete as appropriate*)

If so, please list below. If the company concerned has a holding company within the meaning of section 13 of the Companies Ordinance (Cap. 622), please also provide the name of that holding company.

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- Notes:** (a) "Remunerated directorships" include all directorships for which a fee, honorarium, allowance or other material benefit is payable.
- (b) The term "material benefit" refers to (i) interests received from a single source in the course of one year where the total value of such interests exceeds 5% of the annual salary\* of a Member of the Council (\* excluding the general expenses allowance which covers expenses incurred by a Member in his work); or (ii) one-off material benefits exceeding \$10,000 in value. (This definition also applies to the term "material benefit" in categories 2, 4 and 6.)
- (c) Remunerated directorships of both local and overseas companies are registrable.
- (d) Remunerated directorships through corporate directors are also registrable. However, particulars of remunerated directorships through corporate directors need only be updated on an annual basis, at the beginning of each legislative session.
- (e) Where you are a remunerated director of a company, all subsidiary or associated directorships which you hold within the same group, whether remunerated or not, should also be registered.
- (f) You should give the name of the company, briefly stating the nature of the business of the company in each case.
- (g) Holding company has the same meaning as in section 13 of the Companies Ordinance (Cap. 622).

Signature: \_\_\_\_\_

Date: \_\_\_\_\_





**Registrable Interest**

***Election Donations/Financial Sponsorships***

**4(1)** Did you receive any election donation (see note (a) below) towards your being elected to the membership of the Legislative Council?

**YES/NO**

If so, please give details of the sponsor(s) and the amount involved in each case (see note (b) below).

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**4(2)** Have you or your spouse received any payment, or any material benefit or advantage (see Notes (c)-(f) below) from any person or organization which in any way relates to your membership of the Legislative Council?

**YES/NO**

If so, please give details.

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- Notes:**
- (a) "Election donation" has the same meaning as in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). Under the Ordinance, "election donation" means any of the following donations —
    - (i) any money given to or in respect of the candidate or candidates for the purpose of meeting, or contributing towards meeting, the election expenses of the candidate or candidates;
    - (ii) any goods given to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, and includes any goods given incidental to the provision of voluntary service;
    - (iii) any service provided to or in respect of the candidate or candidates for the purpose of promoting the election of the candidate or candidates or of prejudicing the election of another candidate or other candidates, but does not include voluntary service.
  - (b) For the purpose of stating the details of sponsor(s) and election donation involved, a Member may attach a copy of the election return relating to election donations which he is required to lodge with the Chief Electoral Officer under s.37(1)(b) of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554). However, copies of receipts are not required.
  - (c) A Member is expected to make the necessary enquiries of his spouse in order to make a full and timely return on the registration of interests relating to financial sponsorships.
  - (d) Please refer to note (b) of Category 1 for the definition of "material benefit".
  - (e) You should include any material benefit or advantage received *gratis* or at a price below that generally available to members of the public.
  - (f) Where a company is named as sponsor, please indicate briefly the nature of its business.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Registrable Interest**

**Overseas Visits**

5. Have you or your spouse made any overseas visits relating to or in any way arising out of your membership of the Legislative Council where the cost of the visit was not wholly borne by yourself or by public funds of Hong Kong?

**YES/NO**

If so, please provide the following details :

<b>Dates of Visit &amp; Countries Visited</b>	<b>Purpose of Visit &amp; Name(s) of Sponsor(s)</b>	<b>Nature of Interest Received</b>

- Notes:**
- (a) A Member is expected to make the necessary enquiries of his spouse in order to make a return on the registration of interests relating to overseas visits.
  - (b) Under "Nature of Interest Received" please specify whether the interest relates to the provision of passage, accommodation, and/or subsistence allowance.
  - (c) "Overseas visits" is interpreted to include all visits outside Hong Kong.
  - (d) An interest under this category should be registered within fourteen days of the conclusion of the visit.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***Registrable Interest***

***Payments, benefits and advantages received from any government or organization of a place outside Hong Kong or from any person who does not qualify as a "Hong Kong permanent resident"***

**6 (1)** Have you or your spouse received any payments, or material benefits or advantages from or on behalf of any Government or organization of a place outside Hong Kong, which in any way relates to your membership of the Legislative Council?

**YES/NO**

If so, please give details.

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**6 (2)** Have you or your spouse received any payments, or material benefits or advantages from or on behalf of any person who does not qualify as a "Hong Kong permanent resident" under the Basic Law, which in any way relates to your membership of the Legislative Council?

**YES/NO**

If so, please give details.

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- Notes:**
- (a) A Member is expected to make the necessary enquiries of his spouse in order to make a return on the registration of interests under this category.
  - (b) Overseas hospitality and travel facilities should be entered under category 5.
  - (c) The definition of "Hong Kong permanent resident" is given in the Guidelines on Registration of Interests.
  - (d) Payments or material benefits include such benefits received by a company in which a Member has a controlling interest, or the largest shareholding, as well as payments or material benefits received by the Member personally.
  - (e) Please refer to note (b) of Category 1 for the definition of "material benefit".

Signature: \_\_\_\_\_

Date: \_\_\_\_\_







***LEGISLATIVE COUNCIL OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION***



***Guidelines on Registration of Interests***



***APRIL 2006***

## **I. Provisions on Registration of Interests under the Rules of Procedure**

(1) Rule 83 of the Rules of Procedure provides for the registration of Members' interests. The Rule is reproduced at **Appendix I** to these Guidelines.

## **II. Register of Members' Interests**

(1) Rule 83(4) provides for the maintenance of a Register of Members' Interests ("the Register").

(2) The main purpose of the Register is to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in the Legislative Council ("the Council"), or actions taken in his or her capacity as a Member of the Council. Members are required to have this general purpose in mind when determining what interests should properly be declared.

(3) Members are not required to disclose the amount of any remuneration or benefit they may have, nor the interests of spouses or children, except in certain circumstances relating to material benefits or advantages, overseas visits, and shareholdings.

(4) When reporting particulars of registrable interests under Rule 83(1), Members should complete and sign each and every page of the Registration Form and submit the entire set of the Form to the Clerk to the Legislative Council ("the Clerk"). However when reporting particulars of any change in registrable interests in accordance with Rule 83(3), Members may simply complete and sign the relevant page(s) of the Registration Form and submit it to the Clerk, instead of submitting the entire set of the Form.

(5) Under Rule 83(4), Registration Forms completed by Members are available for public inspection. Members of the public may also make copies of the forms in the Legislative Council Secretariat upon payment of charges.

## **III. Guidelines on Registration of Interests**

(1) The definitions given in this document should be seen as broad guidelines within which Members should proceed with good sense and responsibility. These guidelines should be regarded as representing a reasonable minimum requirement of interests to be registered and, as such, it would be up to Members, if they think it right and relevant, to disclose interests beyond those set out below.

(2) It is left to individual Members to give the required information and be responsible for what is recorded about himself in the Register, as each is answerable to his fellow-Members and the public.

(3) The registering of interests is additional to, and in no way a replacement of, the requirement on Members to disclose pecuniary interests under Rule 83A which is reproduced hereunder:

“83A In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.”

(4) Benefits known to be made available without discrimination to all Members of the Council are exempted from registration.

(5) In the registration of interests, where a firm is named, a brief indication should be given of the nature of the firm’s business.

(6) (a) On the registration of “clients” under Rule 83(5)(c), the following are examples of registrable interests under this category -

(i) A solicitor Member’s firm acts for a client in drafting a private bill for presentation to the Council.

(ii) A solicitor Member’s firm acts for a client in making representations to the Council on a bill.

(iii) An accountant Member’s firm acts for a client in preparing tender documents for a project which is the subject of deliberations by the Finance Committee.

(iv) A Member is retained (i.e. paid fees by an organization e.g. a public relations firm or an environmentalist group) to ensure that a particular point of view or issue is drawn to Members’ attention. The point of view or issue need not necessarily be connected with a bill before the Council. It could, for example, be related to a debate of the Council, or it might simply be a matter on which the organization seeks to lobby Members.

(b) The examples quoted in (a) above are provided merely for the purpose of illustration; registrable interests are not confined to the professions cited in the examples.

(7) The requirement of Rule 83(5)(d) is that Members register their acceptance of financial sponsorships as defined in the Rules of Procedure. Regarding the “financial sponsorships” received from a Member’s political organization (see Note for the definition of “political organization”), it would suffice if a Member merely registers interests directly received from his political organization. Such registrable interests include cash subsidy of HK\$5000 or above each month. Whether or not the acceptance of a particular financial sponsorship is in contravention of the provisions of the Prevention of Bribery Ordinance is a matter for the Member to decide for himself having regard to his own knowledge of the circumstances.

(8) On the registration of “spouse’s interests” under Rule 83(5)(d)-(f) relating to financial sponsorships, overseas visits and overseas payments, benefits and advantages, a Member is expected to make the necessary enquiries of his spouse in order to make a full and timely return on the registration of such interests.

(9) The reference to “any government or organization of a place outside Hong Kong” in Rule 83(5)(f)(i) means any government or organization outside Hong Kong, including any government or organization in other parts of China, for example, Taiwan and Macau.

(10) “Any person who is not a Hong Kong permanent resident” in the context of Rule 83(5)(f)(ii) refers to any person who does not qualify as a “Hong Kong permanent resident” under Article 24 of the Basic Law. The definition of a “Hong Kong permanent resident” is given in **Appendix II**.

Note: The definition of “political body” is the same as the definition of “political body” in the Societies Ordinance (Cap. 151). The relevant definition in the Societies Ordinance is reproduced as follows:-

“Political body” means-

- (a) a political party or an organization that purports to be a political party; or
- (b) an organization whose principal function or main object is to promote or prepare a candidate for an election.

Rule 83 of the Rules of Procedure

**83. Registration of Interests**

(1) Except for the purpose of making registration of interests under subrule (2), every Member shall, not later than the first meeting of each term, furnish to the Clerk, in such form as may be approved by the President, particulars of his registrable interests.

(2) Every new Member of the Legislative Council shall, within 14 days from the date of his becoming a new Member to fill a vacant seat, furnish to the Clerk, in such form as may be approved by the President, particulars of his registrable interests.

(3) Every Member shall furnish to the Clerk, in such form as may be approved by the President, particulars of any change in such registrable interests, within 14 days of any such change.

(4) The Clerk shall cause those particulars to be entered in a Register of Members' Interests and that register shall be available for inspection by any person during office hours.

(5) In this Rule, "registrable interests" means –

- (a) remunerated directorships of companies, public or private, and if the company concerned is a subsidiary of another company within the meaning of section 2(4) of the Companies Ordinance (Cap. 32), also the name of that other company;
- (b) remunerated employments, offices, trades, professions or vocations;
- (c) the names of clients when the interests referred to above include personal services by Members which arise out of or are related in any manner to his membership of the Council;
- (d) (i) all donations, as a candidate in the Legislative Council election in which the Member was elected as a Member of the Council, received by the Member or any person on his behalf for the purpose of meeting the Member's election expenses in the election; or

- (ii) financial sponsorships, as a Member of the Council, by any person or organization, stating whether any such sponsorships include any payment or any material benefit or advantage to the Member or his spouse, whether direct or indirect;
- (e) overseas visits made by the Member or his spouse relating to or arising out of membership of the Council where the cost of any such visit has not been wholly borne by the Member or public funds;
- (f) any payments or any material benefits or advantages received by the Member or his spouse arising out of his membership of the Council from or on behalf of:
  - (i) any government or organization of a place outside Hong Kong; or
  - (ii) any person who is not a Hong Kong permanent resident;
- (g) land and property;
- (h) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital.

**Definition of a “Hong Kong permanent resident”**

**Paragraph 2 of Article 24 of the Basic Law**

The permanent residents of the Hong Kong Special Administrative Region shall be:

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

**THE LEGISLATIVE COUNCIL COMMISSION ORDINANCE**

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**RESOLUTION**

(Determination made under sections 4(1)(e) and 5(4)  
of The Legislative Council Commission Ordinance (Cap 443))

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RESOLVED that with effect from 8 July 1998 the membership of The Legislative Council Commission, the election of members thereof and their term of office, be determined as follows :

**Membership**

1. In accordance with section 4(1)(e) of The Legislative Council Commission Ordinance (“the Ordinance”), the maximum number of members to be elected shall be 10.

**Manner of election**

2. An election of members referred to in section 4(1)(e) of the Ordinance shall be held at a meeting of the House Committee, the date of which (“election date”) shall be appointed by the House Committee.

3. 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 the election date, inviting nominations to be made.

4. 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.

5. Duly completed nomination forms shall be delivered to the Legislative Council Secretariat at least three clear days before the election date.

6. In cases where the number of nominations received by the Legislative Council Secretariat by the deadline for nomination is less than the number referred to in paragraph 1, 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.

7. In cases where the number of nominations received under paragraphs 5 and 6 is less than or equal to the number referred to in paragraph 1, the Chairman of the House Committee shall declare the nominees duly elected.

8. In cases where the number of nominations received under paragraphs 5 and 6 is more than the number referred to in paragraph 1, a poll shall be taken at the House Committee meeting at which the election is conducted; voting at which shall be by secret ballot and counted in accordance with the simple or relative majority system of election (otherwise known as “first-past-the-post” system of election), whereby a Member may vote for as many nominees as the number of vacancies and no more and the nominees who get the highest numbers of votes will be declared elected.

9. 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 system of election mentioned in paragraph 8 above until all the remaining vacancy or vacancies are filled.

#### **Term of Office**

10. Unless otherwise determined by the Council by resolution, the term of office of members elected under section 4(1)(e) shall be one year or until the next House Committee meeting held for the election of Commission members, or until the next dissolution of Legislative Council, whichever is the earlier.

**Committees of The Legislative Council Commission**

**Committee on Personnel Matters**

***Terms of Reference***

- (1) To consider personnel matters including staffing resources, appointment, promotion, dismissal, grading, duties, remuneration and other terms and conditions of service of staff of the Secretariat which require the attention of the Commission;
- (2) To approve appointments including acting appointments with a view to promotion of officers at Chief Council Secretary level and above; and
- (3) To monitor progress of appointment and personnel matters delegated to the Secretary General.

**Committee on Facilities and Services**

***Terms of Reference***

- (1) To advise on matters relating to the provision of office accommodation, furniture and equipment to the Council and the Secretariat;
- (2) To assess the needs of the Council and of individual Members for services and facilities for the conduct of Council business;
- (3) To advise on the provision of services and facilities to the public who visit the Legislative Council Complex;
- (4) To formulate solutions for meeting needs identified at (1), (2) and (3);
- (5) To consider financial matters relating to (1) to (4) above, and approve procurement of fixed assets costing above \$500,000 but not exceeding \$2,000,000;
- (6) To formulate policy/guidelines on the acquisition of works of art for the Legislative Council Complex; (*from 20 November 2012*)
- (7) To advise on matters relating to the display and management of the art collection in the Legislative Council Complex; and (*from 20 November 2012*)
- (8) To monitor the progress and developments relating to (1) to (7). (*from 20 November 2012*)

## **Committee on Members' Operating Expenses**

### ***Terms of Reference***

- (1) To advise on administrative matters relating to Members' operating expenses; and
- (2) To review Secretary General's decision on a Member's claim for operating expenses reimbursement upon the Member's request.

## **Committee on the Use of Legislative Council Square**

### ***Terms of Reference***

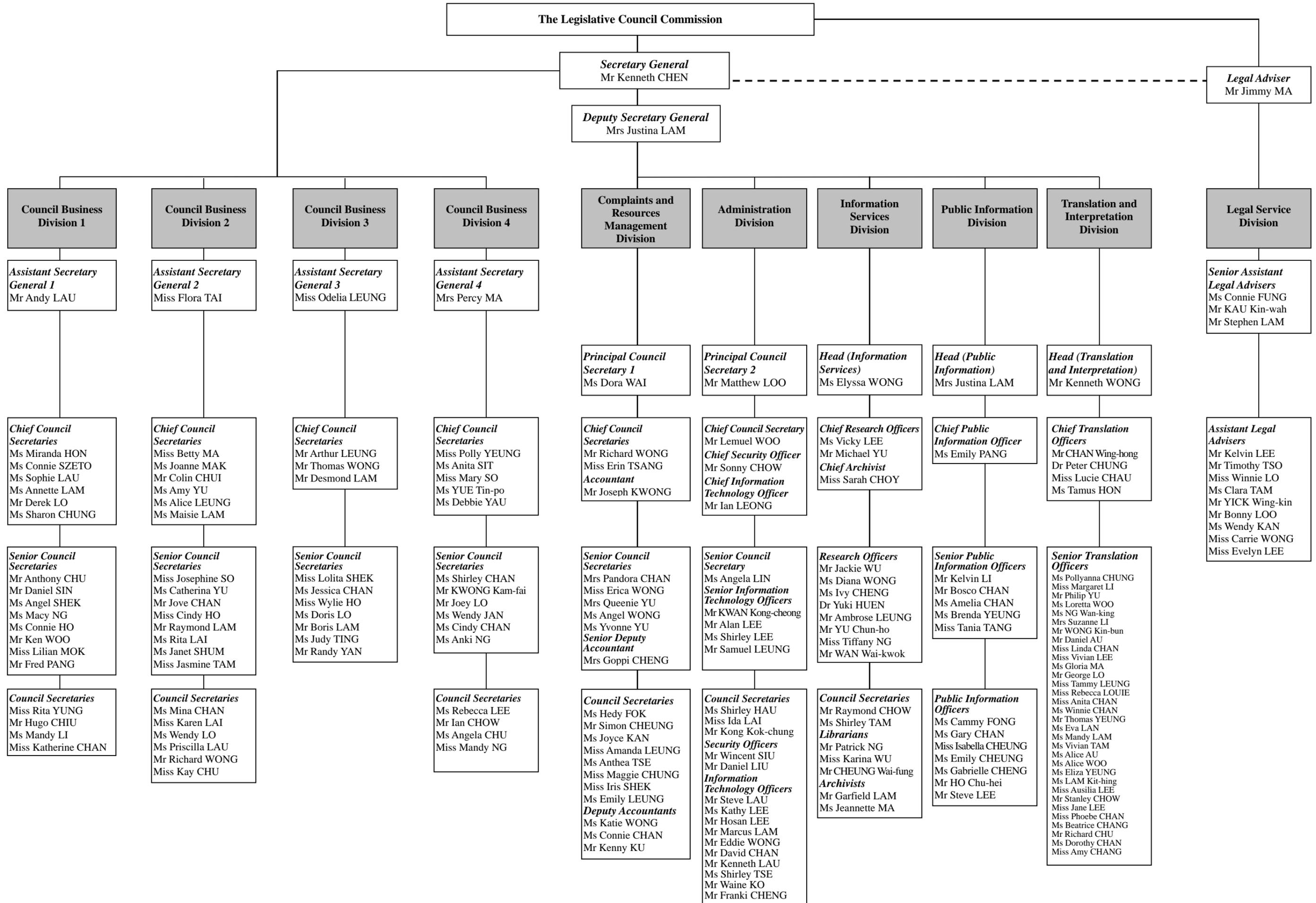
To consider and approve applications for the use of the Legislative Council Square, and to impose conditions of use where necessary, according to the guidelines endorsed by The Legislative Council Commission.

## **Appeals Committee on the Use of Legislative Council Square**

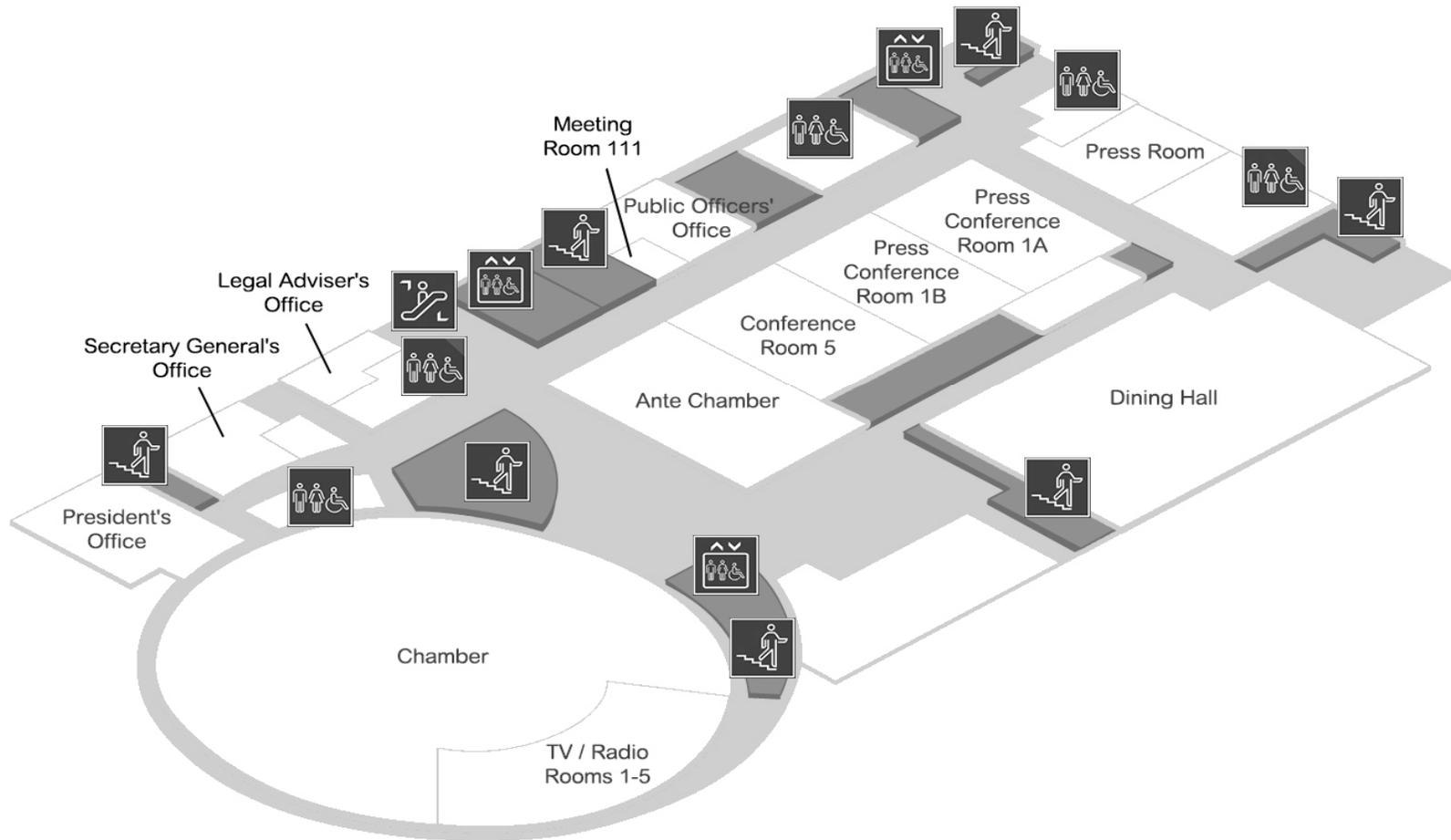
### ***Terms of Reference***

To consider appeals against the decisions of the Committee on the Use of Legislative Council Square not to approve an application for permission to use the Legislative Council Square, or to approve an application but subject to conditions imposed.

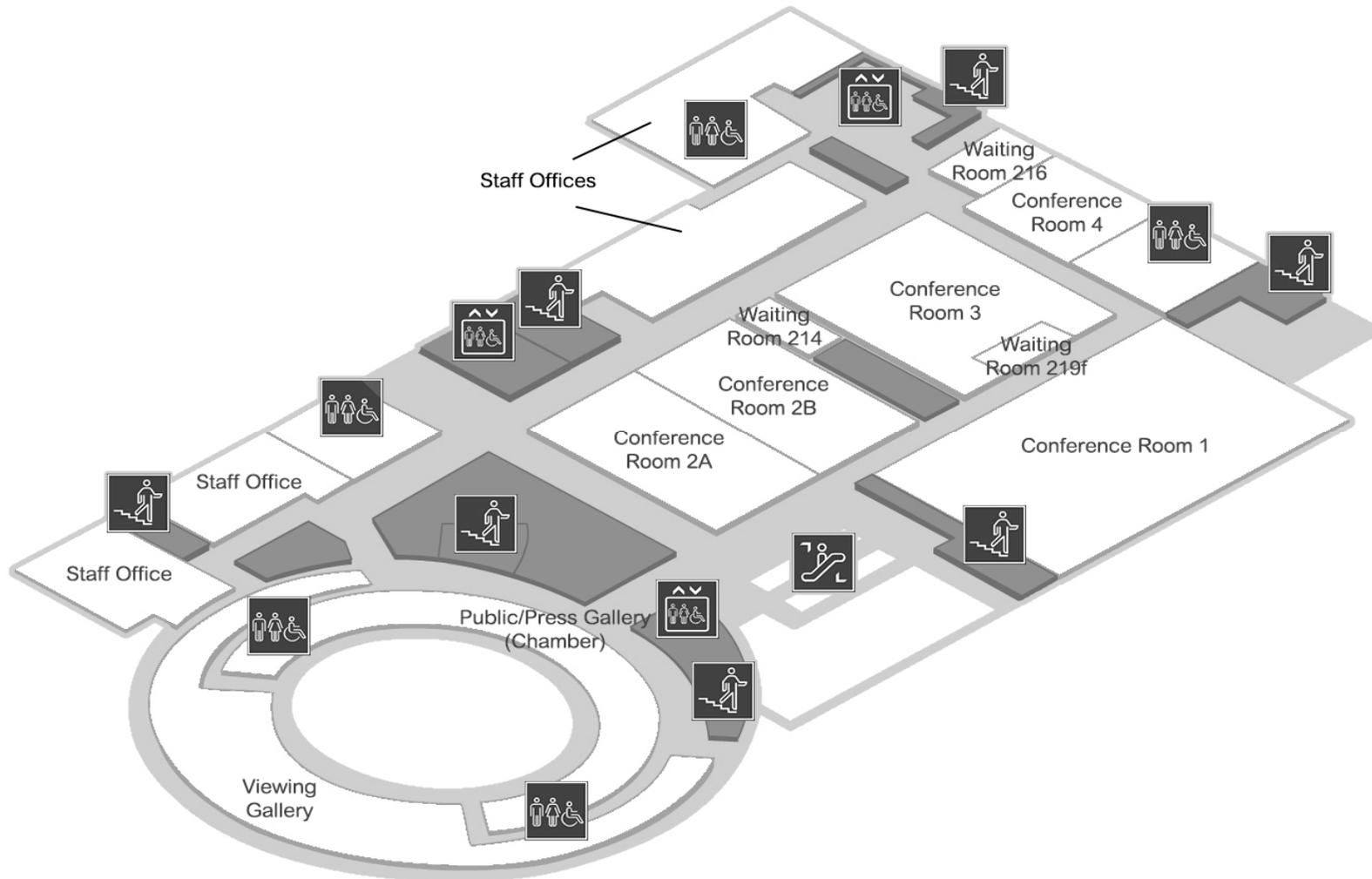
**Organization Chart of the Legislative Council Secretariat (as at 2 May 2014)**



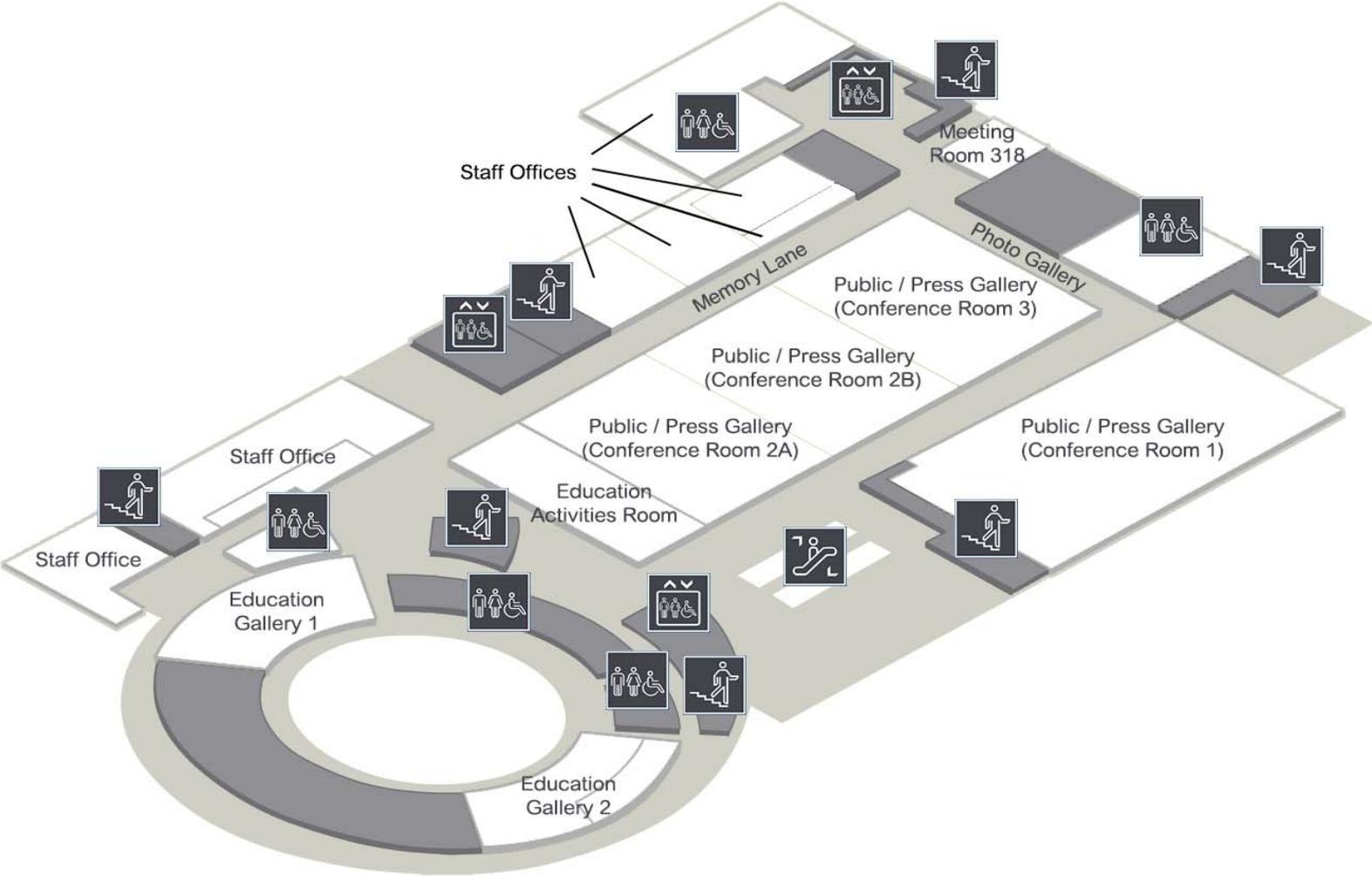
**Floor Plans of the Precincts of the Chamber**



**1/F Council Block, Legislative Council Complex**



**2/F Council Block, Legislative Council Complex**



3/F Council Block, Legislative Council Complex

## **Historical development of Members' Remuneration and Operating Expenses Reimbursement**

### **1976 to 1991**

1. The provision of a remuneration package for Members of the Legislative Council can be traced back to 1976 when an "allowance" was granted to the Unofficial Members of the pre-1997 Legislature to reimburse them for their expenses on staff, office expenses, travelling, entertainment and other expenses incurred on their Legislative Council duties.<sup>1</sup> It was generally considered that the Unofficial Members were performing a kind of public service by accepting the appointment, and the expenses incurred from performing this service should be borne at least in part from public funds. The allowance was intended to be a partial compensation for any pecuniary loss arising from holding the office.<sup>2 3</sup>

2. In 1985, in the light of the introduction of Members elected from functional constituencies and the electoral college, a stipend was introduced to provide remuneration to offset living expenses and loss of income so that intending candidates would not be deterred from coming forward in the elections.<sup>4</sup> The stipend was set at  $\frac{4}{5}$ <sup>5</sup> of the mean salary for middle management, non-professional employees in the private sector.<sup>6</sup> In 1987, the allowance and the stipend were combined to form a single allowance.

3. In August 1991, in anticipation of the election of the first batch of directly elected Members to the Council, the single allowance was replaced by a remuneration package comprising a taxable monthly salary and a non-taxable monthly general expenses allowance payable against certified claims for expenses. The remuneration package was to give clear recognition to the very important work done by the Legislative Council Members and to provide sufficient means to those Members who regarded Legislative Council work as a major occupation to sustain a reasonable living.<sup>7</sup> Revisions of the monthly salary

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<sup>1</sup> Funded under Head 54 – Office of UMELCO in the Estimates of Expenditure.

<sup>2</sup> Press release on 24 August 1976.

<sup>3</sup> Report of the Independent Commission on Remuneration for Members of the Legislative Council (September 1994).

<sup>4</sup> Finance Committee Paper FCR(91-92)89 approved on 9 August 1991, paragraph 1.

<sup>5</sup> The rationale for the  $\frac{4}{5}$  factor was that it was unlikely that Members of the Legislative Council would be occupied on a full time basis.

<sup>6</sup> Report of the Independent Commission on Remuneration for Members of the Legislative Council (September 1994).

<sup>7</sup> Finance Committee Paper FCR(91-92)89 approved on 9 August 1991, paragraph 8.

and the general expenses allowance were carried out on an annual basis according to the relevant Hang Seng Consumer Price Index.

## 1991 to 1997

4. On 24 July 1992, at the Finance Committee meeting considering a proposal<sup>8</sup> to revise the salaries and allowances for Members, Members asked for a review of the package of salary and allowance in view of the new development in formalizing the committee system of OMELCO and the provision of dedicated offices for Members. At the special LegCo In-House Meeting<sup>9</sup> held on the same day, an Ad Hoc Group on Review of Allowances for LegCo Members ("Ad Hoc Group") was formed to conduct a comprehensive review on Members' accountable expenses which had been found to be grossly insufficient in the light of experience. In October 1992, the Ad Hoc Group submitted a report to the House committee highlighting the inadequacies of the salary and allowances in meeting Members' actual needs and the general observation that the level of allowances and benefits currently received by Members was generally below that received by Members of other legislatures. It was agreed that the review of Members' allowances should be undertaken by an independent commission. The report of the Ad Hoc Group was then submitted to the Government.<sup>10 11 12</sup>

5. In May 1993, the Government proposed a new remuneration system which allowed Members to be reimbursed the expenses for setting up and winding up their offices in addition to an accountable general expenses allowance to cover staff and office expenses on a reimbursement basis and a non-accountable allowance to cover travelling and entertainment expenses. As regards Members' salary, the Government's standpoint was that the salary should aim to provide sufficient means to those who regard the work in the Legislative Council as a major occupation to sustain a reasonable living, and to provide an incentive for those of modest means to come forward as candidates in the Legislative Council elections. The level of salary of Members proposed in May 1993 was within the top 1.1% of the average income in Hong Kong.<sup>13</sup> The view of the Government on Members' salary was not shared by the Ad Hoc Group which again asked for the setting up of an independent commission to deal with Members' remuneration. With an undertaking by the Government that the proposal would be implemented as an interim measure pending a more

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<sup>8</sup> Finance Committee Paper FCR(92-93)40 approved on 24 July 1992.

<sup>9</sup> The LegCo In-House Meeting became the House Committee in October 1992.

<sup>10</sup> Finance Committee Paper FCR(93-94)28 approved by the Finance Committee on 7 May 1993.

<sup>11</sup> Minutes of Finance Committee meeting on 7 May 1993.

<sup>12</sup> Report of the Working Group on the Review of Allowances for Legislative Council Members (dated 14 March 1994).

<sup>13</sup> Finance Committee Paper FCR (93-94)28 for discussion on 7 May 1993.

comprehensive review to be conducted by an independent commission, the proposal was approved by the Finance Committee on 7 May 1993.

6. In July 1993, the independent Commission on Remuneration for Members of the Legislative Council ("the Independent Commission")<sup>14</sup> was appointed by the Governor to recommend a system of remuneration for Members of the Legislative Council and to advise on the appropriateness of the then remuneration package for non-official Members of the Legislature. The Ad Hoc Group continued to make submissions to the Independent Commission on the issues which had not been addressed in the Government's proposal in May 1993.

7. In January 1994, a Working Group on the Review of Allowances for Legislative Council Members ("Working Group") was appointed by the House Committee to re-examine the recommendations of the former Ad Hoc Group and review the situation faced by Members following the introduction of the new remuneration package. In March 1994, the House Committee, after endorsing the recommendations of the Working Group, submitted to the Independent Commission that Members' status should be properly reflected in the remuneration which should be comparable to the salary range of Directorate officers in the Civil Service and a pegging criterion should be adopted. The Working Group's recommendations also included a range of financial support and administrative services for Members which were also submitted to the Independent Commission for its consideration.

8. In September 1994, the Independent Commission submitted its first report to the Governor. The Independent Commission concluded that the work of a Legislative Council Member did not meet the requisite parameters of a job and the position did not necessarily require a full-time commitment of time and effort from the incumbent; it was more a form of service to the public and the monthly payment to Members should best be described as remuneration for service to the public. The Independent Commission considered the then level of remuneration reasonable and did not recommend any change to it. As regards the general expenses allowance, the Independent Commission considered that the requirements of directly elected Members and those returned by functional constituencies or appointed by the Governor were different. The former should be allowed to have an additional accountable allowance specifically for operating one office in their district. There were also a range of recommendations to tighten the control over the employment of staff and to restrict the use of the general expenses allowance. The recommendations in the report were endorsed by the Governor-in-Council and were reflected in a proposal put to the Finance Committee on 10 October 1994. However, Members disagreed with the recommendations of the Independent Commission and refused to accept the

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<sup>14</sup> The Commission was chaired by Professor WANG Gungwu.

revised remuneration package for Members of the term commencing in October 1995.

9. In March 1995, the Governor asked the newly reconstituted Independent Commission to reconsider Members' views on the report of the former Commission. In June 1995, the Independent Commission submitted its response to Members' comments. In its response, the Independent Commission concurred with the former Commission that work of Legislative Council Members was a service to the public but it also considered that their work was so unique and important that it should not be considered as just a job. In recognition of the tremendous work pressure put on Members, the Independent Commission agreed that more support services<sup>15</sup> should be given to Members to help them fulfill their role properly. The "general expenses allowance" should be changed to "operating expenses reimbursement" to reflect more accurately the nature of the allowance. The Independent Commission endorsed all recommendations of the former Commission but suggested modifications to some of the recommendations in the light of Members' views. A revised remuneration package was approved by the Finance Committee on 14 July 1995.<sup>16</sup>

10. In October 1995, after the election of the last term of the pre-1997 Legislature, the House Committee set up the Subcommittee on Review of Allowances for Members of The Legislative Council (subsequently renamed as Subcommittee on Members' Remuneration and Operating Expenses Reimbursement ("the Subcommittee")) to review the use of Members' operating expenses reimbursement and allowances. In November 1995, the Subcommittee reported to the House Committee and recommended that there should be no distinction between Members elected from geographical constituencies and those who were not in their eligibility for the setting up of district offices. Members should be given equal treatment in all aspects of the remuneration and allowances system. The Subcommittee considered that all Members should be encouraged to maintain close and regular contact with the public and if necessary with the support of a district office. Given the wide geographical spread of constituencies, one district office might not be sufficient.

11. In February 1996, the Independent Commission responded to the Subcommittee and stressed that there was no intention to discriminate against any group of Legislative Council Members. Having regard to the increasing workload of legislators and to ensure equal treatment, the Independent Commission agreed that each Member should be provided with both a central office and an allowance to enable him/her to rent district offices. Whilst

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<sup>15</sup> Such services included the strengthening of the research and library support services operated by the Secretariat and provision of a modern communication network between the Secretariat and Members' central offices.

<sup>16</sup> Finance Committee Paper FCR(95-96)44 approved on 14 July 1995.

recognizing the need for greater flexibility in the effective use of resources, the Independent Commission reiterated the importance of accountability and transparency and advised that these principles should be maintained in Members' reimbursement claims. The modifications to the remuneration package for Members were approved by the Finance Committee on 12 April 1996. The Subcommittee further submitted its views on the winding up allowance in July 1996. In January 1997, after taking into account the recommendations of the Independent Commission, the Government put forward a proposal to modify the conditions governing the reimbursement of the winding up allowance to enable Members to fulfill their contractual responsibilities and statutory obligations upon the cessation of office.<sup>17</sup> The proposal was approved by the Finance Committee on 10 January 1997.

## 1997 to present

### Provisional Legislative Council

12. In the run-up to 1 July 1997, the newly elected Chief Executive appointed an Independent Commission<sup>18</sup> to determine the remuneration packages for Members of the Executive Council and Legislature of the HKSAR. One of its tasks was to recommend to the Chief Executive the criteria for and the level of remuneration to be paid before 1 July to Members of the Provisional Legislative Council having regard to the volume and nature of business of the Provisional Legislature. On 23 July 1997, based on the recommendations of the Independent Commission, the Government proposed to the Finance Committee that Members of the Provisional Legislative Council should be given a lump-sum payment for the period from its first meeting on 25 January 1997 to 30 June 1997 in view of its lighter workload than that of a full-fledged legislature, but should be entitled to the same remuneration package for the former Legislative Council from 1 July 1997 onwards as the Provisional Legislature would operate in essentially the same manner as the former Legislature after 1 July 1997. The proposal was approved.<sup>19</sup>

13. In March 1998, the Chief Executive-in-Council endorsed the recommendations of the Independent Commission on the remuneration package of the First Legislative Council. As the functions and workload of the Legislature of HKSAR would be broadly comparable to those of the pre-1997 Legislature, the Independent Commission recommended that the same remuneration package should be adopted. The Commission also recommended that a review should be carried out about a year before the start of the Second Legislative Council but the

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<sup>17</sup> Finance Committee Paper FCR(96-97)89 approved on 10 January 1997.

<sup>18</sup> The Independent Commission was chaired by Mr Wong Po Yan, GBM, JP.

<sup>19</sup> Finance Committee paper FCR(97-98)26.

Commission would also consider any ad hoc requests from Members to review any particular aspects of the remuneration package.

#### First Legislative Council

14. On 10 July 1998, the House Committee of the First Legislative Council set up a subcommittee with the same terms of reference of the former Subcommittee to review the operating expenses for Members. Between September 1998 and June 1999, the Subcommittee held meetings with the Government and submitted its views to the Independent Commission on the level of operating expenses required by Members. On 2 July 1999, based on the agreed understanding between the Subcommittee and the Independent Commission<sup>20</sup>, the Government presented a proposal to the Finance Committee to modify Members' remuneration and reimbursement package by providing greater flexibility in the use of the reimbursements and creating a new expenses reimbursement to improve Members' communication with the public through wider use of the information technology. The proposal was approved.

#### Second Legislative Council

15. One of the recommendations of the then Working Group in its submission to the Independent Commission in 1994 was a request for the Independent Commission to make reference to the remuneration systems in other Parliaments, having regard to the amount of time spent on legislative work, the level of responsibility and the status of a legislator. The matter was revisited by the Subcommittee of the Second Legislative Council<sup>21</sup> which, in its report submitted to the Government after endorsement of the House Committee on 8 December 2000, requested that the issue of Members' remuneration should be studied from a longer term perspective. The Subcommittee considered that the question of whether Legislative Council work should be regarded as a full-time commitment of Members or their main occupation should be studied. As legislators, Members worked with those in the top echelons of the administration, Members' remuneration should therefore be comparable to that of senior Government officials. The Independent Commission<sup>22</sup>, in its report submitted to the Chief Executive in October 2003 for the remuneration package for Members of the Third Legislative Council, reaffirmed that legislative Council membership was a form of service. Noting that the then remuneration had put Members at the top 2.7% of salary earners in Hong Kong, the Independent Commission

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<sup>20</sup> Second Report of the Subcommittee on Review of Operating Expenses for Members of the Legislative Council presented to the House Committee on 25 June 1999 (Paper AS339/98-99).

<sup>21</sup> The Subcommittee was set up by the House Committee of the Second Legislative Council on 20 October 2000.

<sup>22</sup> The Independent Commission was renamed as the Independent Commission on Remuneration for Members of the Executive Council and the Legislature, and Officials under the Political Appointment Systems of the HKSAR in 2002.

considered this level sufficient to meet the objective of attracting people of modest means to come forward to stand for elections, and therefore recommended no changes to the level and also the adjustment mechanism.

16. As regards the operating expenses reimbursement, the Subcommittee of the Second Legislative Council made a number of submissions to the Government throughout its 4-year term. Noting Members' difficulties, the Government, after consulting the Independent Commission, put forward a proposal to the Finance Committee on 6 July 2001<sup>23</sup> to increase the accountable expenses reimbursement for office operation and merge the monthly provision of the operating expenses reimbursement into an annual provision. In view of this enhancement which took effect on 1 October 2001, the Independent Commission in its 2003 report did not recommend any major changes to the level of office operating expenses but agreed to remove some conditions in the use of the setting-up allowance to provide greater flexibility for utilizing their setting-up and information technology allowances. Regarding the Subcommittee's request for a pension scheme for Members having regard to the practices of overseas legislatures, the Independent Commission was not convinced that there should be a retirement scheme for Members.

### Third Legislative Council

17. The Subcommittee of the Third Legislative Council submitted a package of proposals to the Government in June 2005 on possible adjustments to the reimbursements including the provision of medical benefits to Members. The Subcommittee also met with the Independent Commission to put forward its views on the need to peg Members' remuneration at a certain percentage of the salary range of the directorate officers in the Civil Service or an independent remuneration scale to be set for Legislative Council Members, as well as the need to provide medical and retirement benefits for Members. The Subcommittee also reiterated the need to enhance the operating expenses reimbursement for setting up more district offices in view of the substantial growth of geographical constituencies in terms of area and population over the years.

18. In January 2008, the Government put forward a proposal to the Finance Committee based on the recommendations of the Independent Commission. The Independent Commission did not respond to the view of the Subcommittee on the pegging mechanism. It nevertheless recommended an increase in Members' remuneration to bring the remuneration to the price level of 2007 and agreed to the provision of an end-of-service gratuity at 15% of the total remuneration received by a Member in his/her term of service. As regards medical benefits, the Independent Commission recommended the provision of a separate,

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<sup>23</sup> Finance Committee Paper FCR(2001-02)32 approved by the Finance Committee on 6 July 2001.

additional annual accountable medical allowance<sup>24</sup> to enable Members to pay for the premium of their personal medical and/or dental insurance policies or to use the allowance to pay for the actual medical and dental expenses. Taking into account the utilization rate and the difficulty in devising an objective yardstick to determine the number of staff members and district offices a Member required, the Independent Commission could only adopt a more prudent approach in adjusting the operating expenses reimbursement. The proposal for the package of remuneration and reimbursements for Members of the Fourth Legislative Council was approved by the Finance Committee on 11 January 2008.

#### Fourth Legislative Council

19. The Subcommittee of the Fourth Legislative Council was set up on 17 October 2008 to follow up with the Independent Commission on two outstanding issues, namely the enhancement of the operating expenses reimbursement and the lack of a mechanism to determine Members' remuneration. After conducting a series of surveys among Members and their Personal Assistants, it was revealed that there was a serious problem of staff retention due to low salaries, poor career prospect and irregular/long working hours. The turnover rate of full-time staff was as high as 34%. On 18 March 2011, based on the analysis of the staff required for providing core support services at the central office and other services at the district offices of Members, the Subcommittee submitted to the House Committee a package of proposals<sup>25</sup> to enable Members to employ and retain a team of good quality staff and to have the necessary support as well as the furniture and equipment to support the work of their offices. The proposals were supported by the House Committee and put to the Independent Commission for its consideration in March 2011.

20. In February 2012, the Subcommittee circulated a draft report to all Members inviting their views on the mechanism to be recommended to the Independent Commission for determining Members' monthly remuneration, including a proposal to peg Members' remuneration to 30%-50% of that of a Director of Bureau.<sup>26</sup> Following consultation with Members, the Subcommittee decided that it would not put forward any specific proposal on the monthly remuneration of Members of the Fifth Legislative Council. However, in its submission to the Independent Commission, it reiterated that a long-term mechanism to determine Members' remuneration should be put in place to avoid unnecessary arguments over the subject between the Administration and the Council once every four years. The remuneration so determined should be able to

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<sup>24</sup> The annual medical allowance was set at \$25,000 in the proposal to the Finance Committee on 11 January 2008.

<sup>25</sup> LC Paper No. AS 197/10-11 endorsed by the House Committee on 18 March 2011.

<sup>26</sup> LC Paper No. AS 103/11-12 circulated to all Members for comments in February 2012.

reflect the important role of the Legislature and the constitutional status of Legislative Council Members under the Basic Law.

21. In March 2012, the Chief Executive-in-Council endorsed the recommendations of the Independent Commission and put forward a revised remuneration package for the Fifth Legislative Council. Regarding Members' remuneration, the Independent Commission maintained that given the very unique nature of Legislative Council membership, it was not appropriate to derive a formula to determine Members' remuneration or to compare their remuneration directly with that of other sectors or to peg it to that of the civil service or politically appointed officials. The Independent Commission recommended to bring the monthly remuneration to the median monthly salary of the top 25% of salary earners working as managers and administrators. As regards the operating expenses reimbursement, the Subcommittee noted that the Independent Commission had only taken on board some of the proposals of the Subcommittee but ignored the proposed staffing complement which formed the basis of its proposals. The Government's proposed package revealed that the Independent Commission had failed to acknowledge the nature and complexity of Members' work in present day and the support required by Members to perform their constitutional functions under the Basic Law. While Members approved the proposed remuneration package for the Fifth Legislative Council at the Finance Committee meeting on 11 May 2012, the Subcommittee was asked to follow up with the Government on the issues which were still outstanding at the start of the next term.

#### Fifth Legislative Council

22. In June 2013, after consulting Members, the Subcommittee of the Fifth Legislative Council noted that a vast majority of Members of the Council supported that the Subcommittee should pursue the outstanding proposals from the report of the Subcommittee of the Fourth Legislative Council.

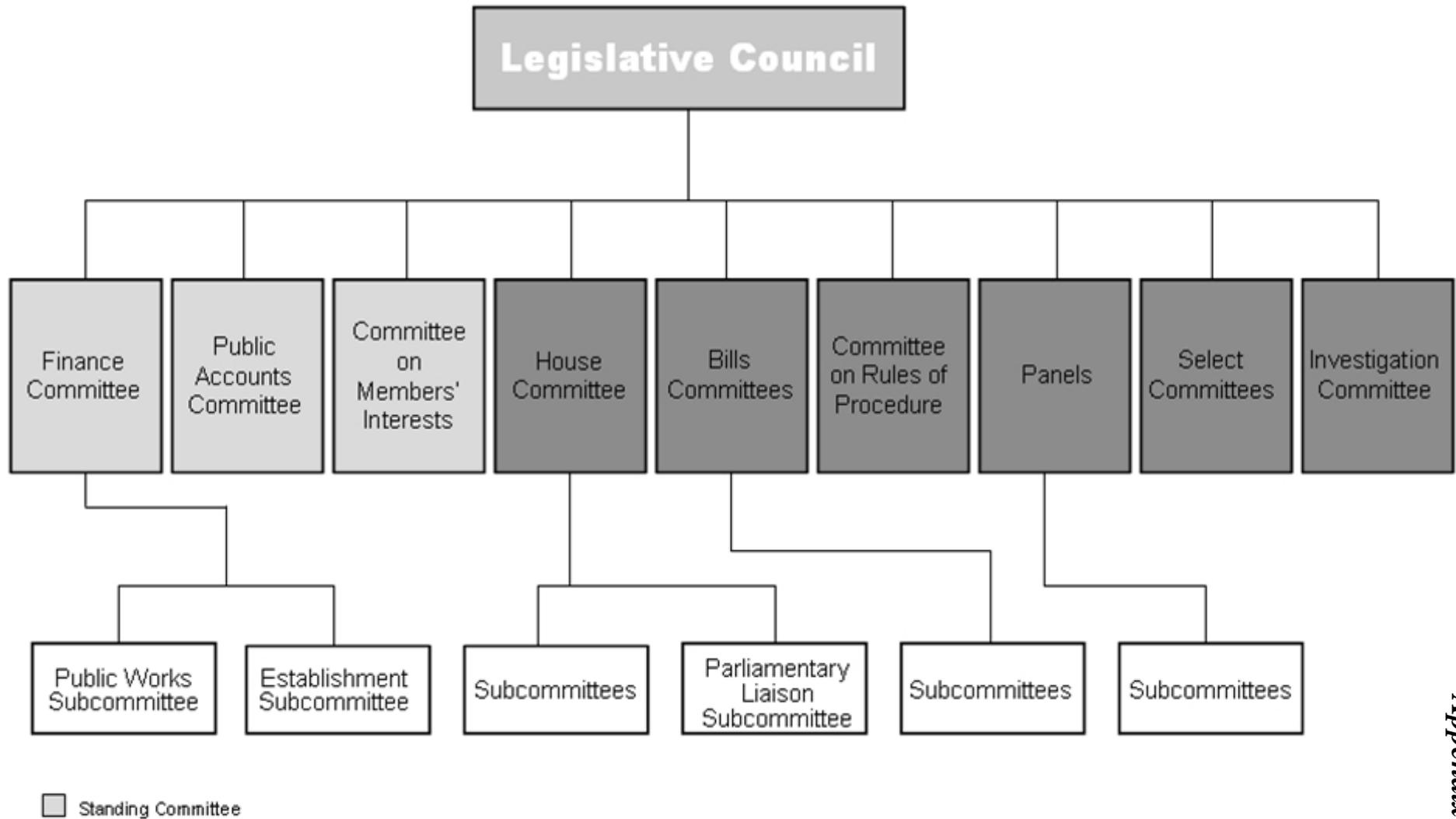
## *Appendix 5-A*

### **List of Government Officials designated by the Chief Executive to attend meetings of the Legislative Council**

- (a) For attending meetings of the Legislative Council, its committee and subcommittees:
  - (i) The Chief Secretary for Administration
  - (ii) The Financial Secretary
  - (iii) The Secretary for Justice
  - (iv) All Directors of Bureaux
  - (v) Permanent Secretary for the Civil Service
  - (vi) All Under Secretaries
  - (vii) All Law Officers in the Department of Justice
  
- (b) For attending meetings of committees and subcommittees, if so directed by officials in (c) below:
  - (i) All directorate officers.
  - (ii) And without prejudice to the generality of (i) above, the following specific categories of officials –
    - Officials at the ranks of Assistant Secretary, , Principal Assistant Secretary and Deputy Secretary in the Government Secretariat;
    - Under Secretaries and officials at the rank of Political Assistant to Director of Bureau; and
    - Officials at the ranks of Government Counsel, Senior Government Counsel, Assistant Principal Government Counsel, Deputy Principal Government Counsel, principal Government Counsel and Law Officer in the Department of Justice.
  - (iii) The Director of the Chief Executive's Office.
  - (iv) The Commissioner, Independent Commission Against Corruption and all directorate officers in the Office of the Independent Commission Against Corruption.
  - (v) The Director of Audit and all directorate officers in the Audit Commission.
  - (vi) The Chief Executive and all Heads of Division or above of the Hong Kong Monetary Authority.

- (c) Authorized by the Chief Executive to direct officials in (b) above to attend meetings of committees and subcommittees:
- (i) The Chief Secretary for Administration
  - (ii) The Financial Secretary
  - (iii) The Secretary for Justice
  - (iv) All Directors of Bureaux
  - (v) The Director of the Chief Executive's Office
  - (vi) All Permanent Secretaries
  - (vii) All Under Secretaries
  - (viii) All heads of Departments or Agencies
  - (ix) All Law officers in the Department of Justice
  - (x) The Commissioner, Independent Commission Against Corruption
  - (xi) The Director of Audit
  - (xii) The Chief Executive of the Hong Kong Monetary Authority

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