

**香港特別行政區
立法會
議事規則委員會**

**Committee on Rules of Procedure
of the Legislative Council
of the Hong Kong Special Administrative Region**

**2013 年 10 月至 2014 年 6 月的工作進度報告
Progress Report for the period
October 2013 to June 2014**

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1. Introduction

1.1 The Committee on Rules of Procedure ("the Committee") is a committee of the Legislative Council established under Rule 74 of the Rules of Procedure of the Council. The functions of the Committee are to review the Rules of Procedure of the Council and the committee system, and to propose to the Council any amendments or changes as are considered necessary. The Committee may examine matters of practice and procedure relating to the Council referred by the Council or its committees or the President, or raised by its own members.

1.2 The Committee consists of 12 members, including the Chairman Hon TAM Yiu-chung, the Deputy Chairman Hon Alan LEONG and 10 other members, appointed by the President in accordance with the recommendations of the House Committee. The membership list is in **Appendix I**.

1.3 This report covers the period from October 2013 to June 2014, during which five meetings were held to study various issues relating to

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- (a) the procedural arrangements of Council meetings;
- (b) the procedures of the committees of the Council;
- (c) access to Council documents and records; and
- (d) amendments to Rule 83(5) of the Rules of Procedure.

1.4 A complete list of the issues studied by the Committee in the current session is in **Appendix II**.

2. Review of the procedural arrangements relating to Council meetings

2.1 In the reporting period, the Committee examined a number of procedural arrangements relating to meetings of the Council, including –

- (a) Members' motions on subsidiary legislation not being able to be dealt with before the expiry of the vetting period;
- (b) moving of amendments to amendments to motions not intended to have legislative effect;
- (c) display of objects by Members during Council meetings;
- (d) procedural options to deal with filibusters;
- (e) procedures on quorum at Council meetings; and
- (f) repeated grossly disorderly conduct of Members at Council meetings.

Members' motions on subsidiary legislation not being able to be dealt with before the expiry of the vetting period

2.2 In the 2012-2013 legislative session, the Committee studied the problem of Members' motions on subsidiary legislation subject to the negative vetting procedure not being able to be dealt with before the expiry of the vetting period due to unfinished preceding business at the relevant Council meeting ("the Problem").¹

2.3 To address the Problem in the context of the order of business of Council meetings and the statutory timetable determined under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), the Committee had considered the following two options –

- (a) Rule 18(1) of the Rules of Procedure is to be amended to the effect that motions on subsidiary legislation and other

¹ Please refer to paragraphs 2.26 to 2.32 of the Committee's Progress Report for the period October 2012 to July 2013.

instruments made under an ordinance (with Government motions taking precedence over Members' motions) shall take precedence over Government bills and Government motions under Rule 18(1)(i) and (j). This may be achieved by moving the existing Rule 18(1)(ja) and (jb) to immediately before Rule 18(1)(i).

- (b) Section 34 of Cap. 1 is to be amended to provide that whilst the Legislative Council's power to amend subsidiary legislation subject to the negative vetting procedure may continue to be subject to a fixed timetable, a mechanism should be provided to enable extension of the fixed timetable by operation of law under certain circumstances. Such a mechanism may be akin to the deeming arrangement currently provided under section 34(3) of Cap. 1 for the extension of a vetting period that straddles two Legislative Council sessions.

2.4 Having regard to their respective implications and limitations, the Committee agreed that the first option should not be pursued, while the Administration's views should be sought on the second option.

2.5 The Administration provided its response in September 2013. In gist, the Administration was of the view that the proposed arrangement under the second option could not provide a satisfactory solution. As a filibuster could last for an indefinite period of time, it would be impracticable to amend section 34 of Cap. 1 to allow an indefinite extension of a vetting period to cater for filibustering situations. Furthermore, introducing piecemeal amendments to legal provisions in Cap. 1 with a view to dealing with some isolated incidents (for example, filibustering and adjournment of Council meetings due to lack of quorum etc.) would neither be desirable nor justifiable. The Administration would however continue to communicate with Legislative Council Members and the Legislative Council Secretariat with regard to the scheduling of the tabling of subsidiary legislation. The Administration would strive to avoid the tabling of subsidiary legislation without urgent operational needs once it sees the first signs of filibustering.

2.6 Having regard to the Administration's response, the Committee considers that there is no need to further study the subject matter at this stage.

Moving of amendments to amendments to motions not intended to have legislative effect

2.7 There is no provision in the Rules of Procedure governing the moving of amendments to amendments ("AAs") to motions not intended to have legislative effect that are initiated by Members for debate in Council ("MNLEs"). The practice has been that Members are allowed to move such AAs at the discretion of the President. The relevant rules regarding the required notice period for moving such AAs and the speaking time of the mover are specified in rule 17 of the House Rules.

2.8 Pursuant to the suggestion of Hon Kenneth LEUNG, the Committee has reviewed the practice of allowing the moving of AAs to MNLEs. Members of the Committee generally consider that as the purpose of holding debates on MNLEs is to provide opportunities for Members to express views on issues of public concern, and as Members can move amendments to such a motion to reflect their own views, it is not necessary for Members to move an AA to achieve the purpose. The moving of AAs, on the contrary, often renders the wording of a motion convoluted and members of the public would find it difficult to understand the relevant proceedings. Moreover, given that the minimum notice period required for an AA is three clear days, if an AA is to be moved by a Member, other Members who are amendment movers will have very little time to consider whether to proceed with their amendments should the AA be passed, and if so, how to revise the wording of their amendments.

2.9 The Committee notes that the number of possible scenarios of the passage or otherwise of different amendments and AAs could increase significantly with the moving of AAs. In the 2011-2012 session, 5.4% of MNLEs had AAs, and the figure rose to over 20% in the 2012-2013 session.

2.10 The Committee consulted all Members on the issue in December 2013. Of the 64 Members who provided their response, 54 Members (84%) considered that the practice that allowing the moving of AAs to MNLEs should be discontinued. In the light of the consultation outcome, the Committee proposed to the House Committee at the latter's meeting on 24 January 2014 that the moving of AAs to MNLEs should not be allowed in future and rule 17 of the House Rules should be amended accordingly. As the scope of the review was confined to AAs

to MNLEs, the Committee affirmed that the proposal would not affect the existing procedures and practices in respect of motions with legislative effect. The House Committee endorsed the proposal. The new arrangement of not allowing AAs to MNLEs took effect from the Council meeting of 19 February 2014.

Display of objects by Members during Council meetings

2.11 There is no provision in the Rules of Procedure that specifically regulates the kinds of objects which may be brought into and displayed in the Chamber during Council meetings. The display of objects by Members during Council meetings is common in recent years. Apart from using objects to illustrate a point being made during their speeches, some Members often display objects throughout the proceedings on a particular agenda item or throughout the Council meeting concerned. Since the commencement of the Fifth Legislative Council, there have been some occasions during Council meetings where individual Members raised a point of order about the display of objects by some other Members. Besides, from time to time, the President of the Legislative Council ("the President") had to remind Members to put away displayed objects which blocked his sight lines or caused obstruction to other Members.

2.12 At the request of the President, the Committee has reviewed the practice of Members displaying objects during Council meetings, and considered –

- (a) whether objects should be displayed only when a Member is speaking and should be stowed away after speaking; and
- (b) whether some regulations should be imposed on the size and style of objects displayed in the Chamber during Council meetings.

2.13 The Committee notes that the subject matter had been studied by the Committee of the Fourth Legislative Council in consultation with all Members and with reference to the relevant rules and practices of some selected overseas parliaments. As a result of the study, the Committee of the Fourth Legislative Council did not consider it necessary to amend the Rules of Procedure to regulate display of objects by Members at

Council meetings, as the existing provisions in the Rules of Procedure were adequate for the President to deal with disruption at Council meetings caused by the display of objects by Members. The Committee of the Fourth Legislative Council had suggested to the President that in handling relevant situations, reference could be drawn from the principle adopted by the House of Representatives of the New Zealand Parliament in its Standing Order 108 (currently re-numbered as Standing Order 109) under which Members are permitted the use of appropriate visual aids to illustrate points made in their speeches, provided that the aids do not cause inconvenience to other Members or obstruct the proceedings of the House, and the aids have to be removed at the end of the speech.

2.14 Taking into account the outcome of the studies conducted by the Committee of the Fourth Legislative Council and further development, the approach adopted by the incumbent President has been as follows –

- (a) The President would allow a Member to display an object during Council meetings provided that –
 - (i) the object displayed is related to the agenda item(s) of the meeting;
 - (ii) the object displayed does not and will not disturb the proceedings of the relevant meeting or cause obstruction to other Members or public officers in their participation in the proceedings; and
 - (iii) the display is confined to the Member's own seating area.
- (b) The President would ask the Member concerned to put away displayed object or instruct the staff of the Legislative Council Secretariat to remove such object if the display is not compliant with any of the above conditions, either upon the complaint of another Member or of the President's own accord. If that Member refuses to comply with the President's direction, the President will regard the refusal of that Member to be grossly disorderly conduct under Rule 45(2) of the Rules of Procedure and will order that Member to immediately withdraw from the Council for the remainder of that meeting.

2.15 In revisiting the subject matter, the Committee has studied the relevant rules and practices of the House of Commons of the United Kingdom ("UK"), the House of Commons of Canada, the House of Representatives and the Senate of Australia, the House of Representatives of New Zealand, the House of Representatives and the Senate of the United States ("US"), and the Legislative Yuan of Taiwan. The Committee notes that –

- (a) in all the legislatures studied, except the House of Commons of Canada, Members are allowed to display objects to illustrate points made in their speeches but the objects must be removed from the Chamber at the end of the speeches;
- (b) in most of the legislatures studied, it is either provided in the relevant rules or is an established practice that Members are not allowed to display objects when they are not making speeches; and
- (c) among the legislatures studied, only the US Senate has express rules regulating the size and style of the objects displayed. In the other legislatures which allow the display of objects by Members, the general restriction on size is that the display should be confined to the desk of the Member speaking or the immediate area where the Member is making a speech. With regard to the style of objects displayed, the concerns of those other legislatures include the effect on the intelligibility of the official records of proceedings, the impact on the public perception, esteem or decorum of the legislature, and whether the objects may pose a threat to the safety of Members and other persons.

2.16 During the Committee's deliberation, members expressed divergent views on the matter. Some members preferred maintaining the status quo, while some other members supported adopting the arrangement that Members should stow away the displayed objects after speaking. There was also a suggestion that the President should take a more vigilant approach in handling relevant situations in future. Subsequent to the Committee's deliberation, the Chairman of the Committee has conveyed the views of members to the President for his consideration.

Procedural options to deal with filibusters

2.17 The Committee has continued its study on various procedural options to deal with filibusters during the current reporting period. At a pre-meeting session held between the President and members of the Committee on 24 February 2014, the President shared his concern about the lack of specific procedures in the Rules of Procedure to deal with filibusters, and gave views on certain procedural options so as to facilitate the Committee's ongoing study on this matter.

2.18 The President has emphasized that maintaining the status quo of having no specific procedure to deal with filibusters in the Rules of Procedure 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 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.

2.19 The President has pointed 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 the Rules of Procedure for dealing with filibusters has left the Council or Members with no effective means to resolve filibusters.

2.20 Having perused the information on the procedures and practices of some overseas parliaments which the Committee has referred to in its study and taking into account the past deliberations of the Committee 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 the Legislative Council. 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;
- (b) timetabling of debates;
- (c) extending the application of Rule 57(4)(d) of the Rules of Procedure to "a series of amendments"; and
- (d) providing the President with the power to select amendments.

Details of the President's views on the above procedural options are set out in the paper LC Paper No. 46/13-14, which was issued as an open document to all Members on 28 February 2014.

2.21 Members of the Committee have consulted other Members of their political parties/groupings on the above four procedural options. The Committee notes that Members have divergent views. Some Members have reservation about the President's suggestion of making the moving of a closure motion or timetabling motion in Council subject to a prior affirmative decision of the House Committee made by an "overwhelming majority" of Members². The Members consider that it is very difficult to obtain the support of an "overwhelming majority" of Members and there is no guarantee that with such overwhelming support, a closure motion or timetabling motion could also be passed in Council under the spilt voting procedure³. Some other Members do not object to the suggestion that the moving of a motion to close a debate in

² The President has suggested that if it is necessary to provide "a higher threshold" to achieve a general consensus among Members on a procedure to deal with filibusters, consideration could be given to making the moving of a closure motion or timetabling motion in Council subject to a prior affirmative decision of the House Committee made by an "overwhelming majority" of Members. The "overwhelming majority" threshold may be 60% or two-thirds of the Members, or another proportion as considered appropriate by Members.

³ It is stipulated in Annex II to 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.

Council should be subject to a prior affirmative decision of the House Committee made by an "overwhelming majority" of Members. However, these Members consider it not appropriate to draw any conclusion at this stage, as the Court of Final Appeal will hear the appeal against the Court of Appeal's decision on the judicial review case regarding the decision of the President to close the debate at the Committee Stage of the Legislative Council (Amendment) Bill 2012.

2.22 The Committee also notes that Members of different political parties/groupings have divergent views on the two procedural options of extending the application of Rule 57(4)(d) of the Rules of Procedure to a series of amendments and providing the President with the power to select amendments for debate and voting.

2.23 To facilitate the Committee's further study on this matter, the Legislative Council Secretariat has presented to the Committee (a) a proposed procedure for allocation of time to debates at the Committee Stage of a bill, which is drawn up by combining the two procedural options of "closure of debates" and "timetabling of debates", and (b) further information on the two procedural options referred to in paragraph 2.22 above. After deliberation, the Committee agrees that a consultation exercise should be conducted to gauge all Members' views on these three proposals.

2.24 On 5 June 2014, a consultation circular (LC Paper No. CROP 69/13-14) was issued to all Members setting out the following proposals and information.

Time allocation procedure – Procedure for allocation of time to debates at Committee Stage of a bill

2.25 Under this proposed procedure, a time allocation motion may be moved to –

- (a) close a debate immediately or after a certain period of time;
- (b) close a number of debates after a certain period of time; or
- (c) close the whole Committee Stage after a certain period of time.

2.26 Details of the proposed procedure and its rationale are as follows

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Consideration of proposals by the House Committee

- (a) Any proposal to move a time allocation motion in committee of the whole Council for consideration by the House Committee should be made jointly by a certain number of Members, and a limit should be imposed on the number of proposals each Member may propose for consideration by the House Committee on any one occasion.
- (b) Any decision of the House Committee that a time allocation motion be moved in committee of the whole Council should require a high threshold, such as a two-thirds majority vote of all the members of the House Committee, in order to address the concern that Members in the minority may not be given adequate protection of their right to speak.

Moving a time allocation motion in Council

- (c) Pursuant to a relevant decision of the House Committee, a Member (normally the Chairman of the House Committee) may move a time allocation motion without notice in committee of the whole Council.
- (d) In order that procedural certainty and orderliness could be achieved, any time allocation motion should be worded in a prescribed form which would be designed to cater for different possible scenarios of time allocation as decided by the House Committee.
- (e) A time allocation motion should not be subject to amendment or debate so that the motion could be put to vote forthwith without its proceeding being subject to filibuster.
- (f) In accordance with Annex II to the Basic Law, passage of the motion requires a majority vote of each of the two

groups of Members present: Members returned by functional constituencies and those returned by geographical constituencies.

- (g) If such a motion is passed, the Chairman of the committee of the whole Council will order that the relevant debate(s) be concluded upon the expiry of the specified duration.

Procedures for handling voluminous amendments

2.27 Under the existing Rule 57(4)(d) of the Rules of Procedure, the President, acting as the Chairman of the committee of the whole Council, may rule out of order an amendment which he/she considers to be frivolous or meaningless. However, it is not clear whether this restriction may apply to a series of amendments. Hence, it will be difficult for the President to rule out amendments which individually may serve a substantive purpose but if taken together can be regarded as frivolous and may have the effect of prolonging Council proceedings more than necessary for providing fair and genuine choices for Members. It has therefore been proposed that Rule 57(4)(d) of the Rules of Procedure be revised to 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.

2.28 It has also been proposed that the Rules of Procedure be amended to confer on the President the power to select amendments for debate and voting at the Committee Stage, with reference to the relevant arrangements of the House of Commons of the UK⁴ and those of the House of Commons of Canada⁵.

⁴ In the House of Commons of the UK, the Speaker has the power to select amendments to bills or to motions for debate and voting in the House. Selection is made in such a way as to bring out the salient points of criticism, to prevent repetition and overlapping, and where several amendments deal with the same point, to choose the more effective and the better drafted. The practice is that the Speaker does not give reason for his/her decision in individual cases.

⁵ In the House of Commons of Canada, the Speaker has the power to select or to combine amendments or clauses to be proposed to a bill at the report stage. A Note is appended to the relevant Standing Order stating that the Speaker should not select for debate an amendment or series of amendments of a repetitive, frivolous or vexatious nature or of a nature that would serve merely to prolong unnecessarily proceedings at the report stage. The practice is that the Speaker will inform the House of his/her relevant decisions with reasons stated.

2.29 The Committee will consider the outcome of the consultation at its coming meeting.

Procedures on quorum at Council meetings

2.30 In response to the concern raised by some of the Committee members about the use of quorum calls⁶ by a few Members for filibustering and the suggestion of the President of reviewing the relevant procedures with a view to achieving more effective use of the Council's time, the Committee has conducted a study on the procedures on quorum at Council meetings. Specifically, the Committee has studied some suggested arrangements which aim to –

- (a) deal with incessant quorum calls for filibustering purpose; and
- (b) reduce the possibility of abrupt adjournment of a Council meeting with unfinished business due to the absence of a quorum.

2.31 Article 75 of the Basic Law provides that "[t]he quorum for the meeting of the Legislative Council of the Hong Kong Special Administrative Region shall be not less than one half of all its members" ("香港特別行政區立法會舉行會議的法定人數為不少於全體議員的二分之一"). Rule 17 of the Rules of Procedure governs the procedures regarding the quorum of the Council and of a committee of the whole Council. Under Rule 17(2), (3) and (4) of the Rules of Procedure, the President or Chairman of a committee of the whole Council is obliged to count the Members present to ascertain the presence of a quorum (a) whenever his attention is drawn to the absence of a quorum during a Council meeting, and (b) when the absence of a quorum is demonstrated at the time of a division.

2.32 The Committee notes that in addition to the circumstances expressly specified in the Rules of Procedure, the practice has been that

⁶ The term "quorum call" here refers to a Member drawing the attention of the President or the Chairman in committee of the whole Council under Rule 17(2) or 17(3) of the Rules of Procedure that a quorum is not present during a Council meeting thereby triggering the procedure set out in these two subrules for the summoning of Members to form a quorum.

if a quorum is not present at the appointed start time of a Council meeting, the President will direct the Members to be summoned with the ringing of the quorum bell for up to 15 minutes. The President will not of his own accord count the Members present to ascertain the presence of a quorum during a Council meeting.

2.33 In conducting the study, the Committee has made reference to, inter alia, the following –

- (a) the deliberations of the Drafting Committee for the Basic Law related to Article 75(1) in the course of drafting the Basic Law;and
- (b) the relevant rules and practices of some overseas legislatures, namely the House of Lords and House of Commons of the UK, the House of Representatives and the Senate of the US, the House of Representatives and the Senate of Australia, the House of Commons and the Senate of Canada, the Parliament of Singapore and the National Assembly of South Korea.

Application of the quorum requirement in the Basic Law and the right of Members to make quorum calls

2.34 The Committee notes that the Basic Law does not explicitly specify that a quorum is required at all times of a Council meeting. The discussions of the Drafting Committee for the Basic Law in the course of drafting the Basic Law had focused on the size of the quorum of the Council in terms of a proportion of all its members. Relevant records do not indicate that the issue of whether the presence of a quorum is required at all times during Council meetings and other related procedural issues had been raised or discussed.

2.35 As regards the relevant rules and practices of overseas parliaments, the Committee notes that –

- (a) except for the House of Commons and House of Lords in the UK, all the overseas legislatures studied are subject to the quorum requirement stipulated in the respective nation's constitution;

- (b) except for the UK Parliament, a common arrangement among the overseas legislatures studied is that the presence of a quorum during a sitting is presumed unless the absence of a quorum is demonstrated by a division or until a point of order that a quorum is not present is raised by a Member; and
- (c) another common arrangement among these overseas legislatures is that during a sitting any Member has the right to raise a point of order that a quorum is not present. Except in the US House of Representatives and the US Senate, this right of Members is not subject to any restriction in that a Member may raise a point of no quorum any time during a sitting.

2.36 The Committee has not taken a view on the issues of whether the quorum requirement in Article 75(1) of the Basic Law should be regarded as generally applicable throughout the proceedings of Council meetings, and whether it is feasible to impose restriction on Members' right to make quorum calls during Council meetings.

Suggested arrangements to reduce the possibility of adjourning the Council due to the absence of a quorum

2.37 Under Rule 17(2) and (3) of the Rules of Procedure, the President must adjourn the Council if a quorum is still not present upon the expiry of the 15 minutes for summoning Members. To reduce the possibility of adjourning the Council due to the absence of a quorum, the Committee has considered the following suggested arrangements –

- (a) allowing a longer period for summoning Members; and
- (b) giving the President the discretion to suspend the meeting, instead of adjourning the Council, after the expiry of the summoning period.

2.38 The Committee members generally consider that allowing a longer period for summoning Members may not be effective in reducing the possibility of abrupt adjournment of the Council due to the absence of a quorum. Moreover, such a measure may have the effect of increasing the amount of time spent on quorum calls, in which case quorum calls would be more effective as a filibustering tactic.

2.39 Regarding the suggestion of giving the President the discretion to suspend the meeting if a quorum is still not present after the expiry of the summoning period, some members have expressed concern that unless clear guidelines are established in this regard, such discretionary decisions of the President are susceptible to criticisms from Members and the public.

2.40 In view of members' views and concerns, the Committee has not taken a view on the above suggested arrangements. The Committee will continue to study the procedures on quorum at Council meetings at its future meetings.

Repeated grossly disorderly conduct of Members at Council meetings

2.41 Rule 45(2) of the Rules of Procedure empowers the President, the Chairman of a committee of the whole Council or the chairman of any committee to order a Member whose conduct is grossly disorderly to withdraw immediately from the Council or the committee for the remainder of that meeting. There is no provision in the Rules of Procedure that deals with repeated grossly disorderly conduct of Members at Council or committee meetings.

2.42 Amidst a number of incidents of Members behaving in a disorderly manner at Council and committee meetings, the Committee of the Fourth Legislative Council studied the need to amend the Rules of Procedure to provide for specific sanction against repeated grossly disorderly conduct of Members at Council or committee meetings with reference to the relevant arrangements of the House of Commons of the UK, the House of Representatives of Australia, the Bundestag (i.e. the lower house) of the Parliament of Germany, the Lok Sabha (i.e. House of the People or the lower house) of the Parliament of India and the National Assembly of the Parliament of South Africa.

2.43 After deliberations at a number of meetings, the Committee of the Fourth Legislative Council decided in June 2012 to take forward the then revised proposal of Hon IP Kwok-him, under which a Member who has been ordered a second time during the same term under Rule 45(2) of the Rules of Procedure to withdraw from a Council meeting is prohibited from attending the following Council meeting if a motion to sanction

such is passed by the Council. The Secretariat was requested to follow up the matter, including drafting the proposed amendments to the Rules of Procedure based on Mr IP's revised proposal, for consideration by the Committee in the Fifth Legislative Council.

2.44 The Committee has revisited the subject during the current reporting period in response to the request of Dr Hon CHIANG Lai-wan and Hon CHAN Kam-lam. The two Members propose that the Rules of Procedure should be tightened to deal with repeated grossly disorderly conduct of Members at Council meetings by making reference to the relevant provisions of the Standing Orders made by the former Legislative Council of Hong Kong in 1929.

2.45 Noting that since the commencement of the Fifth Legislative Council, there have been a number of incidents involving a few Members being ordered by the President to withdraw immediately from the Council for the remainder of the relevant meetings due to their grossly disorderly conduct (including the throwing of objects at the Chief Executive and public officers) at those meetings, the Committee has decided that a consultation with all Members on the subject should be conducted, and the proposed procedure drawn up by the Legislative Council Secretariat based on Hon IP Kwok-him's proposal mentioned above should form the basis for the consultation. The relevant consultation circular (LC Paper No. CROP 70/13-14) was issued to all Members on 5 June 2014. The Committee will discuss the consultation results at its coming meeting.

3. Review of the procedures of the committees of the Council

3.1 In the reporting period, the Committee has studied the following issues relating to the procedures of committees of the Council –

- (a) practices for the making of oral representations by members of the public at committee meetings; and
- (b) arrangements for committee meetings during tropical cyclone warning signals and rainstorm warning signals.

Practices for the making of oral representations by members of the public at committee meetings

3.2 When The Legislative Council Commission discussed proposed measures to improve the handling of disturbances at the Legislative Council Complex in early 2014, some members of the Commission expressed concern that at present there is no restriction on the number of oral representations a member of the public may make at committee meeting(s) held to receive public views on a subject, and hence a member of the public may speak as many times as the different capacities in which he or she is attending the meeting(s). As the practices for arranging members of the public to give views at committee meetings have bearing on the operation of the committee system, the Commission invited the Committee to study the issue.

3.3 Under the existing Rules of Procedure, there is no provision governing the arrangements for receiving representations from the public at committee meetings. As regards the House Rules, there is a provision, i.e. House Rules 25(c), which deals with written submissions from those members of the public who will attend or have attended a committee meeting for making representations. Some guidelines in respect of the invitation of public views, speaking order of and speaking time limit for deputations, etc. are provided in the various handbooks for committee chairmen.

3.4 The Committee notes the current practice that in response to the invitation of views on a specific subject by a committee of the Legislative Council, a member of the public may register to make oral representation to the committee in his/her personal capacity or as a

representative of a body. Each registered member of the public is allowed to make oral representation once only but may speak again in response to Members' questions during the discussion at the committee meeting, and all the oral representations are subject to the same time limit as determined by the chairman of the committee.

3.5 The Committee also notes that requests from individual members of the public to make oral representations more than once in different capacities have not been frequent, and most of these requests were made at the relevant committee meetings. The usual reason for the requests was that a member of the public who had registered to make oral representation could not attend the meeting due to unforeseen circumstances and thus entrusted another attending member of the public to make oral representation on his/her behalf. In the absence of relevant guidelines in the House Rules or the handbooks for committee chairmen, these requests were considered on a case-by-case basis by the Chairman concerned. Some requests were acceded to while some were rejected.

3.6 After discussion, the Committee in principle agrees that a member of the public should be allowed to make oral representation once only at committee meetings held for the purpose of receiving public views on a subject, and committee chairmen should continue to have the discretion to handle special requests flexibly. To ensure consistency in the practices among committees, the Committee considers that suitable guidelines should be provided in the handbooks for committee chairmen.

3.7 In this connection, the Committee notes that there has been a growing trend that organizations or concern groups are formed on an ad hoc basis to make oral representations at committee meetings. Some members have expressed concern that some deputations attending committee meetings were from organizations/groups bearing indecent or offensive names, and allowing the use of such names is undesirable as they would be recorded in the papers and records of the committees concerned. The Committee has agreed to study this issue.

Arrangements for committee meetings during tropical cyclone warning signals and rainstorm warning signals

3.8 Rule 28 of the House Rules provides for the arrangements for

committee meetings during tropical cyclone warning signals and rainstorm warning signals. The Committee has reviewed the provisions under this rule and agreed that amendments should be made to the rule to ensure its clarity and to align with the terminology currently used by the Hong Kong Observatory. The Committee will present the relevant proposal to the House Committee in due course.

4. Access to documents and records of the Legislature

4.1 The Legislative Council Secretariat has received and dealt with access requests to documents and records of the Legislature held by the Secretariat since its establishment in 1994. Documents and records of the Legislature are those documents and records produced in connection with or arising from the Legislature in discharging its constitutional functions. They may broadly be defined as open or closed. Most of them are open in nature and are already available for public access via the Legislative Council Website as well as at the Legislative Council Library and Archives. While access requests to closed documents and records of the Legislature were dealt with on a case-by-case basis, closed documents and records of certain defunct committees (such as select committees) were not available for public access.

4.2 To formalize and enhance the relevant arrangements, the Secretariat, under the direction of The Legislative Council Commission, prepared detailed proposals on a formal access to information policy and conducted consultation exercises to seek the views of Members and the public. A consultation exercise, in the form of a questionnaire survey and briefings, with all Members was conducted in April 2013. Eight briefing sessions were conducted by the Secretariat to explain to Members and their staff the proposed policy and related issues. A total of 65 Members completed and returned the questionnaire, and they in general supported the proposals.

4.3 After obtaining Members' majority views, a public consultation exercise was conducted between July and September 2013. Members of the public were invited to complete a questionnaire posted on the Legislative Council Website. The Secretariat also approached the Hong Kong News Executives' Association, the Hong Kong Journalists Association and the Hong Kong Foreign Correspondents' Club, as well as 21 tertiary institutions and professional/interest groups for views on the proposed policy. Two briefing sessions were organized for the media and the academia on 23 August and 6 September 2013 respectively. The majority views received from the returned questionnaires as well as those expressed at the briefing sessions were in general supportive of the proposals.

4.4 The Legislative Council Commission noted that while it could make access decisions in respect of closed documents and records under

its control, i.e. documents and records of The Legislative Council Commission and the Secretariat, the Council, as the Legislature, enjoys certain exclusive privileges including whether and how the documents and records of the Legislature are to be provided for public information⁷, hence authorization of the Council for accessing the documents and records of the Legislature is required. Furthermore, implementing the maximum closure periods and declassification reviews will have a bearing on the operation of the Council and the committee system. The Legislative Council Commission therefore invited the Committee to study how the Council's authorization should be sought with a view to having the authorization put in place by April 2014.

4.5 The Committee has discussed how the Council's authorization may be sought and related issues. The Committee has noted that most open documents and records are already available for public access. For closed documents and records (including those prepared for or related to closed meetings or the Redress System which are not intended to be available for public access), not all of them are classified materials, i.e. documents and records graded as "restricted" or "confidential". Under the past access arrangements, closed documents and records would remain closed unless they were requested access by the public and did not fall under certain exemptions. As sensitivity of documents and records diminishes over time, it follows that no documents and records should be kept closed forever unless the disclosure is prohibited by law. In this regard, the majority views of Members obtained in earlier consultation were that:

- (a) the maximum closure period for classified documents and records should be 50 years unless the disclosure is

⁷ Such privileges are based on the common law. See the judgment of the UK Supreme Court in R v Chaytor and others [2010] UKSC 52. In LEUNG Kwok-hung v The President of the Legislative Council and another, unreported, CACV123/2012 (dated 1 February 2013), the Court of Appeal of Hong Kong affirms that the Legislative Council enjoys similar privileges. In relation to the privileges in the context of disclosing parliamentary materials by the UK Parliament, see paragraphs 14 to 21 of the information note prepared by the Information Commissioner's Office on section 34 of the Freedom of Information Act at

http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_34_parliamentary_privilege.ashx [accessed on 11 March 2014].

The Canadian Parliament also enjoys similar privileges on disclosing its materials. See Chapter 8, *Parliamentary Privilege in Canada*, second edition, 1997, by J.P. Joseph Maingot, Q.C.

prohibited by law. These documents and records should be subject to review for declassification within 25 years against the exempted categories set out in **Appendix III**. For those classified documents and records which remain to be classified after a review, they should be reviewed again at least once every four years until they can be open to the public or upon expiry of their closure periods, whichever is earlier; and

- (b) the maximum closure period for unclassified documents and records should be 20 years subject to a review to ensure that the disclosure is not prohibited by law.

4.6 While it is for the Council to determine whether and how access to its documents and records are to be provided, it is inconceivable that the Council would have to make access decisions in respect of each and every of its closed documents and records. Hence, the Committee considers that it is necessary for the Council to appoint an appropriate authority to make access decisions on its behalf. The Committee notes that in Parliaments of the UK, Canada, Australia and Germany as well as the Congress of the US, the authority to review and determine public access to closed parliamentary or congressional documents and records often rests with the Speaker or the Clerk, as both are entrusted by the Parliaments or Congress with responsibilities to ensure the orderly conduct of the business of the House.

4.7 The Committee has considered whether the work may be delegated to the President or the Clerk to the Legislative Council, as under the existing Rules of Procedure, the President and the Clerk to the Legislative Council have certain roles to play in respect of keeping and making available documents and records of the Legislature for public access. However, in the earlier consultation exercises to solicit views from Members and the public, the general view obtained was that the decision on access to a document or record should not be made by a single person but by The Legislative Council Commission or a committee comprising Members from different political parties and groupings. Nonetheless, The Legislative Council Commission does not have nor may it be given the authority to determine on behalf of the Council on questions concerning access to a document or record of the Legislature. Hence, it would be necessary for the Council to appoint a committee to make decisions on access and related matters, and to assign

the Clerk to the Legislative Council to undertake declassification reviews, deal with access requests and other related duties.

4.8 Taking into account the above considerations, the Committee proposed to amend the Rules of Procedure to set out, in the form of a schedule, a policy on access to documents and records together with new provisions in the body of the Rules of Procedure for setting up a dedicated committee and for empowering the Clerk to the Legislative Council to implement the policy.

4.9 The Committee proposed that the committee appointed by the Council to undertake the work be named the Committee on Access to the Legislature's Documents and Records ("CALDR"). The composition and size of the membership of the CALDR should be modelled on those of The Legislative Council Commission. In order to give due recognition to the role of the President in regulating public access to documents and records laid before the Council under the Rules of Procedure, the President should be the ex officio chairman of the CALDR. The proposed CALDR should have the following functions:

- (a) to determine that the documents or records of the Legislature should be made available for access earlier than the expiry of their respective maximum closure periods as specified in the Policy on Access to the Legislature's Documents and Records;
- (b) to set guidelines for implementing the said policy;
- (c) to consider any objection against the denial of access to a closed document or record of the Legislature by the Clerk to the Legislative Council; and
- (d) to consider any other matter relating to or arising from the said policy.

4.10 The Committee also proposed that the quorum, meeting, voting and reporting requirements of the CALDR should follow, with necessary modifications, those of the Committee, as the CALDR also deals with the practice and procedure of the Council, and those of The Legislative Council Commission which makes access decisions in respect of closed documents and records under its control.

4.11 The Committee consulted the House Committee on the above proposals and the relevant proposed amendments to the Rules of Procedure on 28 February 2014. The House Committee supported the Committee's proposals including the proposed amendments to the Rules of Procedure. The proposed amendments to the Rules of Procedure were passed at the Council meeting of 19 March 2014. The CALDR convened its first meeting on 20 May 2014.

5. Amendments to Rule 83(5) of the Rules of Procedure to tie in with the commencement of the new Companies Ordinance (Cap. 622)

5.1 Rule 83 of the Rules of Procedure provides for the registration of interests of Members of the Legislative Council. The eight categories of interests required to be registered by Members are set out in Rule 83(5). These include, among others, "remunerated directorships" and "shareholdings" in Rule 83(5)(a) and (h).

5.2 The Administration launched a comprehensive rewrite of the Companies Ordinance (Cap. 32) in mid-2006 and introduced into the Legislative Council in January 2011 the Companies Bill to reform the provisions affecting the operation of live companies in Hong Kong. The Companies Bill was passed by the Council on 12 July 2012 and gazetted on 10 August 2012. The Companies Ordinance (Commencement) Notice 2013 specified 3 March 2014 as the commencement date of most provisions of the new Companies Ordinance (Cap. 622).

5.3 The new Companies Ordinance (Cap. 622) adopts an alternative drafting approach in defining the terms "subsidiary" and "holding company" without changing their meaning. Under the new Companies Ordinance (Cap. 622), the meaning of "holding company" is first defined in section 13 and the meaning of "subsidiary" is then defined in section 15 by reference to the term "holding company". To tie in with the commencement of the new Companies Ordinance (Cap. 622), the Committee on Members' Interests proposed to amend Rule 83(5)(a) as follows –

"remunerated directorships of companies, public or private, and if the company concerned is ~~a subsidiary of another company~~ has a holding company within the meaning of ~~section 2(4)~~ section 13 of the Companies Ordinance (~~Cap. 32~~)(Cap. 622), also the name of that ~~other~~ holding company;"

5.4 The new Companies Ordinance (Cap. 622) provides for the migration to a mandatory no-par regime for all local companies. Section 135 of the new Companies Ordinance (Cap. 622) provides that shares in a company have no nominal value and this section applies to shares issued before or after the commencement date of the new

Companies Ordinance (Cap. 622). As the abolition of nominal value for the shares of all Hong Kong companies would take immediate effect upon the commencement of the new Companies Ordinance (Cap. 622), the Committee on Members' Interests proposed to amend Rule 83(5)(h), which contained a reference to the term "nominal value", as follows –

"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~~ shares of a ~~nominal value~~ number greater than one-hundredth of the total number of issued share-capital shares".

5.5 After studying the matter, the Committee supported the proposed amendments to Rule 83(5)(a) and (h) of the Rules of Procedure. With the support of the House Committee, the Chairman of Committee on Members' Interests moved a motion on the proposed amendments at the Council meeting of 8 January 2014. The motion was passed and the amended Rule 83(5) took effect on 3 March 2014.

6. Acknowledgement

6.1 Members of the Committee wish to record their appreciation of the views of Members of the Council and their support for the work of the Committee.

Appendix I**Membership list****Committee on Rules of Procedure**

Chairman Hon TAM Yiu-chung, GBS, JP

Deputy Chairman Hon Alan LEONG Kah-kit, SC

Members Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Tommy CHEUNG Yu-yan, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon WONG Yuk-man
Hon Dennis KWOK

(Total : 12 Members)

Clerk Ms Anita SIT

Legal Adviser Mr Arthur CHEUNG (up to 30 April 2014)
Mr Stephen LAM (since 2 May 2014)

Appendix II**Committee on Rules of Procedure****List of issues studied during the period from October 2013 to June 2014**

Item	Issue	Relevant rule(s)	Progress/remarks
1	Members' motions on subsidiary legislation not being able to be dealt with before the expiry of the vetting period	Rule 18(1) of the Rules of Procedure	Having regard to the Administration's response on this matter, the Committee considers that there is no need to further study the subject matter at this stage.
2	Moving of amendments to amendments to motions not intended to have legislative effect	Rule 17 of the House Rules	The Committee's proposal to amend rule 17 of the House Rules was endorsed by the House Committee at its meeting on 24 January 2014. The new arrangement of not allowing the moving of amendments to amendments to motions not intended to have legislative effect took effect from the Council meeting of 19 February 2014.
3	Display of objects by Members during Council meetings	-	Members of the Committee have divergent views on the matter. Their views have been conveyed to the President for his consideration.

Item	Issue	Relevant rule(s)	Progress/remarks
4	Procedural options to deal with filibusters	Rule 57(4)(d) of the Rules of Procedure	The Committee has conducted a consultation exercise to gauge the views of all Members on three procedural proposals to deal with filibusters, including a proposed procedure for allocation of time to debates at the Committee Stage of bills and two proposals for handling voluminous amendments to bills. The Committee will consider the outcome of the consultation at its coming meeting.
5	Procedures on quorum at Council meetings	Article 75(1) of the Basic Law and Rule 17 of the Rules of Procedure	The Committee has not taken a view on the issues of whether the quorum requirement in Article 75(1) of the Basic Law should be regarded as generally applicable throughout the proceedings of Council meetings, and whether it is feasible to impose restriction on Members' right to make quorum calls during Council meetings. The Committee will continue to study matters relating to the procedures on quorum at Council meetings at its future meetings.
6	Repeated grossly disorderly conduct of Members at Council meetings	-	The Committee has conducted a consultation exercise to gauge the views of all Members on whether there is a need to provide for specific sanction in the Rules of Procedure to deal with repeated grossly disorderly conduct of Members at Council meetings, as well as a proposed procedure with specific sanction to deal with repeated grossly disorderly conduct of Members at Council meetings. The Committee will discuss the consultation results at its coming meeting.

Item	Issue	Relevant rule(s)	Progress/remarks
7	Practices for the making of oral representations by members of the public at committee meetings	-	The Committee in principle agrees that a member of the public should be allowed to make oral representation once only at committee meetings held for the purpose of receiving public views on a subject, and committee chairmen should continue to have the discretion to handle special requests flexibly. The Committee considers that suitable guidelines should be provided in the handbooks for committee chairmen. The Committee will further study other issues relating to the practices for receiving public views at committee meetings.
8	Arrangements for committee meetings during tropical cyclone warning signals and rainstorm warning signals	Rule 28 of the House Rules	The Committee agrees that rule 28 of the House Rules should be amended to ensure its clarity and to align with the terminology currently used by the Hong Kong Observatory. The Committee will present its proposal to the House Committee in due course.
9	Access to documents and records of the Legislature	Rules 6(5A) and 74A of the Rules of Procedure	The Committee's proposals including the proposal to amend the Rules of Procedure were endorsed by the House Committee on 28 February 2014. The proposed amendments to the Rules of Procedure were passed at the Council meeting of 19 March 2014.
10	Amendments to Rule 83(5) of the Rules of Procedure to tie in with the commencement of the new Companies	Rule 83(5) of the Rules of Procedure	The Committee supported the proposal of the Committee on Members' Interests to amend Rule 83(5) of the Rules of Procedure. With the support of the House Committee, the Chairman of the

Item	Issue	Relevant rule(s)	Progress/remarks
	Ordinance (Cap. 622)		Committee on Members' Interests moved a motion to amend Rule 83(5) of Rules of Procedure at the Council meeting of 8 January 2014. The motion was passed at the Council meeting and the amended Rule 83(5) took effect on 3 March 2014.

Appendix III

Exempted categories of the documents and records of the Legislature

Access may be refused if the requested documents and records fall under the following exempted categories. Where circumstances warrant, such documents and records may be made available if public interest outweighs the harm and prejudice of disclosure unless it is prohibited by law.

- (a) documents or records the disclosure of which is prohibited by statute law or common law that applies to Hong Kong;
- (b) documents or records relating to law enforcement, legal proceedings and legal professional privilege the disclosure of which would harm or prejudice the enforcement of law, the administration of justice, any legal proceedings being conducted or likely to be conducted or the parties concerned;
- (c) documents or records held for or provided by any party under an explicit understanding that it would not be disclosed without the consent of that party;
- (d) documents or records relating to individual complaint cases;
- (e) documents or records relating to the Legislature and its committees authorized by the Council to exercise the powers under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and investigation committees that are subject to review the premature disclosure of which would cause harm or damage to the parties concerned or impede the operation of such committees or later committees;
- (f) documents or records relating to the on-going work of the Legislature and its committees, commercially sensitive information, research, statistics, data and planned publications the premature disclosure of which would be misleading, unfair or lead to improper gain or advantage;
- (g) documents or records obtained or transferred in confidence between Members and the Secretariat; and

- (h) documents or records the access to which would be detrimental to their preservation.