

# **立法會**

## ***Legislative Council***

LC Paper No. LS 9/14-15

### **Note for Chairman of Public Works Subcommittee**

#### **Chairman's power in setting the order of agenda items on the agenda of a meeting of the Public Works Subcommittee**

#### **Background**

At the meeting of the Public Works Subcommittee ("PWSC") held on 22 October 2014, some members requested that the order of agenda items on the agenda of PWSC should be re-arranged by the Chairman in accordance with his judgment on the priority of the agenda items based on certain matters such as the importance of the agenda item to people's livelihood, the level of controversy, tender exercise deadlines, and views of PWSC members and the Administration. In response, the Chairman indicated that he believed that he had the necessary power to make the proposed re-arrangement, but if he did exercise that power it would mean a departure from the established practice of respecting the Administration's proposed order of agenda items which has been followed by previous chairmen of Finance Committee ("FC") and its subcommittees including PWSC. The Chairman also indicated that he would first seek the advice of the Legal Adviser before he considered the request.

2. This note provides a legal analysis of whether the Chairman of PWSC has the power to determine the agenda of PWSC, and if he has, how that power should be exercised in dealing with the requests made to re-arrange the agenda items on the agenda.

3. Information that is relevant for examining how the organization and operation of meetings of FC and its two subcommittees have developed into established practices supplementary to the Rules of Procedure ("RoP") of the Legislative Council ("LegCo") and PWSC Procedure has been provided by Mr Andy Lau, Clerk to FC, and his team, as well as Ms Pauline Ng, former Secretary General (2008 to 2012) who was Clerk to FC from 1994 to 2008.

## **PWSC Chairman's power to determine the agenda of the Subcommittee**

4. Similar to all other committees of the Council, there are provisions in the RoP to empower the chairman of FC to determine the time and place of FC meetings (Rule 71(6)) and to empower FC to determine its own practice and procedure as well as those of its subcommittees including PWSC subject to the RoP (Rule 71(13)). However, the power of the chairmen of FC and its subcommittees in determining the agenda of a meeting is not explicitly provided for in the RoP or in the Procedures of FC and its two subcommittees.

5. The Chairman of PWSC has power to determine the dates of meetings. Paragraph 10 of the PWSC Procedure provides that agreement should be sought from the Chairman, after he or she is elected at the start of a session, to a provisional schedule of meeting dates for the session. The Chairman may decide to hold special meetings to consider urgent items. The Administration is informed of the meeting schedule for planning the submission of discussion items.

6. Under Rule 9(2) and (3) of RoP, a designated public officer may give notice to the Clerk to PWSC of items to be included in the agenda, and where it appears to the Clerk who prepares the agenda that a particular item of business requires the attendance of a designated public officer, the Clerk shall state, in respect of that particular item, the name of the office of that public officer.<sup>1</sup> The role of the Clerk in preparing the agenda of PWSC was examined and reaffirmed in December 2002 when questions were raised on whether Bureau Secretaries ought to be present at PWSC meetings.

7. Paragraphs 19 and 20 of the PWSC Procedure further provide that the Financial Secretary ("FS"), the Secretary for Financial Services and the Treasury, the Permanent Secretary for Financial Services and the Treasury (Treasury), a Deputy Secretary for Financial Services and the Treasury (Treasury) or any member of the PWSC may give notice to the Clerk to PWSC of the items of business to be included in the agenda of the PWSC. Notice of agenda items should reach the Clerk at

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<sup>1</sup> Under Paragraph 16 of the PWSC Procedure, the Chairman or PWSC may invite any public officer, any member or employee of a non-governmental body or organization, or any other person to give information or explanation or to produce any records or documents which PWSC may require in the performance of its duties. The Clerk will state in the agenda the office of the public officers and other persons invited for discussion of the particular items.

least six clear days before the meeting concerned and the Clerk should dispatch the papers for discussion at least five clear days before meeting. The Chairman however has the power to allow shorter notice of agenda items and waive the five-clear-day requirement for the issue of discussion papers, which is normally exercised on grounds of urgency.

8. Unlike Rule 18 of RoP which specifies the order in which the various kinds of business of each Council meeting are to be transacted, there are no express provisions in the Public Finance Ordinance (Cap. 2), RoP, FC Procedure or PWSC Procedure regarding the order in which agenda items are to be placed on the agenda of either FC or PWSC. It is an established practice that the Clerk will use the same order of the discussion items submitted by the Administration for seeking the agreement of the chairman to the agenda. Any motion to be moved by individual members will be placed after the Government's agenda items.

9. In Legal Adviser's view, despite the lack of specific provisions in RoP and PWSC Procedure on the PWSC Chairman's power of agenda setting (including the power to re-arrange the order of agenda items), this power should come within those reasonably incidental to the Chairman's power to convene meetings under Paragraph 10 of the PWSC Procedure, his power to direct the Clerk to give notice of meetings under Paragraph 11 of the PWSC Procedure and his power to chair a meeting under Paragraph 12 of the PWSC Procedure<sup>2</sup>.

10. Moreover, according to the Court of Final Appeal in the case of *Leung Kwok Hung v. The President of LegCo and SJ (FACV No. 1 of 2014)*, the President of LegCo is to exercise his power to "preside over meetings" under Article 72 of the Basic Law so as to ensure the orderly, efficient and fair disposition of LegCo's business. Whilst the case is on the Court's power to judicially review the exercise of the President's powers, it is submitted the Court's remark on how the power should be exercised by the President should also apply to a chairman of a committee of LegCo, including the PWSC.

11. However, in light of the constitutional principle in public finance that it is for the government to make the demand and for the legislature to grant as reflected in Articles 62(4), 73(2) and 73(3) of the

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<sup>2</sup> We should arrive at the same conclusion by an application of the general principle in the law of meetings that in the absence of express provisions in the articles of a company, the details of the proceedings must be regulated by the persons present and by the chairman (see *Wandsworth and Putney Gaslight Co v Wright* (1870) 22 LT 404, cited in *Modern Law of Meetings*, Third Edition, page 123).

Basic Law<sup>3</sup> and section 8(1) of the Public Finance Ordinance (Cap. 2)<sup>4</sup>, there should be certain limitations to which the chairman's exercise of power in agenda setting should be subject. These limitations should be such that the exercise of the chairman's power would not be inconsistent with the above constitutional principle. How the Chairman would exercise his power would depend on the particular circumstances of each case.

12. Dialogues are not uncommon between the Clerk (as directed by the Chairman) and the Administration over the time allowed for the discussion of each Government agenda item, resulting in possible decisions of the Chairman to schedule additional meetings to deal with all the items or the Administration to defer some to other meeting dates. It is also not uncommon for the Administration to withdraw agenda items when it is clear that more discussion ought to be conducted on those financial proposals by the relevant panels before they are discussed by FC or any of its subcommittees. This kind of interaction could involve the order of agenda items and/or the number of items to be included on the agenda of a meeting. There were occasions where the Chairman held a different view on the order of discussion items proposed by the Administration. Such view was conveyed through the Clerk to the Administration and there were cases where the Administration agreed to change the order of discussion items in the light of the Chairman's view.

### **The practice of respecting the Administration's view in agenda setting**

13. In the last two legislative sessions, there were occasions where the chairmen of FC and PWSC were requested to re-arrange the agenda items on the agenda of a scheduled meeting. The chairmen, after consulting the Administration, took the position that they would follow the practice of respecting the Administration's proposed order of agenda items. According to records, there has not been any re-arrangement of the order of agenda items which is not in line with the Administration's proposed order.

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<sup>3</sup> Under Article 62(4) of the Basic Law, the Government shall draw up and introduce budgets and final accounts. Under Article 73(2) and (3), LegCo shall examine and approve budgets introduced by the Government, and approve taxation and public expenditure.

<sup>4</sup> Under section 8(1) of Cap. 2, no changes shall be made to the approved estimates of expenditure except with the approval of FC upon a proposal of FS. Paragraph 27 of the FC Procedure and Paragraph 25 of the PWSC Procedure provide that proposals to change the approved estimates of expenditure must come from FS, and members cannot amend FS's proposals which must be discussed and voted on as they stand.

14. This practice does not give rise to any constitutionality issue because the government's proposal is not changed as a result.

**Members' requests to re-arrange agenda items on the agenda**

15. Members' requests to re-arrange the order of agenda items on the agenda should be dealt with on a case by case basis. In relation to those requests made by members at the meeting of PWSC held on 22 October 2014, you have already asked the Administration for a response. Subject to its response, you may consider if you should follow the established practice of respecting the views of the Administration or, where a departure from the established practice is warranted, seek the views of PWSC members before you decide on the matter.

16. In view of the constitutional significance of a possible re-arrangement of the order of the agenda items on an agenda, it would be advisable, in seeking members' views, to bring to their attention the constitutional framework in public finance as provided in the Basic Law, the Public Finance Ordinance (Cap. 2), the RoP and PWSC Procedure.

Prepared by

Legal Service Division  
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