

# 立法會 *Legislative Council*

LC Paper No. LS 6/15-16

## **Finance Committee**

### **The Chairman's powers in relation to motions presented by members under paragraph 37A of the Finance Committee Procedure**

#### **Purpose**

With regard to the two agenda items on the establishment of the Innovation and Technology Bureau under consideration by the Finance Committee (FC), six members presented to the Chairman a total of 1 133 motions in accordance with paragraph 37A of the Finance Committee Procedure (FCP), 1 132 of which were presented by five members while the remaining one by one member. On 29 October 2015, the Chairman made his rulings on the 1 132 motions presented by the five members. In gist, the Chairman requires the members concerned to consolidate their proposed motions or select the more representative motions. The Chairman also suggests a maximum number for the proposed motions so consolidated and/or selected.

2. This paper provides information on the legal basis for the Chairman to set limits on the number of motions that members may propose under paragraph 37A of the FCP.

#### **Power to chair committee meetings**

3. Paragraph 13 of the FCP provides for the FC Chairman's power to chair committee meetings. The extent of this power has been considered by the court in a recent case<sup>1</sup>. In that case, the Court of First Instance (CFI) made reference to the Court of Final Appeal's judgment in *Leung Kwok Hung v President of the Legislative Council of the HKSAR*<sup>2</sup> on the power of the President of the Legislative Council (LegCo) to "preside over meetings" under Article 72(1) of the Basic Law, and came to the conclusion that the meaning of "to chair meetings" under paragraph 13 of FCP and "to preside over meetings" under Article 72(1) of the Basic Law are for all practical purposes the same. The Court of Final Appeal (CFA) held in *Leung Kwok Hung* that "the President had power to set limits to and terminate a debate which was inherent in, or incidental to, the power granted by Article 72(1) of the Basic Law to the President to preside over meetings" and that "it was not for the court to consider whether or not the power was properly exercised"<sup>3</sup>. Applying the CFA judgment to the case of FC, the CFI held that the FC Chairman similarly has such power<sup>4</sup>. As the Court is satisfied that the FC Chairman has "the power to regulate the process of the FC meetings under the FCP, including the power

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<sup>1</sup> *Wong Yuk Man v Ng Leung Sing and Tommy Cheung Yu-yan*, HCAL 78/2014.

<sup>2</sup> [2015] 1 HKC 195.

<sup>3</sup> Ibid, para 46.

<sup>4</sup> HCAL 78/2014, para. 62.

to set limits to and terminate a debate"<sup>5</sup>, under the non-intervention principle (i.e. the court should not adjudicate matters concerning procedural compliance of LegCo unless there are provisions in the Basic Law requiring the court to do so), the CFI held that "it is not for the court to determine the occasion on the manner of the exercise of this power"<sup>6</sup>.

4. It may be useful to refer to the following extracts from the judgments of the Court of Final Appeal, the Court of Appeal and the Court of First Instance in *Leung Kwok Hung* on the power of the President to "preside over meetings":

- (a) The Court of Final Appeal held that "the President is to exercise his power to "preside over meetings" under art 72 so as to ensure the orderly, efficient and fair disposition of LegCo's businesses"<sup>7</sup>.
- (b) The Court of Appeal held that "the President has the constitutional power and function to exercise proper authority over the process" and that the "orderly, fair and proper conduct of proceedings must be within the province of the President"<sup>8</sup>.
- (c) The Court of First Instance held that in presiding over the meetings, "the President did not simply sit at his seat listening to the speeches of the legislators but had the constitutional function and power to exercise proper control over the process to ensure that the orderly, fair and proper conduct of business in the Legislative Council was not derailed"<sup>9</sup>. "How the power of the President was to be exercised and the relationship between the President and the members as a whole (balancing the interests of different political parties in the Legislative Council) were matters of politics and not for the courts"<sup>10</sup>.

## **Power to set limits**

5. Based on the above authorities and given that proposing motions under paragraph 37A of the FCP is part of the process of the FC meetings, the FC Chairman should have the power to regulate the handling of such motions, which may include setting limits on the number of motions that members may propose under paragraph 37A of the FCP or imposing conditions, if he considers that this is necessary for the orderly, efficient and fair disposition of the meetings.

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<sup>5</sup> Ibid, para. 63.

<sup>6</sup> Ibid, para. 63.

<sup>7</sup> Ibid, para. 22.

<sup>8</sup> *Leung Kwok Hung v President of the Legislative Council*, CACV 123/2012, [2013] 2 HKC 580 at para.52.

<sup>9</sup> *Leung Kwok Hung v President of the Legislative Council of the HKSAR*, HCAL 64/2012, [2012] 4 HKC 83 at paras. 25 – 26.

<sup>10</sup> Ibid, para. 55.