

# Legislative Council

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## **Paper for the House Committee meeting on 24 July 1998**

### **Committee on Rules of Procedure**

#### **Procedure in dealing with the introduction of Members' Bills as provided in Article 74 of the Basic Law and the interpretation of Article 48(10) of the Basic Law**

#### **Purpose**

This paper outlines the deliberations of the Committee on Rules of Procedure on the Department of Justice's opinion that certain provisions in the Rules of Procedure of the Legislative Council contravene Article 74 of the Basic Law. It also provides background information on the issues considered when formulating rules governing the presentation of bills by Members and the moving of motions and amendments by them.

#### **Background**

2. Article 74 of the Basic Law provides that Members of the Legislative Council may introduce bills in accordance with provisions in the Basic Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the Government may be introduced individually or jointly by Members of the Council. The written consent of the Chief Executive shall be required before bills relating to Government policies are introduced.
3. The requirements in Article 74 are reflected in Rule 51 (Notice of Presentation of Bills) in particular subrules (3) and (4) of the Rules of Procedure of the Legislative

Council, as reproduced in Appendix I.

4. The Rules of Procedure, made by the Council on 2 July 1998, were drawn up after a series of discussions by Members (then Members-elect) in June 1998. During the discussions, Members were aware that further deliberations on the scope of restrictions arising from Article 74 on Members' Bills, motions and amendments were required. However, in order to provide a set of procedures for the immediate functioning of the Council, Members agreed that for the purpose of reflecting the requirements under Article 74, the provisions in Rule 51 (3) and (4) would suffice. Members also agreed to adopt the same requirements, being self-imposed restrictions to govern motions, amendments to bills and amendments to motions with "charging effect", as those applied to the former legislatures of Hong Kong in order to achieve a proper balance in the power to initiate legislative measures without contravening the Basic Law. The relevant rules, namely Rules 31, 57(6) and 69 are reproduced in Appendix II.

5. When the Council considered the Rules of Procedure on 2 July 1998, Members noted that the Solicitor-General of the Department of Justice had written to the Legal Adviser of the Legislative Council Secretariat on 30 June 1998 expressing the opinion of the Department of Justice on the scope of Article 74 and the relevance of Article 48(10) in restricting Members' motions. The letter is attached in Appendix III. Members also noted that the subject would be referred to the Committee on Rules of Procedure for further study.

6. In view of the urgency to deal with the points raised by the Solicitor-General, Members agreed at the House Committee meeting on 6 July 1998 that, pending the appointment of the Committee on Rules of Procedure, the Solicitor-General be invited to brief Members on his letter of 30 June 1998. A briefing was held on 9 July, and continued on 15 July at the first meeting of the Committee on Rules of Procedure (the Committee).

7. Members also took note of the views of the Legal Adviser of the Legislative Council Secretariat in his advice given in LC Paper No. LS6/98-99. The paper is attached in Appendix IV.

### **Views of the Department of Justice**

8. In the opinion of the Department of Justice, a generous and purposive interpretation should be given to Article 74. The Article should cover not only bills but also Committee Stage amendments. Under the circumstances, any amendments moved by

Members, whether to a bill introduced by a Member or by the Government, should also be subject to Article 74.

9. When asked by Members as to whether resolutions made under Sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap 1) to amend subsidiary legislation should also be subject to Article 74, the Solicitor-General's view is that Article 74 would not apply to such resolutions.

10. The Department of Justice is of the view that Article 48(10) should cover motions moved by Members. The Article, which spells out the powers and functions of the Chief Executive, states in (10) that one of his powers and functions is to approve the introduction of motions regarding revenues or expenditure to the Legislative Council. According to the Solicitor-General, Members may only introduce such motions, including those without legislative effect, with the Chief Executive's consent. He also argues that Rule 31, which confines the requirement for obtaining the Chief Executive's consent to motions or amendments with "charging effect", is inconsistent with the Basic Law as such a formulation is narrower than that of "regarding revenues or expenditure" as specified in Article 48(10).

11. The Department of Justice stresses that decisions as to whether certain proposals are subject to Articles 48(10) and 74 must be made by the Chief Executive. The Department takes the view that although neither article expressly identifies the decision-maker, such decisions must be made by the Chief Executive by necessary implication. For example, the question whether a bill relates to Government policies can only be decided by the very Government which formulates these policies, and the Chief Executive is best placed to decide these questions. The Solicitor-General adds that since the purpose of the articles is to restrict the powers of Members of the Legislative Council in certain specified areas falling within the purview of the Executive, this purpose would be defeated were the President given the power to make such decisions, particularly when such decisions might differ from those of the Chief Executive.

12. In conclusion, the Department of Justice is of the view that Rules 31, 51(3), 57(6), and 69 contravene the Basic Law and require amendment.

### **The Committee's Views**

13. Regarding the interpretation of Article 74 to cover Committee Stage amendments, the Committee is of the view that nothing is written in the Article which suggests that the Article is meant for anything other than bills introduced by Members. The Basic

Law is very specific in making reference to bills, motions and Members' amendments to Government bills, as illustrated in the voting procedures provided in Annex II of the Basic Law. If Article 74 were intended to cover Members' amendments to Government bills, there is no reason why it was not stated in the Article in the first place. The Committee considers it inappropriate for the Department of Justice to extend the coverage of Article 74, which governs only Members' bills, to Members' amendments to Government bills.

14. The Committee is aware of the concern of the Executive, as reflected in the Solicitor-General's opinions, that proposals in relation to those areas mentioned in Article 74 should come from the Executive instead of from Members of the Legislative Council. This principle has been spelt out in Article 74 and also reflected in the Rules of Procedure of the Council. The Basic Law has not specified detailed procedure of the legislative process, but it is clear that amendments to Government bills moved by Members are anticipated, as shown in the bicameral voting procedure in Annex II of the Basic Law and references to introduction, amendment and passage of bills in various provisions. The Committee considers it important to maintain a legislative process which allows every bill or motion before the Council to be fully debated and all aspects of the bill or motion thoroughly considered. The legislative process which the Council has now put in place is a three-reading process which has worked well in Hong Kong and which people of Hong Kong are familiar with. This process provides a stage between the second and third readings during which the Committee of the Whole Council discusses the detailed provisions of proposed amendments to a bill. A Member (including a public officer) in charge of a bill can withdraw the bill at the beginning of the proceedings for the second or third reading of the bill. If the Government finds difficulty in accepting a Government bill in its amended form, the public officer in charge of the bill may withdraw the bill before the third reading stage. The availability of the procedure to withdraw a bill provides a means for the Government to decide the final form of the proposed legislation introduced by it. Under the circumstances, it is not logical, nor reasonable, to regard arbitrarily the word "bills" in the context of Article 74 to mean also "amendments to bills" as this would deprive the Council of the opportunity to discuss and agree to proposals alternative to those proposed in a bill. The mechanism under the Rules of Procedure ensures a degree of checks and balances between the Executive and the Legislature, and preserves the principle of executive - led Government.

15. As for Article 48(10), the Committee considers that the Article, which comes under a dedicated section on the Chief Executive, is stating the powers and functions of the Chief Executive. Article 48(10) therefore refers to introduction of motions

regarding revenues or expenditure to the Legislative Council by the Government, rather than those by Members of the Legislative Council. The only restrictions on Members in respect of introduction of business in the Legislative Council are provided in Article 74 which comes under the section on the Legislature. Besides, it would be illogical if the Legislative Council, with one of its functions being to debate any issue concerning public interests under Article 73(6), was disallowed to debate a motion regarding revenues or expenditure without the Chief Executive's approval.

16. On the view that the Chief Executive should be the person to decide on whether any bills are subject to Article 74, the Committee considers that since it is not specified in Article 74 as to who should be the person to decide on such matters, and since Article 75 provides the Legislative Council with the power to make its own rules of procedure, that view does not stand. It is for the Legislative Council to draw up its own procedures which on the one hand satisfy the requirements under the Basic Law, and on the other, facilitate the conduct of business of the Council in the most effective manner. The Rules as they stand do not contravene the Basic Law. If it was the intention of drafters of the Basic Law for such decisions to be made by the Chief Executive, such an important requirement would have been expressly provided. The Committee considers that referral to the Chief Executive for ruling on every bill, motion and amendment would not only upset the proper checks-and-balances between the Executive and the Legislature, but would also seriously affect the day-to-day functioning of the Legislative Council. It should also be pointed out that if the Department of Justice's arguments were to be accepted, then Article 48(10) and Article 74 would become contradictory in that the former authorizes the Chief Executive to "approve the introduction of motions regarding revenues or expenditure to the Legislative Council" while the latter prohibits the introduction of bills which relate to "public expenditure or political structure or the operation of the government".

17. The Committee has studied the powers of and inter-relationship among the Executive, the Legislature and the Judiciary as provided in the Basic Law. The provisions in the Basic Law enable the Executive and the Legislature to regulate and monitor the activities of each other, as illustrated in the functions of the two bodies and Articles 49, 50, 51 and 52. Under the Rules of Procedure, the President is empowered to take decisions on whether bills, motions and amendments to bills may be introduced into the Council. These rules are in support of the power of the President to decide on the agenda and to exercise other powers and functions as prescribed in the Rules of Procedure under Article 72(2) and (6). Any person, including the Government, who is aggrieved by a decision of the President or perceives a breach of the law by the Legislative Council may seek judicial redress.

18. The Committee has also noted that the procedure which enables the President to form an opinion as to whether a bill falls within the particular areas under Article 74 is similar to Standing Order provisions of the former Legislative Council under which the President ruled on the "charging effect" of a proposed bill or proposed amendments to a bill. These Standing Order provisions governing charging effect were made to implement Clause XXIV of the Royal Instructions, where no person was named as the authority to decide on such matters. The Committee also notes that before the President was elected by and from among Members, the Governor of Hong Kong was making the relevant rulings in his capacity as President of the Legislative Council rather than as head of the Administration. The procedure of having the President to rule on whether a question can be put at a meeting is a practice widely adopted in other common law jurisdictions. For reference purposes, the practice and procedure in other jurisdictions and in the former Legislative Council of Hong Kong are given in Appendix V.

19. The Committee affirms that Rule 51(3) and (4) does not contravene Article 74. The procedure for the President to decide whether any bills introduced by Members are related to the specific areas under Article 74 is in order. The Committee considers that the procedure should also be spelt out clearly in Rule 51(4).

20. As regards Rules 31, 57(6) and 69, the Committee maintains that these are self-imposed restrictions to govern motions and Committee Stage amendments with charging effect moved by Members. These rules are consistent with the financial procedure in other jurisdictions, as illustrated in Appendix V. Although no such requirements are stipulated in the Basic Law, they do not contravene the Basic Law. The Committee considers it reasonable to maintain such a procedure and therefore does not recommend any change to these Rules.

## **Conclusion**

21. The Committee has come to the unanimous conclusion that the Rules of Procedure do not contravene Articles 48(10) and 74 of the Basic Law and do not require amendments. Specifically, the Committee is of the view that:

1. Article 48(10) (the Article being on the powers and functions of the Chief Executive) only governs the introduction of motions regarding revenues or expenditure by the Government to the Council, and not motions introduced by Members of the Council;
2. the restrictions in Article 74 apply only to Members' bills, and not Members' Committee Stage amendments to Government bills;

3. decisions on whether bills introduced by Members fall within the confines of Article 74 should be made by the President; and
4. the self-imposed restrictions governing motions and Committee Stage amendments with charging effect moved by Members should continue.

22. Although the Committee has not yet completed its deliberation on all the points raised by the Department of Justice, e.g. voting procedure, members of the Committee consider it necessary to provide an interim report on the issues relating to Article 74, for the information of all Members of the Legislative Council. If Members have any views on the subject, they are invited to direct them to the Committee.

Legislative Council Secretariat

22 July 1998

**51. Notice of Presentation of Bills**

(1) A Member or a designated public officer may at any time give notice of his intention to present a bill; such notice shall be sent to the office of the Clerk and shall be accompanied by a copy of the bill and memorandum required by Rule 50 (Form of Bills), and in the case of a Member, also by a certificate signed by the Law Draftsman pursuant to subrule (2).

(2) In the case of a bill to be presented by a Member, the Law Draftsman, if satisfied that the bill conforms to the requirements of Rule 50 (Form of Bills) and the general form of Hong Kong legislation, shall issue a certificate to that effect.

(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government.

(4) In the case of a bill relating to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill.

(5) In the case of a bill presented in one official language in pursuance of a direction under section 4(3) of the Official Languages Ordinance (Cap. 5), the notice shall be accompanied by a certificate stating that the Chief Executive in Council has directed that the bill should be presented in the Chinese language or, as the case may be, the English language.

(6) In the case of a bill presented by a Member having any intention such as is described in Rule 50(8) (Form of Bills), the notice shall be accompanied by a certificate signed by the Member, stating that the bill has been published in two successive publications of the Gazette and that notice of the bill has been given by two advertisements in each of two daily newspapers published in Hong Kong, one being a Chinese language newspaper and another being an English language newspaper.

(7) 1. Except as otherwise provided in Rule 66 (Bills Returned for Reconsideration), a bill which, in the opinion of the President, contains substantially the same provisions as another bill on which the Council has



already taken a decision at second reading shall not be further proceeded with in the same session and shall be withdrawn.

2. If a bill which has been read for the second time is subsequently withdrawn another bill with substantially the same provisions may be presented in the same session, subject to the provisions of Rule 50 (Form of Bills), this Rule and Rule 52 (Presentation and Publication of Bills).

(8) A Member presenting a bill shall be known throughout the subsequent proceedings on the bill as the Member in charge of the bill. In the case of a bill introduced jointly by more than one Member, these Members shall designate among themselves a Member as the Member in charge of the bill at the time of presenting the bill and the Member so designated shall signify himself as such in the notice for presentation.

(9) A public officer presenting a bill shall be known throughout the subsequent proceedings on the bill as the public officer in charge of the bill; and references in these Rules of Procedure to a Member in charge of a bill include a public officer in charge of a bill.

**31. Restriction on Motions and Amendments**

A motion or amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

1. the Chief Executive; or
2. a designated public officer ; or
3. a Member, if the Chief Executive consents in writing to the proposal.

**57. Amendments to Bills**

(1) The provisions of this Rule shall apply to amendments proposed to be moved to bills in committee of the whole Council, in a select committee, and on recommitment.

(2) Notice of amendments proposed to be moved to a bill shall be given not less than 7 clear days before the day on which the bill is to be considered in committee; and except with the leave of the Chairman no amendment of which notice has not been so given may be moved to a bill.

(3) The provisions of Rule 30 (Manner of Giving Notice of Motions and Amendments) shall apply to notice of amendments to bills with the substitution of the word "Chairman" for "President" in subrule (3) of that Rule.

(4) The following provisions shall apply to amendments relating to bills:

1. An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.
2. An amendment must not be inconsistent with any clause already agreed to or with any previous decision of the committee upon the bill.
3. An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.
4. An amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved.
5. Where an amendment is proposed to be moved to a bill presented in both official languages the amendment shall be made to the text in each language unless it is an amendment that clearly affects the text in one language only.

But an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved.

(5) If an amendment refers to, or is not intelligible without, a subsequent amendment or schedule, notice of the subsequent amendment or schedule must be given before the first amendment is moved so as to make the series of amendments intelligible as a whole.

(6) An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

1. the Chief Executive; or
2. a designated public officer ; or
3. a Member, if the Chief Executive consents in writing to the proposal.

#### **69. Amendments to Heads of Estimates in Committee of the Whole Council on Appropriation Bill**

(1) An amendment which, in the opinion of the Chairman, would increase the sum allotted to any head of expenditure whether in respect of any item or subhead or of the head itself shall only be moved by a designated public officer.

(2) An amendment to increase a head whether in respect of any item or subhead or of the head itself shall take precedence over an amendment to reduce the head in the same respect, and if it is carried no amendment to reduce the head in that respect shall be called.

(3) An amendment to any head of expenditure to reduce the sum allotted thereto in respect of any item therein may be moved by any Member, and shall take the form of a motion "That head ..... be reduced by \$..... in respect of (or by leaving out) subhead ..... item .....".

(4) An amendment to reduce a head in respect of any subhead or by leaving out a subhead shall only be in order if the subhead is not itemized.

(5) An amendment to reduce a head without reference to a subhead therein shall only be in order if the head is not divided into subheads.

(6) An amendment to leave out a head shall not be in order and shall not be placed on the Agenda of the Council.

(7) In the case of each head, amendments in respect of items or subheads in that head shall be placed on the Agenda of the Council and considered in the order in which the items or subheads to which they refer stand in the head in the Estimates.

(8) When notice has been given of two or more amendments to reduce the same item, subhead, or head, they shall be placed on the Agenda of the Council in the order of the magnitude of the reductions proposed, the amendment proposing the largest reduction being placed first in each case.

(9) Debate on every amendment shall be confined to the item, subhead, or head to which the amendment refers, and after an amendment to an item or subhead has been disposed of no amendment or debate on a previous item or subhead shall be permitted.

(10) When all amendments standing on the Agenda of the Council in respect of any particular head of expenditure have been disposed of, the Chairman shall again propose the question "That the sum for head ..... stand part of the schedule" or shall propose the amended question "That the (increased or reduced) sum for head ..... stand part of the schedule", as the case may require. The debate on any such question shall be subject to the same limitations as apply to a debate arising under Rule 68(3) (Procedure in Committee of the Whole Council on Appropriation Bill).

**Letterhead of DEPARTMENT OF JUSTICE**  
**Legal Policy Division**  
**Solicitor General**

**Appendix III**

Our Ref.: SJO 5012/3C III

Your Ref:

Tel. No.: (852) 2867 2003

30 June, 1998

Mr Jimmy Ma  
Legal Adviser  
Legislative Council Secretariat  
8 Jackson Road  
Hong Kong

Dear Jimmy,

**Draft Rules of Procedure**

This Department has considered very carefully the draft Rules of Procedure of the Legislative Council (LegCo). It is our opinion that certain draft rules contravene the Basic Law. We are therefore drawing those parts of the draft to your attention so that you may take appropriate remedial action.

**Article 74**

Article 74 of the Basic Law prohibits certain bills from being introduced by members of the Council (viz. those relating to public expenditure or political structure or the operation of the government) and requires the written consent of the Chief Executive before other bills (viz. those relating to government policies) are introduced. You will appreciate from the authorities that, since the Basic Law is a constitutional instrument, it must be given a generous and purposive interpretation as opposed to a narrow and literal one which generates anomalies: per Lord Wilberforce in Minister of Home Affairs v. Fisher [1980] AC 319, at 328; per Chan CJHC in HKSAR v. David Ma [1997] HKLRD 761, at 772.

The clear intent underlying Article 74 is to prevent members from introducing certain types of legislative proposals and to require the written consent of the Chief Executive before legislative amendments relating to government policies are introduced. Giving the article a generous and

purposive interpretation, it must cover not only bills but also committee stage amendments (CSAs). Any other interpretation would create the anomaly that members might achieve by way of a CSA that which they could not attain by way of a bill.

We note that draft Rules 57(6) and 69 do not reflect the correct interpretation of Article 74 of the Basic Law, but refer instead to the charging effect test (elaborated below), an irrelevant consideration for present purposes. These rules are inconsistent with the Basic Law and should be amended accordingly.

### **Application of Articles 48(10) and 74**

Articles 48(10) and 74 of the Basic Law contemplate decisions being taken as to whether certain proposals are subject to those articles. Whilst neither article expressly identifies the decision-maker, it is clear by necessary implication that such decisions must be made by the Chief Executive. We understand the purpose of the articles is to restrict the powers of LegCo members in certain specified areas falling within the purview of the Executive. It would defeat this very purpose were the LegCo President given the power to decide whether the Articles applied, particularly where, in doing so, he or she might differ from the Chief Executive.

It is clear that the Chief Executive is best placed to decide these questions. For example, the final sentence of Article 74 provides that the written consent of the Chief Executive shall be required before bills relating to government policies are introduced. The question whether a bill relates to government policies can only be decided by the very government which formulates those policies. This being so, it follows that it must be the Chief Executive who decides the question.

As we shall indicate below, draft Rule 31 does not reflect Article 48(10) of the Basic Law. When it is amended to do so, it must avoid providing for the President or Chairman to decide whether a motion falls within the rule. Similarly, when draft Rules 51(3) and 57(6) are amended to reflect Article 74 of the Basic Law, they should likewise avoid providing for the President to decide whether proposals fall within that article.

### **Article 48(10)**

Article 48(10) of the Basic Law stipulates that the Chief Executive shall “approve the introduction of motions regarding revenues or expenditure

to the Legislative Council". Thus, members may only introduce such motions with the Chief Executive's consent.

We notice that a requirement of the Chief Executive's consent appears in Rule 31 of the draft Rules of Procedures. However, that rule is confined to motions or amendments "the object or effect of which may, in the opinion of the President or the Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong" (emphasis supplied). This formulation, which is generally referred to as the "charging effect" test, is identical to that adopted by the Provisional Legislative Council and in LegCo prior to 1 July 1997. Its genesis lie in Clause XXIV of the Royal Instructions which stipulates that "every ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising ..... shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or directed by him.". Such a formulation is clearly much narrower and more specific than "regarding revenues or expenditure" specified in Article 48(10) of the Basic Law.

"Charging effect" covers only those motions or amendments which would have the effect of reducing revenue or increasing expenditure. In other words, motions which have the effect of increasing revenue or reducing expenditure will not be subject to it. However, "regarding revenues or expenditure" clearly has a wider ambit. It covers motions which have any effect on revenue or expenditure (that is, increases or decreases in revenue as well as increases or decreases in (expenditure) as well as motions which are related to any other aspects of revenue or expenditure. Rule 31, as currently drafted, is accordingly inconsistent with the Basic Law.

### **Voting procedures**

We note that draft Rule 47 provides for decisions to be made according to whether or not the majority of members present are in favour of the question. We agree that the passage of private members' bills and members' CSAs require the support of a majority of members present in the council. However, we are of the considered opinion that the passage of government bills requires the majority vote of members present, and that abstentions cannot be counted in determining the voting outcome. The reason for the difference arises from Annex II of the Basic Law which stipulates that:-

"The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council

present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present : members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee."

"政府提出的法案，如獲得出席會議的全體議員的過半數票，即為通過。

立法會議員個人提出的議案、法案和對政府法案的修正案均須分別經功能團體選舉產生的議員和分區直接選舉、選舉委員會選舉產生的議員兩部分出席會議議員各過半數通過。"

For members' proposals, although the English text of the voting arrangement refers to a simple majority vote of each of the two groups of members present, the crucial word "票" (votes) does not appear the Chinese text. The Chinese words "過半數" (more than half or majority) therefore qualify "出席會議議員" (members present at a meeting). This does not refer to the majority vote but rather the majority of those present. According to established authorities, "those present" include those who are present but who abstain. Given the discrepancy between the English and Chinese texts, the Chinese original, being the language of authorship, must prevail.

For government proposals, the Chinese words "過半數" (more than half or majority) appear immediately before the word "票" (votes). They therefore qualify "票", effectively making "過半數" (majority votes) a technical expression standing by itself. The "majority vote" referred to in the provision is to be given its normal meaning of the greater number of votes. **An abstention is not a vote.** The fact that the provision refers to "members present" does not displace that normal meaning. It merely indicates that one does not count the votes (e.g. proxy votes) of those who are not present.

### **Position of the President**

We understand that you consider that the President of LegCo should be politically neutral and should therefore abstain from voting. As the draft rules stand, however, the President will presumably be regarded as 'present'



for the purpose of deciding whether a majority of those present are in favour of a proposal. If so, this would mean that, by not voting, the President would be counted as one of those present who is not in favour of the proposal. Such a result would render nugatory the proposed neutrality of the President.

One way to avoid such an anomalous outcome would be for the Rules of Procedure to provide that, if the President does not vote, he or she is not to be regarded as present for the purposes of deciding whether a majority of those present support the proposal. Such a provision would be consistent with the Basic Law. The President would not be denied the right to vote, and the provision would reflect the special position occupied by the President under Article 72 of the Basic Law. Since the President is required to 'preside over meetings', he or she does not have the option of being absent during the voting process. It would clearly be absurd to regard his or her presence as tantamount to a permanent, immutable, in-built opposition to every single proposal requiring the support of the majority of members present.

We request, therefore, that consideration be given to the inclusion of such a provision in the rules. The relevant provisions of the draft Rules of Procedure should be amended to reflect this Basic Law requirement.

### **The way forward**

We feel sure that LegCo members will wish to ensure that their Rules of Procedure are consistent with the Basic Law. You will no doubt agree that seeking a broad constitutional consensus as between the Executive and the Legislature is the best way forward. Before you give further advice to members, therefore, we trust you will give careful consideration to the points made above. We hope also that you will revert to us on the outcome. We shall be glad to discuss these issues further if necessary.

(Daniel R. Fung, QC, SC, JP)  
Solicitor-General

# Legislative Council

LC Paper No. LS 6/98-99

## Rules of Procedure

### Legal Adviser's comments on

### the Solicitor General's letter of 30 June 1998

At the House Committee meeting held on 6 July 1998, Members agreed to invite the Solicitor General to a meeting to be held on 9 July 1998 to brief them on the opinion of the Department of Justice on the Rules of Procedure of the Legislative Council. The opinion is contained in the Solicitor General's letter of 30 June 1998 addressed to Legal Adviser. In order to assist Members in preparation for the meeting Legal Adviser has been requested to comment on the opinion of the Department of Justice.

2. Legal Adviser would like to point out that the issues involved are by no means simple and Members have agreed that the Committee on Rules of Procedure should start its review on the Rules of Procedure as soon as its members are appointed by the President.

#### Article 74

3. The Solicitor General is seeking to argue that by giving the article a generous and purposive interpretation the meaning of the word "bill" in Article 74 should include Committee Stage amendments (CSAs) to a bill. He suggests that "any other interpretation would create the anomaly that Members might achieve by way of a CSA that which they could not attain by way of a bill."

4. In Legal Adviser's view, the principle of interpretation referred to by the Solicitor General may be understood more easily by following the approach adopted by Mortimer VP in the case of Director of Immigration v Chan Kam Nga (an infant) [1998]2 HKC 405 at 422 to 423: "The first task is to decide whether the words of the article bear a clear and plain meaning which involves neither anomaly nor absurdity.

If so, that meaning must prevail and it is unnecessary to fall back upon other aids to construction."

5. The plain reading of Article 74 does not give rise to any anomaly or absurdity. Article 74 authorizes Members to introduce bills in accordance with the provisions of the Basic Law and legal procedures. Exceptions under this authorization are bills relating to public expenditure or political structure or the operation of the government which Members are not allowed to introduce. The other exception is in respect of bills relating to government policies for which the written consent of the Chief Executive is required for introduction. It is clear that Article 74 is directed at the procedure of introduction of a bill as opposed to other possible procedures in the legislative process. The Basic Law contemplated that there would be amendments by Members to government bills, as evidenced by such reference in Annex II to the Basic Law. However, the details of procedures on amendment of bills are left to the Legislative Council to determine by way of rules of procedure.

6. On the suggested anomaly raised by the Solicitor General, it could be argued that it would be equally, if not more, anomalous if the same exceptions applied to CSAs because (given that most of the bills introduced by government would fall within one or more of the exceptions) it would deprive the Council of the opportunity to discuss and agree to proposals alternative to those proposed by government in a bill. This would raise serious doubt as to whether the Legislative Council was properly performing its constitutional function of enacting, amending or repealing laws under Article 73 of the Basic Law. The anomaly perceived by the Solicitor General may be seen as reflecting the intention of the Basic Law to leave open the question on proposed amendments to bills so that the Legislature may determine the proper checks and balances between the Executive and the Legislature through its rules of procedure.

#### Rules 57(6) and 69

7. In the first paragraph on page 2 of the Solicitor General's letter, it is said that Rules 57(6) and 69 do not reflect the correct interpretation of Article 74 of the Basic Law and are inconsistent with the Basic Law.

8. Rule 57(6) provides for the "charging effect" restriction on CSAs. Under that restriction any CSA which may have the object or effect of disposing of or charging any part of the revenue of Hong Kong can only be proposed by the Chief Executive (the CE), a designated public officer or a Member who has obtained the CE's consent in writing to the proposed CSA. Rule 69(3) provides for a procedure under which a

Member may move an amendment to an appropriation bill by taking the form of reducing the amount allotted to a head of expenditure.

9. Rule 57(6) was not made to apply Article 74. In the Standing Orders of the previous Legislative Council, a standing order of substantially the same wording was made to implement the restriction imposed by the Royal Instructions. In the Rules of Procedure of the Provisional Legislative Council, the same provision was adopted as a 'self-imposed' restriction which Members found necessary because, in their view, which was never challenged by the Government, Article 74 did not apply to CSAs and no restriction on the moving of CSAs was found in the Basic Law.

10. As regards Rule 69, it is not clear in the Solicitor General's letter in what way it should be amended. If the suggested amendment would result in removing the procedure under which Members may amend an appropriation bill by way of reducing a proposed amount, it would mean the Legislative Council could only pass or not pass an appropriation bill (with or without amendments proposed by the Government only) when performing its function to examine and approve budgets and to approve taxation and public expenditure. This way of defining the role of the Legislative Council would be very different from that for the previous legislatures including the Provisional Legislative Council which had the same task as the current Legislative Council of examining and approving budgets, and approving taxation and public expenditure as provided in section 5(2) and (3) of the Preparatory Committee's decision to establish the Provisional Legislative Council. It may raise doubt as to whether it would upset the checks and balances between the Executive and the Legislature in the area of public financial control which have been in place for many years, both before and after the Reunification.

#### Application of Articles 48(10) and 74

11. The Solicitor General is suggesting that decisions as to whether a motion falls within the ambit of "regarding revenues or expenditure" as provided in Article 48(10) of the Basic Law and whether a bill falls within the areas relating to public expenditure, political structure or the operation of the government or government policies should be for the Chief Executive.

12. Under Rules 31 (relating to 'charging effect' restrictions on motion), 51(3) (relating to Article 74 restrictions) and 57(6) (relating to 'charging effect' restrictions on CSAs) of the Rules of Procedure, it is for the President to form an opinion as to whether a proposed motion, bill or CSA falls within the relevant restriction.

13. In Legal Adviser's view, even assuming that the Solicitor General's opinion as to the effect of Articles 48(10) and 74 is accepted by Members, a procedural rule which requires the President to form an opinion on the question is quite in order and would not contravene the Basic Law. The President is empowered by Article 72(2) of the Basic Law to decide on the Agenda of the Legislative Council. The power is subject only to the condition that government bills are to be given priority on the Agenda. It would, therefore, be the President's duty to determine whether a proposed motion, bill or CSA falls within the Basic Law restrictions in order to decide whether it could be printed on the Agenda.

14. While acknowledging that neither Article 48(10) nor Article 74 expressly identifies the decision-maker, the Solicitor General argues that it is by necessary implication that such decisions must be made by the CE.

15. The same argument of necessary implication could be applied in support of the requirement in the Rules of Procedure that it is for the President to form the relevant opinions. These Basic Law restrictions are imposed as part of the scheme of checks and balances between the Executive and the Legislature. Bearing in mind that the Legislative Council is specifically authorized to make its own rules of procedure, the requirement that the President form the relevant opinions could not reasonably be seen as contravening the Basic Law.

16. In terms of checks and balances, public officers may make representations to the President when there is a need for her to make a ruling and they may raise a point of order at a meeting of the Council.

17. Although not directly relevant, it should be noted that under Standing Order No. 23 of the Standing Orders of the previous Legislative Council, the President was given the authority to form an opinion as to whether a motion would have charging effect. That Standing Order was for the purpose of implementing Clause XXIV of the Royal Instructions which also did not specify the identity of the "decision-maker".

#### Article 48(10)

18. The Solicitor General is of the opinion that Article 48(10) of the Basic Law applies to all kinds of motions which have any effect on revenues or expenditure as well as motions which are related to other aspects of revenue or expenditure.

19. Although the Solicitor General has suggested that the formulation in Rule 31 (the 'charging effect' restriction) is much narrower and more specific than "regarding

revenues or expenditure" specified in Article 48(10), Legal Adviser would like to point out that despite the textual difference it does not necessarily follow that Rule 31 contravenes Article 48 (10). The issue for consideration is whether the rule accurately implements the rather vague expression of "regarding revenues or expenditure".

20. Since all businesses of the Council are conducted by way of motion and because of the Council's functions under the Basic Law many of the motions moved by Members might fall within the ambit of "regarding revenues or expenditure". For example, a motion urging the Government to reduce tax or a motion to amend a piece of subsidiary legislation on increase of government fees. Members may wish to seek clarification from the Solicitor General as to how his opinion referred to in paragraph 19 above (see second paragraph on page 3 of the Solicitor General's letter) would reflect the proper checks and balances between the Executive and the Legislature as intended by the Basic Law.

#### Voting Procedure

21. Legal Adviser has provided Members with his advice on the issue. In Legal Adviser's view, the voting procedure provision in Annex II of the Basic Law has to be read as a whole. Simply singling out a certain phrase in the provision and ignoring its interaction with others could easily produce a distorted meaning.

22. In Legal Adviser's view, the wording of the provision in Annex II of the Basic Law is so clear that it would not be necessary to resort to other aids to interpretation. Nevertheless, it would be useful for Members to take note of the attached part of the speech on voting procedure given by the Mr Ji Peng-fei at the National Peoples's Congress meeting held on 28 March 1990 when moving for the adoption of the draft Basic Law. Mr Ji's explanation of the rationale and operation of the relevant provision in Annex II of the Basic Law confirms that the Rules of Procedure are not in contravention with it.

#### Position of the President

23. Members are aware of the so-called "anomalous outcome" described by the Solicitor General and have decided that the neutrality or impartiality of the President could only be judged by the President's own conduct. The need for counting the presence of the President under the voting procedure is dictated by the Basic Law.

24. The Solicitor General's proposal is to provide in the Rules of Procedure that the presence of the President could be discounted for the purpose of vote counting in

respect of bills or motions introduced by Members if the President decided not to vote. In Legal Adviser's view, the Solicitor General's proposal should be given more thought by Members. However, there may be problems concerning the quorum requirement under Article 75 of the Basic Law if a meeting is marginally quorate with 29 Members and the President when a vote is being taken.

Encl.

Prepared by  
MA Yiu-tim, Jimmy  
Legal Adviser  
Legislative Council Secretariat  
8 July 1998

## 關於《中華人民共和國香港特別行政區基本法 (草案)》及其有關文件的說明

——1990年3月28日在第七屆全國人民代表大會  
第三次會議上

中華人民共和國香港特別行政區  
基本法起草委員會主任委員 姬鵬飛

各位代表：

中華人民共和國香港特別行政區基本法起草委員會經過四年零八個月的工作，業已完成起草基本法的任務。全國人大常委會已將《中華人民共和國香港特別行政區基本法(草案)》包括三個附件和香港特別行政區區旗、區徽圖案(草案)，連同為全國人大代擬的《中華人民共和國全國人民代表大會關於香港特別行政區第一屆政府和立法會產生辦法的決定(草案)》和《香港特別行政區基本法起草委員會關於設立全國人民代表大會常務委員會香港特別行政區基本法委員會的建議》等文件提請全國人民代表大會審議。現在，我受香港特別行政區基本法起草委員會的委托就這部法律文件作如下說明。

根據《第六屆全國人民代表大會第三次會議關於成立中華人民共和國香港特別行政區基本法起草委員會的決定》，第六屆全國人大常委會第十一次會議任命了起草委員。1985年7月1日，起草委員會正式成立並開始工作。在制定了工作規劃，確定了基本法結構之後，起草委員會設立了五個由內地和香港委員共同組成的專題小組，即中央和香港特別行政區的關係專題小

組，居民的基本權利和義務專題小組，政治體制專題小組，經濟專題小組，教育、科學、技術、文化、體育和宗教專題小組，負責具體起草工作。在各專題小組完成條文的初稿之後，成立了總體工作小組，從總體上對條文進行調整和修改。1988年4月，起草委員會第七次全體會議公佈了《中華人民共和國香港特別行政區基本法(草案)》徵求意見稿，用五個月的時間在香港和內地各省、自治區、直轄市及有關部門廣泛徵求了意見，並在這個基礎上對草案徵求意見稿作了一百多處修改。1989年1月，起草委員會第八次全體會議採取無記名投票方式，對準備提交全國人大常委會的基本法(草案)以及附件和有關文件逐條逐件地進行了表決，除草案第十九條外，所有條文、附件和有關文件均以全體委員三分之二多數贊成獲得通過。同年2月，第七屆全國人大常委會第六次會議決定公佈基本法(草案)包括附件及其有關文件，在香港和內地各省、自治區、直轄市以及中央各部門，各民主黨派、人民團體和有關專家，人民解放軍各總部中廣泛徵求意見。經過八個月的徵詢期，起草委員會各專題小組在研究了各方面的意見後，共提出了專題小組的修改提案二十四個，其中包括對第十九條的修正案。在今年2月舉行的起草委員會第九次全體會議上，對這些提案採取無記名投票的方式逐案進行了表決，均以全體委員三分之二以上多數贊成獲得通過，並以此取代了原條文。至此，基本法(草案)包括附件及其有關文件的起草工作全部完成。

香港特別行政區區旗、區徽圖案的徵集、評選工作，由起草委員五人以及內地和香港的專家六人共同組成的香港特別行政區區旗區徽圖案評選委員會負責。在評委會對7147件應徵稿進行初選和複選後，起草委員會對入選的圖案進行了審議、評選，由於未能選出上報全國人大審議的圖案，又由評委會在應



第四章政治體制主要規定了香港特別行政區的行政、立法以及司法機關的組成、職權和相互關係，規定了香港特別行政區行政長官、主要官員、行政會議和立法會成員、各級法院法官和其他司法人員以及公務人員的資格、職權及有關政策，還規定了香港特別行政區可設立非政權性的區域組織等等。

香港特別行政區的政治體制，要符合“一國兩制”的原則，要從香港的法律地位和實際情況出發，以保障香港的穩定繁榮為目的。為此，必須兼顧社會各階層的利益，有利於資本主義經濟的發展；既保持原政治體制中行之有效的部分，又要循序漸進地逐步發展適合香港情況的民主制度。根據這一原則，本章以及附件一、附件二對香港特別行政區政治體制有以下一些主要規定：

（一）關於行政機關和立法機關的關係。行政機關和立法機關之間的關係應該是既互相制衡又互相配合；為了保持香港的穩定和行政效率，行政長官應有實權，但同時也要受到制約。草案規定，行政長官是香港特別行政區的首長，對中央人民政府和香港特別行政區負責。行政長官領導香港特別行政區政府；簽署法案並公佈法律，簽署財政預算案；行政長官如認為立法會通過的法案不符合香港特別行政區的整體利益，可將法案發回立法會重議，如行政長官拒絕簽署立法會再次通過的法案，或立法會拒絕通過政府提出的預算案或其他重要法案，經協調仍不能取得一致意見，行政長官可解散立法會。草案又規定，政府必須遵守法律，向立法會負責；執行立法會制定並已生效的法律，定期向立法會作施政報告，答覆有關質詢，徵稅和公共開支需經立法會批准；行政長官在作出重要決策、向立法會提交法案、制定附屬法規和解散立法會前，必須徵詢行政會議的意見。同時又規定，如立法會以不少於全體議員三分

之二多數再次通過被行政長官發回的法案，行政長官必須在一個月內簽署公佈，除非行政長官解散立法會；如被解散後重選的立法會仍以三分之二多數通過有爭議的原法案或繼續拒絕通過政府提出的財政預算案或其他重要法案，行政長官必須辭職；如行政長官有嚴重違法或瀆職行為而不辭職，立法會通過一定程序可提出彈劾案，報請中央人民政府決定。上述這些規定體現了行政和立法之間相互制衡、相互配合的關係。

（二）關於行政長官的產生辦法。草案規定，行政長官在當地通過選舉或協商產生，報中央人民政府任命。行政長官的產生辦法要根據香港的實際情況和循序漸進的原則而規定，最終達到由一個有廣泛代表性的提名委員會按民主程序提名後普選的目標。據此，附件一對行政長官的產生辦法作了具體規定，在1997年至2007年的十年內由有廣泛代表性的選舉委員會選舉產生，此後如要改變選舉辦法，由立法會全體議員三分之二多數通過，行政長官同意並報全國人大常委會批准。行政長官的具體產生辦法由附件規定比較靈活，方便在必要時作出修改。

（三）關於立法會的產生辦法和立法會對法案和議案的表決程序。草案規定，立法會由選舉產生，其產生辦法要根據香港的實際情況和循序漸進的原則而規定，最終達到全體議員由普選產生的目標。據此，附件二對立法會的產生辦法作了具體規定，第一、二屆立法會由功能團體選舉、選舉委員會選舉和分區直接選舉等三種方式產生的議員組成。在特別行政區成立的頭十年內，逐屆增加分區直選的議員席位，減少選舉委員會選舉的議員席位，到第三屆立法會，功能團體選舉和分區直選的議員各佔一半。這樣規定符合循序漸進地發展選舉制度的原則。附件二還規定，立法會對政府提出的法案和議員個人提出

的法案、議案採取不同的表決程序。政府提出的法案獲出席會議的議員過半數票即為通過；議員個人提出的法案、議案和對政府法案的修正案須分別獲功能團體選舉的議員和分區直接選舉、選舉委員會選舉的議員兩部分出席會議的議員的各過半數票，方為通過。這樣規定，有利於兼顧各階層的利益，同時又不至於使政府的法案陷入無休止的爭論，有利於政府施政的高效率。在特別行政區成立十年以後，立法會的產生辦法和對法案、議案的表決程序如需改進，由立法會全體議員三分之二多數通過，行政長官同意並報全國人大常委會備案。立法會的具體產生辦法和對法案、議案的表決程序由附件規定，也是考慮到這樣比較靈活，方便必要時作出修改。

(四) 關於香港特別行政區行政長官、行政會議成員、立法會主席、政府主要官員、終審法院和高等法院首席法官以及基本法委員會香港委員的資格。草案的有關條文規定，擔任上述職務的人必須是在外國無居留權的香港特別行政區永久性居民中的中國公民。這是體現國家主權的需要，也是體現由香港當地人管理香港的原則的需要，只有這樣才能使擔任上述職務的人切實對國家、對香港特別行政區以及香港居民負起責任。也正是基於這一考慮，有關條文還規定，特別行政區立法會必須由在外國無居留權的香港特別行政區永久性居民中的中國公民組成。但照顧到香港的具體情況，允許非中國籍的香港特別行政區永久性居民和在外國有居留權的香港特別行政區永久性居民可以當選為立法會議員，但其所佔比例不得超過立法會全體議員的20%。

(五) 關於香港特別行政區第一屆政府和立法會的產生辦法。根據體現國家主權、有利平穩過渡的原則，香港特別行政區的成立須由全國人大設立的香港特別行政區籌備委員會負責主持。考慮到籌備工作須在香港特別行政區第一屆政府和立法會成

立之前進行，而基本法要到1997年7月1日才開始實施，起草委員會建議，全國人大對第一屆政府和立法會的產生辦法作出專門決定，此項決定與基本法同時公佈。起草委員會為此起草了有關決定的代擬稿。規定香港特別行政區第一任行政長官，由香港人組成的推選委員會負責產生，報請中央人民政府任命；原香港最後一屆立法局的組成如符合全國人大關於特別行政區第一屆政府和立法會產生辦法的決定中的規定，其議員擁護基本法，願意效忠香港特別行政區並符合基本法規定條件者，經籌委會確認後可成為香港特別行政區第一屆立法會議員。這樣安排，是為了保證香港在整個過渡時期的穩定以及政權的平穩銜接。

此外，還規定行政長官、主要官員、行政會議和立法會成員、各級法院法官和其他司法人員在就職時必須宣誓擁護基本法，效忠中華人民共和國香港特別行政區。

五、關於經濟和教育、科學、文化、體育、宗教、勞工和社會服務。

第五章主要從財政、金融、貿易、工商業、土地契約、航運、民用航空等八個方面，就香港特別行政區的經濟制度和政策作了規定，這些規定對於保障香港的資本主義經濟機制的正常運行，保持香港的國際金融中心地位和自由港地位很有必要。如在金融貨幣方面規定，香港特別行政區不實行外匯管制政策，繼續開放外匯、黃金、證券、期貨等市場；保障一切資金的流動和進出自由；保障金融企業和金融市場的經營自由；確定港幣為特別行政區法定貨幣，可自由兌換，其發行權在特別行政區政府等等。又如在對外貿易方面規定，一切外來投資受法律保護；保障貨物、無形財產和資本的流動自由；除法律另有規定外，不徵收關稅；香港特別行政區為單獨的關稅地

**Rulings on Members' Bills**

This note provides information on the practices in common law jurisdictions, and in the former Legislative Council of Hong Kong, with regard to rulings over Members' bills.

**Practice and Procedure in other common law jurisdictions**

United Kingdom

2. In the House of Commons of the United Kingdom, any Member may, having given notice and subject to being given time on the specific days allotted each session for debate on private Members' bills, present a bill. Those Members (about 20 in each session) who are successful in getting a place in an annual ballot would have their bills put down for second reading on a day of their own choice and have the bills printed. Apart from those falling within the scope of financial procedures (explained in paragraph 3 below), any Member may move any bill including one directly in conflict with some aspect of Government policy. However, a bill introduced by an Opposition Member and which does not have the support of the Government would not be expected to be given a second reading and is often designed to give publicity to a political issue. It is nevertheless one way for back-benchers to initiate debates on matters of their choice.

3. The introduction of bills or motions by Members is subject to the fundamental principle governing the financial relationship between the Crown and the Parliament: the Crown demands money, the Commons grant it, and the Lords assent to the grant; but the Commons do not authorize expenditure or seek to impose taxes unless required by the Crown. These requirements are more specifically stated in two financial rules applying to the Parliament as a whole. First, that all charges (proposals for expenditure or taxation) must be demanded or recommended by the Crown before they can be considered. Second, all charges must first be considered by the House of Commons but must also be embodied in legislation for approval by both Houses.

4. The Parliament authorizes the various objects of expenditure and the sums to be spent on each; it also authorizes the levying of taxes. The authorization of public expenditure is often referred to as "charges upon the public revenue or upon public funds", while authorization of taxation is referred to as "charges upon the people". A charge of either kind must first be considered in the form of a resolution which, when

agreed to by the House, forms a necessary preliminary to the bill or clause by which the charge is authorized.

5. The rules of financial procedure are strictly observed by the House of Commons. Matters of interpretation are decided by the Speaker, or if they arise in committee of the whole House, by the Chairman. In discharging his duty to disallow any proceedings which would infringe the rules of financial procedure, the Chair relies in the last resort upon his power to decline to propose the necessary questions.

### Canada

6. In Canada, the Standing Orders of the House of Commons also lay down procedures to regulate the financial relationship between the Parliament and the Crown. In gist, the relationship is as follows: " ..... the Crown demands money and Parliament grants it ..... but the Commons do not vote money unless such taxation be necessary for the public service, as declared by the Crown through its constitutional advisers."

7. In the Canadian system of parliamentary government, the Sovereign, as represented by the Governor General, and acting on the advice of His or Her responsible ministers, is charged with the management of all revenues of the State and the payment of all public expenditures. The Standing Orders of the Commons require that " This House shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to the House by a message from the Governor General in the session in which such vote, resolution, address or bill is proposed. The message and recommendation of the Governor General shall be printed with or annexed to any bill for the appropriation of any part of the public revenue or of any tax or impost.

8. Before legislation can be brought in to implement taxation measures, a Ways and Means motion must be concurred in. Such a motion shall be forthwith decided without debate or amendment. If there is a breach of these procedures, the Speaker can decide on the matter. The Speakers of the Commons have ruled many times in the past on the "charging effect". In the case of Private Members' Bills, the Speaker sometimes takes the initiative at the time of introduction of the bill and rules the bill out of order, or the Speaker may rule the bill out of order at the later part of the proceedings, e.g. upon third reading if there has been no "Royal Recommendation", again on his own initiative or when a point of order is raised that the bill is not correctly before the House.

## Australia

9. In Australia, the Parliament has the ultimate control over Government finances in that taxes are imposed and Government expenditure authorized by legislation which must be agreed to by the Parliament.

10. The Constitution stipulates that bills appropriating revenue or moneys or imposing taxation must originate in the House of Representatives (House); the Senate may not amend such bills. However, the Senate may request the House to make such amendments as the Senate itself is unable to make, and the House may, if it thinks fit, then make the amendments. The question of whether a request may be acceded to is not a strict law on which the courts will pronounce. It is a matter of constitutional propriety between the Houses themselves. If the House refuses to accede to a request, the Senate can refuse to pass the bill as a matter of law.

11. A private Member of the House may not initiate a bill imposing or varying a tax or requiring the appropriation of revenue or moneys as this would also be contrary to the constitutional and parliamentary principle of the financial initiative of the Crown, that is, that no public charge can be incurred except on the initiative of the Government. Taxation bills must be introduced by a Minister, and amendments to bills to increase the rate or widen the incidence of a proposed tax can likewise only be made by a Minister. An important point to note, nevertheless, is that any Member may move to reduce a tax proposed in a bill. The above requirements are reflected in the Standing Orders of the House.

12. The Speaker presides over the debates of the House. He is empowered to interpret the Standing Orders and precedents, deal with points of order when they are raised, and give rulings when called upon to do so.

## **Practice and Procedure in Hong Kong before the Reunification**

13. In the former Legislative Council, the financial procedure applicable to the United Kingdom, as well as most other common law jurisdictions, also applied. The restriction that no Member could move bills, motions or Committee Stage amendments with "charging effect" was spelt out in the Royal Instructions and the Standing Orders of the Legislative Council. In the event that a Members' Bill was regarded as having a charging effect, the President reviewed the arguments put forward by the Government and the Member who introduced the Bill, and made a ruling on the Bill. Once the President had made a ruling, the decision was final.

14. As regards "charges on the people", no provision was made in the Standing Orders of the former Legislative Council to restrict Members from introducing a Bill to levy taxation.

15. Another opportunity for Members to take initiative on revenue issues was the moving of amendments to reduce the level of tax in bills or motions brought into force by Public Revenue Protection Orders made by the Governor as an interim measure.

Legislative Council Secretariat

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