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**Paper for the House Committee meeting
on 28 April 2000**

Committee on Rules of Procedure

**Report on the Application of the Rule of Anticipation
to Council Business**

Purpose

This paper reports the views of the Committee on Rules of Procedure on the application of the rule of anticipation to Council business and the provisions to be made in the Rules of Procedure for the purpose.

Background

2. At the House Committee meeting on 4 June 1999, Members discussed the appropriateness of the Council to debate a motion the subject of which was related to an issue being studied by the Public Accounts Committee. Members considered it undesirable to do so, but noted that the moving of such a motion was not disallowed under the Rules of Procedure. A Member considered that the subject was related to the application of the rule of anticipation and that any matter being considered by a standing committee which was expected to present a report on the matter to the Council should be deemed to have been set down for debate in Council. In the circumstances, the House Committee invited the Committee on Rules of Procedure (the Committee) to study whether and how the rule of anticipation should be applied to Council business.

Rule of anticipation

3. The Committee notes that the general principle underlying the rule of anticipation is that a matter appointed for consideration by the legislature must not be anticipated by another matter with substantially the same content but contained in a less effective form of proceeding. As regards the level of effectiveness of the various

forms of proceedings, the practice of the legislatures in other common law jurisdictions is that a bill is more effective than a motion, and a motion more effective than a question.

Practices in other jurisdictions and in Hong Kong

4. The Committee notes that the rule of anticipation is expressly provided for in the Standing Orders of the House of Commons in the United Kingdom (UK) and the House of Representatives in Australia. In practice, it has been applied in the legislatures in UK, Australia and Canada in varying degrees. While the objective is to ensure that a matter will be dealt with in the most effective form of proceeding, the Speaker, in determining whether a discussion is out of order on the ground of anticipation, must have regard to the probability of the matter anticipated being brought before the House within a reasonable time.

5. In Hong Kong, the rule of anticipation is not expressly provided for in the Rules of Procedure of the Legislative Council, but Rule 25(1)(e) (Contents of Questions) does provide that a question shall not refer to proceedings in a committee before that committee has made its report to the Council. The Committee notes that all matters for which notices have been given unless found not in order by the President will be placed on the agenda for a specific Council meeting and will be dealt with at that meeting, irrespective of the length of time required. The probability that the matter being anticipated would not be brought before the Council "within a reasonable time", as in the case of UK, Australia and Canada, therefore does not arise. In the circumstances, an item of business of which a Member has given notice to the Clerk to the Legislative Council will be taken as a matter appointed for consideration by the Council.

The Committee's views

6. The Committee sees the merits of applying the rule of anticipation to Council business to ensure that a matter will be dealt with in the most effective form of proceeding and, the effective use of the Council's meeting time. The Committee considers that the rule should be applied not only to questions, but also to other areas of Council business, namely bills, motions, and any matter being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into a matter. However, the Committee considers that the rule should not be applied to matters being considered by Panels so as not to hinder the exchange of views between Members and the Administration on various policy issues.

Questions

7. The Committee notes that under the current practice of the Council and as laid down in the House Rules, Members are required to provide the draft wording of the questions to be asked at a specific Council meeting well ahead of the notice period. Where two or more Members have put in questions of similar content, the Members concerned will be advised to reach an agreement on who will ask the question, failing which the Member who has asked the least number of questions in the session will have the priority and his question will be put before the President for inclusion in the agenda. The anticipation of a question already set down for a specific Council meeting by another question therefore does not arise under normal circumstances.

8. The Committee agrees that a question which has been given a slot for a specific Council meeting must not be anticipated unless by a more effective form of proceeding. However, if urgent questions raised under Rule 24(4) satisfy the tests of urgency and public importance, the rule of anticipation should not apply to them and they should be allowed to be asked. To put the above arrangement into effect, the Committee agrees that *a new subrule (3) should be added to Rule 25 (Contents of Questions)*, as follows:

(3) If the President is of the opinion that the subject matter of a question or any part thereof notice of which is given under Rule 24(2) is substantially the same as that of any matter:

- (a) raised in another question notice of which has been given earlier for the same Council meeting; or
- (b) raised in a motion, or a bill, notice of which has been given earlier for a specific Council meeting; or
- (c) being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into that matter,

the President may direct that the Member be informed that the question or a part thereof is out of order.

Motions

9. In respect of motions, the Committee agrees to adopt the principle that a matter appointed for consideration by the Council must not be anticipated by another matter with substantially the same content but contained in a less effective form of proceeding. In other words, a motion notice of which has been given must not be

anticipated by a question. The proposed new Rule 25(3)(b) has already addressed this situation.

10. As for motions vis-à-vis motions, the Committee considers that a motion intended to have legislative effect notice of which has been given for a specific Council meeting must not be anticipated by a motion which is not intended to have the same effect. As regards two motions of the latter category which are on a subject matter substantially the same, there is a slot-allocation mechanism under the House Rules to allow only one of these motions to be put on the agenda for a Council meeting. The Committee is of view that as the present arrangement has been working well, it is not necessary to make a new provision in the Rules of Procedure in this respect.

11. The Committee however notes that the mechanism under House Rules is not binding on the Government. A public officer may give notice to move a motion on a matter which is substantially the same as that of a Member's motion notice of which has been given. Since Article 72(2) of the Basic Law provides that the President of the Legislative Council shall exercise the power and function "to decide on the agenda, giving priority to government bills for inclusion in the agenda (決定議程，政府提出的議案須優先列入議程)", the Committee agrees that the President should allow the Government motion (政府議案) to be included in the agenda of the Council so long as all other rules in the Rules of Procedure have been complied with. The Committee considers that the Rules of Procedure, as they now stand, already allow the Government to move motions and be given priority on the agenda for the Council meeting.

12. The Committee notes that where two motions contained in an equally effective form of proceedings are placed on the agenda for a Council meeting, when a decision has been taken on the first motion, the second motion cannot be proceeded with in accordance with Rule 32 (Motions on Previous Decisions of Council). The Committee therefore considers that no new provision in the Rules of Procedure is required in this respect.

13. As regards motions vis-à-vis proceedings of a committee, the Committee agrees that the proceedings of a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry must not be anticipated by a motion other than one which is intended to have legislative effect.

14. As regards motions vis-à-vis bills, the Committee considers that for the purpose of applying the rule of anticipation, a bill is equally effective as a motion intended to have legislative effect. In the circumstances, a bill notice of which has been given for a specific Council meeting must not be anticipated by a motion which is not intended to have legislative effect. It is however understandable that some Members may wish to move a motion for the purpose of expressing an opinion on a

forthcoming legislative proposal. To strike a balance between effective use of Council's time and Members' right to speak on matters of public concern, the Committee agrees that if the motion has already been placed on the agenda for a Council meeting and the notice for the introduction of the bill to the Council is given at a later date, the motion should be allowed to be proceeded with.

15. To put the above arrangements into effect, the Committee agrees that *a new subrule (2) should be added to Rule 31 (Restriction on Motions and Amendments)*, as follows:

(2) If the subject matter of a motion (not being a motion proposed to be moved by a designated public officer) not intended to have legislative effect and notice of which is given is substantially the same as that of:

- (a) a motion intended to have legislative effect, or a bill, notice of which has been given earlier for a specific Council meeting; or
- (b) any matter being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into that matter,

the President shall direct that the notice be returned to the Member who signed it, as being in his opinion out of order.

Bills

16. The Committee notes that although not explicitly provided in the Rules of Procedure, it is procedurally in order to have two bills of substantially the same provisions before the Council at the same time. This is evidenced by Rule 51(7)(a) which provides that once the Council has taken decision on a bill at the second reading of the bill, the other bill with substantially the same provisions as the former shall not be proceeded with in the same session. Hence, there is no need to make provisions in the Rules of Procedure to apply the rule of anticipation to bills vis-à-vis bills situations.

Amendments to the Rules of Procedure

17. The Committee recommends that the amendments to Rules 25 and 31 of the Rules of Procedure as set out in paragraphs 8 and 15 above be put before the Council for approval within the current session. Consequential amendments to Rule 23(3) of the Rules of Procedure (Question Time) and House Rule 7(a) (Number and Allocation of Questions) are also required. All the proposed amendments to the Rules of

Procedure are set out in Appendix 1(a), (b) and (c). The proposed amendment to the House Rules is set out in Appendix 2.

Advice sought

18. Members are invited to note the proposed amendments to the Rules of Procedure and the House Rules set out in Appendices 1(a), (b), (c) and 2.

19. Subject to any views which Members may have, Hon Mrs Selina CHOW, Chairman of the Committee, will move a motion at a Council meeting within the current session for the Rules of Procedure to be amended as proposed. The House Rules will be amended after the passage of the motion.

Council Business Division 1
Legislative Council Secretariat
25 April 2000

Proposed amendments to Rule 25 of the Rules of Procedure

25. Contents of Questions

- (1) A question shall conform to the following rules:
 - (a) A question shall not include the names of persons, or statements which are not strictly necessary to make the question intelligible.
 - (b) A question shall not contain a statement which the Member who asks the question is not prepared to substantiate.
 - (c) A question shall not contain arguments, inferences, opinions, imputations or epithets, or tendentious, ironical or offensive expressions.
 - (d) A question shall not contain independent questions or be so complex that it cannot reasonably be answered as a single question.
 - ~~(e) A question shall not refer to proceedings in a committee before that committee has made its report to the Council.~~
 - (f) A question shall not seek information about a matter which is of its nature secret.
 - (g) A question shall not reflect on the decision of a court of law or be so drafted as to be likely to prejudice a case pending in a court of law.
 - (h) A question shall not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition.
 - (i) A question shall not be asked whether statements in the press or of private individuals or private concerns are accurate.
 - (j) A question shall not be asked about the character or conduct of any person mentioned in Rule 41(7) (Contents of Speeches) and a question shall not be asked about the character or conduct of any other person except in his official or public capacity.

- (k) A question shall not be asked seeking information which can be found in accessible documents or ordinary works of reference.
- (l) A question which has been fully answered shall not be asked again during the same session.

(2) If the President is of the opinion that a question of which a Member has given notice to the Clerk or which a Member has sought to ask without notice infringes any of the provisions of Rule 22 (Nature of Questions) or of this Rule, he may direct –

- (a) that it be placed on the Agenda of the Council with such alterations as he may direct; or
- (b) in the case of a question which a Member has sought to ask without notice, that it may be so asked with such alterations as he may direct; or
- (c) that the Member concerned be informed that the question is out of order.

(3) If the President is of the opinion that the subject matter of a question or any part thereof notice of which is given under Rule 24(2) is substantially the same as that of any matter:

- (a) raised in another question notice of which has been given earlier for the same Council meeting; or
- (b) raised in a motion, or a bill, notice of which has been given earlier for a specific Council meeting; or
- (c) being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into that matter,

the President may direct that the Member be informed that the question or a part thereof is out of order.

Proposed amendments to Rule 31 of the Rules of Procedure

31. Restriction on Motions and Amendments

(1) _____ 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 -

- (a) the Chief Executive; or
- (b) a designated public officer ; or
- (c) a Member, if the Chief Executive consents in writing to the proposal.

_____ (2) If the subject matter of a motion (not being a motion proposed to be moved by a designated public officer) not intended to have legislative effect and notice of which is given is substantially the same as that of:

- _____ (a) a motion intended to have legislative effect, or a bill, notice of which has been given earlier for a specific Council meeting; or
- _____ (b) any matter being considered by a standing committee or a select committee, or a committee authorized by the Council to conduct an inquiry into that matter,

the President shall direct that the notice be returned to the Member who signed it, as being in his opinion out of order.

Proposed amendment to Rule 23 of the Rules of Procedure

23. Question Time

(1) Questions may be asked at any meeting except the first meeting of a term or a meeting at which the President is elected or the Chief Executive addresses the Council on the policies of the Government.

(2) With the exception of questions asked under Rule 24(4) (Notice of Questions), not more than 20 questions of which notice has been given may be asked at any one meeting and the questions shall be counted by the Clerk in the manner recommended by the House Committee and agreed by the President.

(3) Where, in the opinion of the President, there will be no debate on a motion ~~with no~~ not intended to have legislative effect at a meeting, no more than 10 questions shall require an oral reply. Where, in the opinion of the President, there will be such a debate, no more than 6 questions shall require an oral reply. The questions shall be counted by the Clerk in the manner recommended by the House Committee and agreed by the President.

(4) The House Committee may recommend to the President that in respect of a particular meeting no question requiring an oral reply should be asked; and if the President accepts such recommendation no such question shall be asked at that meeting, save that the President may permit urgent questions under the provisions of Rule 24(4) (Notice of Questions).

Proposed amendment to House Rule 7

7. Number and Allocation of Questions

- (a) Where there is no debate on a motion ~~with no~~ not intended to have legislative effect at a meeting, no more than 10 oral questions shall be asked. Where, in the opinion of the President, there will be such a debate at a meeting, no more than six oral questions shall be asked and the time limit shall, depending on the Agenda for the meeting, normally be one to one and a half hours. Where 10 oral questions are to be asked at a meeting, the duration of question time shall be not more than two and a half hours.
- (b) Under Rule 24(3) of the Rules of Procedure, each Member is normally limited to asking only one oral and one written or alternatively two written questions at any one meeting. However, if 20 or more Members wish to raise questions at a meeting, each Member is allowed to raise only one question.
- (c) The allocation of questions to be asked at a meeting is normally based on the order of registration of the questions by the Secretariat. Where there are more questions to be raised by Members than can be scheduled for the same meeting and subject to (b) above, priority will be given to Members who have been allocated the least slots respectively for oral or written questions within the session.
- (d) Members may be accorded priority to ask questions with the agreement of the House Committee. Topical interest, public concern and urgency of questions, if any, will be taken into account by the House Committee when making decisions in this regard.
- (e) At the Council meetings for debate on the Appropriation Bill and for the policy debate, there will be no arrangement for Members to put oral questions to the Government.