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**Paper for the House Committee meeting
on 9 June 2000**

Committee on Rules of Procedure

**Studies on the implementation of
Articles 49, 50 and 51 of the Basic Law
and moving of amendment withdrawn**

Purpose

This paper outlines the findings of the studies conducted by the Committee on Rules of Procedure (the Committee) on the following subjects and its proposals to amend the Rules of Procedure and the House Rules for putting in place procedural rules in relation to these subjects:

- (a) Reconsideration of a bill returned by the Chief Executive (CE) in accordance with Article 49 of the Basic Law;
- (b) Procedural arrangements for processing an Appropriation Bill presented to the Legislative Council (the Council) following the refusal of the Council to pass a budget under Articles 50 and 51 of the Basic Law; and
- (c) Moving of amendment which has been withdrawn before it is moved.

Reconsideration of a bill returned by the Chief Executive in accordance with Article 49 of the Basic Law

2. The Committee notes that when the draft Rules of Procedure were considered in June 1998, Members-elect had identified for further deliberation a number of issues in relation to the procedure for dealing with bills returned for reconsideration by CE in accordance with Article 49 of the Basic Law. Members-elect then agreed that for the time being, only the essential procedural steps were to be provided in the Rules of Procedure (Rule 66). As

a follow up, the Committee conducted a detailed study on the subject.

3. The Committee notes that under Article 49 of the Basic Law, if CE considers that a bill passed by the Council is not compatible with the overall interests of the Hong Kong Special Administrative Region (HKSAR), he may return it to the Council within three months for reconsideration. If the Council passes the original bill again by not less than a two-thirds majority of all the members and CE still refuses to sign it, and if consensus cannot be reached after consultations, CE may dissolve the Council in accordance with Article 50 of the Basic Law. In view of the serious nature of the matter, the Committee considers it necessary to provide a mechanism in the Rules of Procedure to enable the Council to process the returned bill. As this mechanism would involve CE, the Committee also sought the views of the Administration at every stage of its deliberation.

4. Both the Committee and the Administration consider that the return of a bill to the Council for reconsideration is a serious matter and should only take place under very exceptional circumstances and with good reason. The Administration is particularly concerned about the way to ensure an avenue for compromises to be made and consensus to be reached.

5. The Committee notes that under the current Rule 66 of the Rules of Procedure (Bills Returned for Reconsideration) and the current practice, there is no restriction on the introduction of an amendment bill to amend a bill passed but not yet signed by CE. The Committee is therefore of the view that if CE considers it not compatible with the overall interests of HKSAR to sign a bill passed by the Council, he may introduce an amendment bill to amend the bill passed within the same session. The amendment bill, like any other bills, shall be referred to the House Committee for consideration after it is adjourned at second reading. How the amendment bill is to be taken further will be determined by the House Committee. If consensus can be reached and the amendment bill is passed within three months of the passage of the original bill, both bills could be signed and promulgated. If it is not likely that the scrutiny of the amendment bill can be completed before the expiry of the three-month period, CE would have to return, in accordance with Article 49, the original bill to the Council for reconsideration. The returned bill will then be processed in accordance with Rule 66(4), (5) and (6) of the Rules of Procedure. The Committee therefore considers the mechanism provided under the current Rules of Procedure adequate to cater for the return of a bill under Article 49. However, for the sake of clarity, the Committee accepts the Administration's proposal to amend Rule 66(6) to reflect that when the House Committee is deciding on the manner in which a returned bill should be considered, it may take account of an amendment bill that may have been presented by the Government. The proposed amendment to Rule 66 is provided in **Appendix 1(a)**.

6. The Committee also proposes to delete Rule 61(5) (Procedure on Reporting of Bill from a Select Committee) which has previously been added to the Rules of Procedure inadvertently. The proposed amendment to Rule 61 is provided in **Appendix 1(b)**.

Procedural arrangements for processing an Appropriation Bill presented to the Council following the refusal of the Council to pass a budget under Articles 50 and 51 of the Basic Law

7. The Committee notes that Article 50 of the Basic Law also provides that if the Council refuses to pass a budget or any other important bill introduced by the Government, and if consensus cannot be reached after consultations, CE may dissolve the Council. The Committee finds it necessary to review the current provisions in the Rules of Procedure to ensure that procedural arrangements are in place to deal with the budget presented after the Council and the Administration have reached consensus.

8. The Committee noted that the term “budget” may cover both expenditure and revenue, and therefore considered it necessary to clarify the scope of the term before it could proceed with the study of the relevant procedural arrangements. At the House Committee meeting on 16 April 1999, the matter was referred to the Panel on Constitutional Affairs (CA Panel) for further study. The CA Panel reported to the House Committee on 11 February 2000 indicating its acceptance of the Administration's interpretation that the term "budget" in the context of Articles 50 and 51 referred only to the Appropriation Bill.

9. Upon further deliberation, the Committee accepts the CA Panel's view that the term “budget” should refer only to the Appropriation Bill. Nevertheless, the Committee considers that a decision of the Council to negative the second reading or third reading motion on an Appropriation Bill should be taken as the refusal of the Council to pass a budget.

10. On the procedural arrangements, the Committee considers that, in the light of the provision in Article 50, there should be an opportunity for “consultation” to take place and “consensus to be reached”. If consensus can be reached, the Administration should be allowed to present a fresh Appropriation Bill which may or may not be the same or substantially the same as the original one rejected by the Council. If the fresh Appropriation Bill is the same or substantially the same as the original one, the proceedings on it will be caught by Rule 51(7)(a) which provides that a bill which 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. The Committee therefore agrees that such an Appropriation Bill should be exempted from the application of Rule 51(7)(a)

and that a new subrule (7A) be added to Rule 51 to provide that where the motion for the second or third reading of an Appropriation Bill is negatived, another Appropriation Bill containing the same or substantially the same provisions may be presented within the same session. The Administration supports the proposed amendments to Rule 51 which are provided in **Appendix 1(c)**.

11. The Committee also notes that the CA Panel will further examine what constitutes "any other important bill" in the context of Article 50 of the Basic Law. The Committee will consider, after the CA Panel's deliberation on the subject, whether exemption from the application of Rule 51(7)(a) should also be provided to an "important bill".

Moving of amendment which has been withdrawn before it is moved

12. The President of the Council has requested the Committee to examine the procedural arrangements for Members to move an amendment which has been withdrawn before it is moved by the Member in whose name the amendment stands. The need for conducting a review on the subject arose from an incident in which two Members who had given notices to move amendments to the District Councils Bill on 10 March 1999 withdrew their notices before the Chairman of the committee of the whole Council called upon them to move the amendments. A Member considered the withdrawal of the amendments unfair to him and other Members who were in support of the amendments. He therefore sought the Chairman's permission to move the amendments without notice. Having considered the fact that the contents of the proposed amendments had already been set out on the agenda and there had been sufficient time for Members to consider the amendments, the Chairman granted leave under Rule 57(2) for the Member to move the amendments without notice.

13. The Committee notes that under normal circumstances, the Chairman of the committee of the whole Council will only grant leave under Rule 57(2) for Members to move amendments without notice during committee stage to amend the wording of their proposed amendments to make them compatible with other amendments which have just been passed. Rule 57(2) has seldom been used to allow a Member to move an amendment the notice of which has been withdrawn before it is moved. The Committee also notes that there is no provision in the Rules of Procedure to enable any amendment the notice of which has been given to be considered and voted upon if the Member who has given the notice does not wish to pursue it.

14. Having referred to the practices in overseas jurisdictions, the Committee notes that the arrangements in the United Kingdom (UK), Canada and Australia allow more than one Member to move the same amendment. In UK and Canada, in the event that the Member who should move such an amendment withdraws it before the question on it is proposed, the Member next on the list may move the amendment. In the case of Australia, since no notice is required for moving amendments, the question of Members not being able to move amendments owing to lack of notice does not arise.

15. The Committee considers that as long as Members are given the opportunity to consider the amendment before it is moved, there is no reason why it cannot be moved by another Member if the Member who first gave the notice does not intend to pursue it. The Committee therefore recommends that express provision be made to allow more than one Member to give notice to the same amendment. All Members are required to give notice in accordance with Rules 29(6) and 57(2), as appropriate, and their names are listed in the order in which the notices were received by the Clerk. The first Member on the list shall be called upon to move the amendment. If he has withdrawn or decides not to move the amendment, the Member next on the list shall be so called upon and so on until the list is exhausted.

16. To achieve the above arrangement, the Committee proposes to amend Rule 30 (Manner of Giving Notice of Motions and Amendments) and Rule 35 (Withdrawal of Motions and Amendments) of the Rules of Procedure, and to add a new Rule 19A (Amendments to Motions) to the House Rules. The proposed amendments to Rules 30 and 35 and the proposed new House Rule 19A are in **Appendices 1(d), 1(e) and 2** respectively.

Advice sought

17. Members are invited to note the proposed amendments to the Rules of Procedure and the House Rules set out in Appendices 1 and 2 respectively.

18. Subject to any views which Members may have, Hon Mrs Selina CHOW, Chairman of the Committee on Rules of Procedure, will move a motion at the Council meeting on 21 June 2000 to amend the Rules of Procedure as proposed. In order to meet the 12 clear days' notice requirement, Hon Mrs Selina CHOW has already given notice to move the motion. The House Rules will be amended after the passage of the motion.

Proposed amendment to Rule 66 of the Rules of Procedure

66. Bills Returned for Reconsideration

(1) Where a bill passed by the Council is to be returned to the Council for reconsideration, notice of the return shall be given to the Clerk within 3 months of the passage of the bill; such notice shall be accompanied by a copy of the bill and a certificate signed by the Chief Executive certifying that he is returning the bill to the Council for reconsideration under Article 49 of the Basic Law.

(2) The Clerk shall, after receipt of the bill for reconsideration, cause a copy of the bill to be sent to every Member and the text of the bill to be published in the Gazette unless the President directs that the bill shall not be published in the Gazette before the short title of the returned bill has been read at a meeting of the Council.

(3) The short title of the bill shall be placed on the Agenda of a meeting of the Council as directed by the President.

(4) After the short title of the bill has been read by the Clerk, a designated public officer may speak on the return of the bill, whereupon the bill shall be referred to the House Committee unless the Council, on a motion which may be moved without notice by any Member, otherwise orders.

(5) If the Council orders that the bill shall not be referred to the House Committee, the bill shall be deemed to have been ordered to be set down for a motion “That the Bill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration”, which may be moved by any Member without notice. The order of the Council shall be so recorded in the minutes of proceedings.

(6) When a returned bill is referred to the House Committee, the House Committee shall immediately arrange (and if considered necessary, in conjunction with any referred bill as may have been presented for the purpose of amending the returned bill) for the returned bill to be considered in such manner as it thinks fit, and after it has completed deliberation on the returned bill, a motion “That the Bill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration” may be moved at a meeting of the Council.

(7) No amendment may be moved to a motion moved under subrule (5) or (6).

(8) If the number of Members in favour of the motion “That the Bill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration” is not less than a two-thirds majority of all the Members, the Clerk shall read the short title of the bill and shall write at the end of the bill the words “Reconsidered and passed by not less than a two-thirds majority of all the Members of the Legislative Council of the Hong Kong Special Administrative Region this day” giving the date. A true copy of the bill shall be certified by the Clerk and submitted to the Chief Executive for his signature.

(9) If the number of Members in favour of the motion “That the Bill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration” is less than a two-thirds majority of all the Members, the Clerk shall read the short title of the bill and shall write at the end of the bill the words “Reconsidered, with less than a two-thirds majority of all the Members of the Legislative Council of the Hong Kong Special Administrative Region in favour of the motion that the Bill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration, this day” giving the date. A true copy of the bill shall be certified by the Clerk and submitted to the Chief Executive.

(10) If a returned bill is signed by the Chief Executive under Article 76 of the Basic Law and notice thereof is given to the Clerk before a motion on that bill is moved under subrule (5) or (6), no further proceedings shall be taken on the bill.

Proposed amendment to Rule 61 of the Rules of Procedure

61. Procedure on Reporting of Bill from a Select Committee

(1) When a bill has been reported from a select committee the Council may consider the bill as reported on a motion, moved by the chairman of the select committee, that the report of the select committee on the bill be adopted.

(2) If that motion is agreed to without amendment, the Council shall be deemed to have ordered the bill to be set down for third reading and the order of the Council shall be so recorded in the minutes of proceedings, and notice of third reading shall not be required to be given by the Member in charge of the bill.

(3) On a motion to adopt the report of a select committee on a bill moved under subrule (1), a Member may propose an amendment to add at the end of the motion the words “subject to the recommittal of the bill (either wholly or in respect only of some particular part or parts of the bill or of some proposed new clause or new schedule) to a committee of the whole Council”.

(4) If the motion is agreed to as amended in accordance with subrule (3), the bill shall stand recommitted as required by the motion, and the Council shall immediately resolve itself into a committee of the whole Council to consider it.

~~(5) This Rule shall not apply to the procedure on the reporting of a bill from a select committee formed to consider a bill returned by the Chief Executive to the Council for reconsideration.~~

Proposed amendments to Rule 51 of the Rules of Procedure

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 which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill. *(L.N. 107 of 1999)*

(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) (a) Except as otherwise provided in subrule (7A) and 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.
- (b) 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).

(7A) Where the motion for the second or third reading of an Appropriation Bill is negatived, another Appropriation Bill containing the same or substantially the same provisions may be presented within the same session.

(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.

Proposed amendment to Rule 30 of the Rules of Procedure

30. Manner of Giving Notice of Motions and Amendments

(1) Notice of a motion or an amendment shall be given by delivering a copy of the motion or amendment in writing to the office of the Clerk. Subject to Article 73(9) of the Basic Law, the notice shall be signed by the Member wishing to move the motion or amendment, and such other Members who introduce the motion or amendment jointly with the mover of the motion or amendment.

(1A) Notice of a motion moved under Rule 49B(1A) (Disqualification of Member from Office) shall be signed by the Member wishing to move the motion and 3 other Members. *(L.N. 107 of 1999)*

(2) A notice of an amendment to a motion shall be in Chinese if the motion is in Chinese and in English if the motion is in English.

(3) A notice of a motion or an amendment shall be submitted to the President, who shall direct –

- (a) that it be printed in the terms in which it was handed in; or
- (b) that it be printed with such alterations as he may direct; or
- (c) that it be returned to the Member who signed it, as being in his opinion out of order.

(4) If more than one notice is received by the Clerk for the same amendment, the Member who gave the earliest notice which has not been withdrawn shall be the mover of the amendment.

Proposed amendment to Rule 35 of the Rules of Procedure

35. Withdrawal of Motions and Amendments

(1) A notice of a motion or an amendment may be withdrawn at any time before it is moved, if the ~~mover~~Member in whose name the motion or amendment stands gives instructions to that effect to the Clerk.

(2) A motion or an amendment may be withdrawn at the request of the mover by leave of the Council or committee of the whole Council before the question is put thereon, if there is no dissenting voice. A motion or amendment which has been so withdrawn may be proposed again if, in the case of a motion, the notice required by these Rules of Procedure is given.

Proposed new House Rule 19A

19A. Amendments to Motions

- (a) Members may give notices of the same amendment to a motion or a bill, subject to the notice requirements given in Rules 29(6) and 57(2) of the Rules of Procedure, as appropriate.
- (b) Where more than one Member give notices of the same amendment, the amendment will be issued under the list of Members who have given notices of the amendment in the order in which the notices were received by the Clerk.
- (c) The first Member on the list shall be called upon to move the amendment. If he has withdrawn the notice or decides not to move the amendment, the Member next on the list shall be so called upon and so on until the list is exhausted.