

立法會 *Legislative Council*

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Committee on Rules of Procedure

Views of the President of the Legislative Council on procedural options for dealing with filibusters

Purpose

This paper sets out the views expressed by the President of the Legislative Council ("the President") at the pre-meeting session with members of the Committee on Rules of Procedure ("CRoP") on 24 February 2014 on certain procedural options for dealing with filibusters.

Background

2. At the pre-meeting session held between the President and members of CRoP on 24 February 2014, the President shared his concern about the lack of specific procedures in the Rules of Procedure ("RoP") to deal with filibusters, and gave views on certain procedural options so as to facilitate CRoP's ongoing study on this matter. At its meeting that immediately followed the pre-meeting session, CRoP agreed that it would hold a meeting in mid March 2014 to consider the matter. In the meantime, members should discuss the various procedural options with other Members of their political groupings taking into account the President's views. To this end, CRoP requests the Secretariat to prepare a paper setting out the concerns and views expressed by the President for issuance to all Members.

Need for devising specific procedures to deal with filibusters

3. The President emphasizes that maintaining the status quo of having no specific procedure to deal with filibusters in RoP is highly undesirable.

Under the Basic Law, he has the constitutional power and function to preside over meetings which include the power and function to exercise proper authority or control over meetings. In the past incidents of filibusters in Council, in order to ensure the orderly, fair and proper conduct of meetings so that the Legislative Council ("LegCo") would not be prevented from properly exercising and discharging its powers and functions under the Basic Law, he had no alternative but to exercise the aforesaid constitutional power of the President to end the relevant debates.

4. The President points out that as filibuster is a common tactic used by Members in the minority of legislative assemblies to bargain for their demands, it is a political decision as to whether a filibuster should be allowed to continue or should end, and such a decision should be made by Members through voting. However, the absence of specific procedure in RoP for dealing with filibusters has left the Council or Members with no effective means to resolve filibusters.

President's views on procedural options to deal with filibusters

5. The President notes that CRoP has made reference to the relevant procedures and practices of some overseas parliaments¹ in its study of procedural options for dealing with filibusters. Having perused such information and taking into account the past deliberations of CRoP on the matter, the President considers that some of the procedures of the overseas parliaments for time control of debates and handling of amendments to bills may be adopted with modifications by LegCo. Bearing in mind the need to balance all relevant factors, which include the right of Members to participate in the legislative process, the use of filibuster by Members as a tactic to bargain with the Administration, the smooth conduct of Council meetings and the proper functioning of this law-making institution, he has given views on the following four procedural options –

- (a) Closure of debates;

¹ CRoP has made reference to the relevant rules and practices in the House of Commons of the Parliament of the United Kingdom ("UK"), the House of Commons of the Parliament of Canada, the House of Representatives of the Parliament of Australia, the House of Representatives of the Parliament of New Zealand, and the Senate and the House of Representatives of the United States Congress. Relevant information is set out in LC Paper No. CROP 20/12-13 issued to all Members for reference on 31 January 2013. The paper is available at the LegCo website at the following link: <http://www.legco.gov.hk/yr12-13/english/procedur/papers/cropcrop-20-e.pdf>.

- (b) Timetabling of debates;
- (c) Extending the application of Rule 57(4)(d) of RoP to "a series of amendments"; and
- (d) Providing the President with the power to select amendments.

Option 1 – Closure of debates

6. The President considers that it is paramount to provide a procedure in RoP whereby the Council can decide on the closure of debates. He suggests that LegCo may adapt for use the procedures of the Westminster-style parliaments for closure of debates, and provide in RoP that a motion may be moved in Council by a Member to end a debate at the Committee Stage of a bill. The motion is not subject to debate, amendment and adjournment. Upon passage of the motion, the debate to which the motion relates shall end immediately, and questions on the relevant clauses and amendments shall be put forthwith. If the motion is negatived, another closure motion in respect of the same debate may be moved by a Member after the debate has continued for not less than a further specified hours and at the discretion of the Chairman of the committee of the whole Council.

7. Members' motions are subject to the split voting procedure under Annex II of the Basic Law². While pointing out that the rights of Members in the minority are afforded protection to some extent under the split voting procedure³, the President appreciates that some Members hold a strong view that passage of a closure motion should be subject to a higher threshold. In order to achieve a general consensus among Members, he considers that the moving of a closure motion in Council may be made subject to a prior affirmative decision of the House Committee made by an "overwhelming

² It is stipulated in Annex II of the Basic Law that "[u]nless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions: ..." In other words, except for those matters subject to a different voting procedure as already specified in other provisions of the Basic Law, the passage of any bill or motion introduced by the Government shall require a simple majority vote of the Members present, whereas the passage of any motion, bill or amendment introduced by Members shall require a simple majority vote of each of the two groups of the Members (i.e. Members returned by functional constituencies and Members returned by geographical constituencies) present.

³ A motion subject to this voting procedure can be vetoed by a simple majority of the Members returned by functional constituencies or a simple majority of the Members returned by geographical constituencies.

majority" of Members⁴. In that case, the motion will be moved by the Chairman of the House Committee according to the established practice. The "overwhelming majority" threshold may be 60% or two-thirds of the Members, or another proportion as considered appropriate by Members. He has consulted the Legal Adviser of the Secretariat, whose advice is that such a procedural arrangement is unlikely to be in contravention of the Basic Law.

Option 2 - Timetabling of debates

8. The President notes that in nearly all the overseas parliaments studied by CRoP, procedures are in place for the timetabling of debates on bills. He considers that for LegCo, apart from providing a procedure for closure of debates, CRoP may also consider providing a procedure in RoP for the timetabling of debates on bills, especially the debates at the Committee Stage. One situation to which this procedure can suitably apply is that at an early stage of a bill, there is a clear consensus among an overwhelming majority of Members that the proceedings on the bill should not be subject to filibuster.

9. Similar to the procedure for closure of debates, the moving of a timetabling motion in Council can be made subject to a prior affirmative decision of the House Committee made by an "overwhelming majority" of Members. Upon passage of a timetabling motion in Council, debates on the bill concerned will proceed according to the timetable and be curtailed at the specified times.

Option 3 - Extending the application of Rule 57(4)(d) of RoP to "a series of amendments"

10. The President reiterates his concern that under the existing Rule 57(4)(d) of RoP⁵, even when a series of proposed amendments when considered collectively can be regarded as frivolous or meaningless, he cannot rule them out of order if the amendments when considered individually may serve a particular purpose as explained by the Member proposing the amendments. He considers that if Members agree to provide more room for the President to determine the admissibility of amendments, Rule 57(4)(d) may be revised to

⁴ If the House Committee has taken a decision on the moving of a closure motion in the negative, according to rule 24(n) of the House Rules, when another proposal on moving a closure motion in respect of the same debate is put to the House Committee, it is for the House Committee to decide whether such a proposal should be considered.

⁵ Under Rule 57(4)(d) of RoP, an amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved.

expressly provide that an amendment or a series of amendments which is in the opinion of the Chairman of the committee of the whole Council frivolous or meaningless may not be moved. He understands that a similar arrangement is in place in the House of Commons in Canada⁶.

Option 4 - Providing the President with the power to select amendments

11. The President points out that if it is considered by Members that extending the application of the "frivolous or meaningless" criterion under Rule 57(4)(d) of RoP is still inadequate for handling a large number of amendments of similar wording, consideration may be given to conferring on the President the power to select amendments for debate and voting at the Committee Stage. With such power, when numerous similar amendments are proposed, the President may select one or a few of these amendments for debate and voting. In devising this procedure, reference may be drawn from the relevant arrangements of the House of Commons in UK and that in Canada⁷.

Advice sought

12. As members of CROp will consult other Members of their political groupings on procedural options to deal with filibusters, Members are invited to note the information set out in this paper.

Council Business Division 4
Legislative Council Secretariat
28 February 2014

⁶ According to the Note to Standing Order 76(5) of the House of Commons in Canada, the Speaker will not select for debate a motion or series of motions of a repetitive, frivolous or vexatious nature or of a nature that would serve merely to prolong unnecessarily proceedings at the report stage, and in exercising this power of selection, the Speaker should be guided by the practice followed in the UK House of Commons.

⁷ In the House of Commons in UK, the Speaker has the power to select amendments to bills or to motions for debate and voting in the House. In the House of Commons in Canada, the Speaker has the power to select or to combine amendments or clauses to be proposed to a bill at the report stage.