

香港特別行政區
立法會
議事規則委員會

**Committee on Rules of Procedure
of the Legislative Council
of the Hong Kong Special Administrative Region**

關於實施《基本法》第七十九(六)條的程序安排報告書
**Report on the Procedural Arrangements
for implementing Article 79(6) of the Basic Law**

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I. Introduction

1.1 This report outlines the deliberations of the Committee on Rules of Procedure (the Committee) on the procedural arrangements for relieving a Member of his duties under Article 79(6) of the Basic Law. It also contains the Committee's proposed amendments to the Rules of Procedure in relation to the implementation of such arrangements.

1.2 The Committee was established on 10 July 1998 through the appointment of 12 Members by the President in accordance with an election procedure determined by the House Committee. A membership list is in **Appendix I**. The functions of the Committee are to review the Rules of Procedure of the Council and the committee system, and to propose to the Council any amendments or changes as are considered necessary. The Committee also examines matters of practice and procedure relating to the Council referred by the Council or its committees or the President, or raised by its own members.

1.3 The Committee first met on 15 July 1998 to draw up a list of issues which are to be examined by the Committee and has since held several meetings to deliberate on issues contained therein. One of the issues so listed and which is to be examined within the current session is the arrangements for implementing the provision in Article 79(6) of the Basic Law. Article 79(6) provides that when a Member of the Legislative Council "is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the Members of the Legislative Council present", the President of the Legislative Council shall declare that the Member is no longer qualified for the office.

1.4 Consequent upon a meeting of the House Committee on 5 August 1998, the Committee was requested to study the procedural arrangements and any issues related to the implementation of Article 79(6) and recommend the course of action to be taken in respect of such arrangements.

1.5 In response to the request of the House Committee, the Committee has held five meetings in August 1998 to deliberate on the issue, including one meeting to which non-Committee members were invited to give views on the matter.

II. Consultation with Members

2.1 The Committee, after holding the first round of discussions on the various aspects in implementing Article 79(6) including the interpretation of the Article and how far the current Rules of Procedure had provided rules for dealing with the motion concerned, considered it appropriate to invite views from all Members of the Council. Non-Committee members were invited to a meeting on 15 August 1998 to give their views. To facilitate deliberations, a consultation paper outlining the approaches and options considered by the Committee was issued for Members' reference. A copy of the consultation paper is at **Appendix II**.

2.2 At the meeting, Members generally expressed support for procedural rules to be drawn up as far as practicable for incorporation into the Rules of Procedure for implementing Article 79(6) of the Basic Law as the Rules have a formal and permanent status. Members also gave views on the following:

- (a) the form of a motion moved under Article 79(6), including how it should be worded, who may move the motion, and whether it should be amendable;
- (b) the rules of speaking, including the restriction on time, and the opportunity for the Member concerned to address the Council or for his written statement to be read at a meeting;
- (c) the voting procedure; and
- (d) whether another motion could be moved to rescind the decision of the Council on the motion within the same session or the same term.

The attendance at the meeting on 15 August 1998 is at **Appendix III**.

III. Views of the Committee

3.1 In accordance with the wish of Members, the Committee has adopted the approach of drawing up procedural rules as far as practicable for incorporation into the Rules of Procedure for implementing Article 79(6) of the Basic Law.

3.2 The Committee also considers that the procedural arrangements to be instituted should apply to all motions which may be moved under Article 79(6). The Committee is aware that other procedural arrangements would also be required for implementing other provisions in the Basic Law. **It is of the view that as far as possible, the general philosophy and principles underlying the way Council business is conducted should be maintained, and existing procedures governing motions, rules of speaking, etc. should remain unchanged. Only when general rules are considered not applicable should specific rules be drawn up for incorporation into the Rules of Procedure, or suitable amendments made to existing rules, to cater for such special circumstances.**

Form of Motion

3.3 Under the Rules of Procedure, a motion may be moved by any Member of the Council or any public officer designated by the Government of the Hong Kong Special Administrative Region. Except in certain areas as specified in Rule 10 (Participation of Public Officers in Proceedings), the Rules of Procedure also apply to public officers when they transact Council business at meetings of the Council. The Committee has noted that a motion under Article 79(6) could be moved by any Member. The Article does not preclude a public officer from doing so. Besides, Article 62(5) provides for the Government of the Hong Kong Special Administrative Region to, inter alia, introduce motions into the Council. The Committee therefore does not see any particular reason to bar public officers from moving a motion under Article 79(6) or speaking on the motion. As such, **the Committee concludes that existing rules on the moving of motions should apply and that motions under Article 79(6) of the Basic Law may be moved by either a Member or a designated public officer.**

3.4 Since the Rules of Procedure allow the moving of a motion subject to the requisite notice requirements, and the case will automatically be discussed by the House Committee if such a motion were to be moved in

Council, **the Committee does not see any need to lay down any special procedure or time frame to trigger off the moving of the motion.** The need for the presentation of relevant papers to the Council would be a matter to be decided by the Member moving the motion.

3.5 A motion moved under Article 79(6) would be for the purpose of deciding whether a Member, after having been sentenced to imprisonment for one month or more, should be relieved of his duties as a Member of the Legislative Council. The objective and effect of such a motion should therefore be single-barrelled and unequivocal; this dictates the need for the wording of the motion to be short and precise. Having regard to the specific purpose of the motion and other examples in the Rules of Procedure where prescribed wordings of motions are given, **the Committee takes the view that the wording of the motion should be short and in prescribed form, along the following lines:**

“That whereas (name of Member) was convicted on (date) in (court) in (place) of a criminal offence(s) and was sentenced on (date) by (court) to imprisonment for one month or more (as particularized in the Schedule to this motion), this Council relieves (name of Member) of his/her duties as a Member of the Legislative Council.”

3.6 As a general rule, amendments to motions may be moved subject to the notice requirements laid down in Rule 29 (Notice of Motions and Amendments) and the restrictions in Rule 31 (Restriction on Motions and Amendments). On the other hand, the Committee is also aware that some motions are either not subject to amendments such as that under Rule 66(7) in respect of a bill returned to the Council for reconsideration, or are subject to restricted amendments as in the case of Rule 13(3) in connection with a motion of thanks for the Chief Executive’s Policy Address. Views expressed on the amendability of a motion moved under Article 79(6) show a strong support for the motion to be non-amendable. The general view is that Article 79(6) requires a straight-forward decision on whether the Member concerned should be relieved of his duties in the light of the conviction and sentence. The introduction of amendments might complicate the resolution and the effect of the amendments might deviate from the purpose for which the motion is moved. Besides, if amendments were to be allowed, the scope of amendments would be very limited. Even if the sentence were a suspended one, or if an appeal had been lodged, these should not form the basis for amendments as the effect of the motion should not deviate from the primary objective of relieving a Member of his duties. Moreover, the President would be in a difficult position in deciding whether amendments containing conditional approval

should be allowed. The Committee however notes the view of a Member who believes that some degree of flexibility should be retained, and allowing amendments to be moved to the motion is one way of providing flexibility.

3.7 After deliberations, **the Committee has come to the view that no amendment to the motion should be allowed. This is in pursuance of the principle that given its clear objective, the motion should be simple and precise, and that the motion if amended might give rise to uncertainty over whether or not the requirements under Article 79(6) have been fulfilled.** The Committee is however aware that pending amendments to the Rules of Procedure to this effect, current rules enabling Members to give notice to amend motions would still apply. Under the circumstances, if the motion to amend the Rules of Procedure to institute the arrangements for implementing Article 79(6) and a motion to relieve a Member of his duties were to be moved at the same meeting, the procedure disallowing amendments will take immediate effect upon approval of the amendments to the Rules of Procedure by the Council, and will apply to a motion moved under Article 79(6). Even if notice has been given for moving amendment(s) to the motion under Article 79(6), the President will not call upon the mover(s) of the amendment(s) to move the amendment(s).

3.8 The Committee is aware that there may be situations where Members of the Council may not be in a position to decide, e.g., when an appeal is in the pipeline or owing to the lack of the full details of the conviction or sentence if the offence took place outside Hong Kong. Nevertheless, a Member may move to adjourn a debate without notice under Rule 40(1) (Adjournment of Debate or of Proceedings of a Committee of the Whole Council). The debate so adjourned may be resumed at a subsequent meeting of the Council provided that the Member who moves the motion gives notice of his intention to resume the debate no less than 5 days before the day on which the debate is to be resumed. The Committee considers that there is sufficient avenue in the current Rules of Procedure to allow a decision to be deferred until Members are in a position to make the decision. The Committee has taken note of a need for more in-depth study on the arrangement for resuming debate as currently provided under Rule 40(6), but does not consider that such a study should delay the current exercise in drawing up procedures for implementing Article 79(6).

Notice Requirement

3.9 Rule 29 (Notice of Motions and Amendments) provides for a notice period of 12 clear days for moving a motion, and 5 clear days for moving an amendment to the motion, but the President may give leave to dispense with such notice requirements. In view of the important nature of a motion moved under Article 79(6), **the Committee considers that existing rules governing notice requirements should apply to such a motion and that waiver of the notice requirements should only be given by the President under exceptional circumstances.**

Rules of Speaking

3.10 In the light of the nature of the motion, the Committee has given careful consideration to rules on contents of speeches, in particular, subrules (2), (5) and (7) of Rule 41 (Contents of Speeches). Rule 41(2) provides that “Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case.” While appreciating the difficulty of avoiding reference to matters which may be relevant to the appeal, the Committee is also aware that it will clearly not be in the interest of justice to suspend the subrule. Experience in the United Kingdom Parliament shows that Speakers are guided by the principle of whether there are real and substantial prejudices to the administration of justice. As such, the Legal Adviser has been asked to provide some guidelines for reference by Members when speaking on matters that may be sub judice.

3.11 As for Rule 41(5) which provides that “A Member shall not impute improper motives to another Member”, the Committee considers that Members should be speaking only on the established facts. This subrule will ensure that the Member concerned, like any other Members, will be equally protected from being unfairly spoken upon.

3.12 Rule 41(7) provides that “The conduct of the Chief Executive or Members of the Executive Council or Members of the Legislative Council otherwise than in the performance of their official duties shall not be raised”. The Committee is aware that application of the subrule will hinder the expression of opinions by Members as statements made on the conduct of the Member concerned are inevitable in a motion of this nature. Rather than suspending the subrule, an amendment to the subrule is called for in order to provide for an exception.

3.13 In summary, **the Committee is of the view that the provisions in Rule 41 (Contents of Speeches) should apply, except that subrule (7) should be amended to provide for an exception where the conduct of a Member is the subject of a particular motion.**

3.14 Under Rule 36(5) (Time and Manner of Speaking), a Member shall not make a speech lasting more than 15 minutes without the permission of the President which is given only in exceptional circumstances. Under Rule 38 (Occasions when a Member may Speak more than once), a Member may not speak more than once on a question except in situations listed in the Rule or with the leave of the President, such as the mover of a motion making a reply after all other Members present have had the opportunity of speaking. Rule 37 (Recommendations of House Committee as to Time of Speaking) provides for the House Committee to recommend the speaking time on motions with no legislative effect. **In consideration of the important nature of a motion moved under Article 79(6), the Committee is of the view that the speaking time of 15 minutes should be maintained, and that Rule 37 should not apply.**

3.15 As for the Member who is the subject of the motion, the Committee does not see any justification to depart from existing rules for the Member concerned to participate in the motion debate like any other Member of the Council. **However, having regard to the severity of the effect of the motion, the Committee is inclined to allowing ample opportunity for the Member concerned to speak. Since there are provisions in Rules 36(5) and 38 for the President to grant exceptions, the Committee does not consider any need to change existing rules.**

Written statement/speech from the Member concerned

3.16 The Committee has deliberated on the appropriate manner to deal with a written statement from the Member concerned, particularly if the Member could not present the statement in person at the meeting of the Council. The Member concerned may wish to explain himself in the form of a letter to Members of the Council or a written statement to be delivered at the motion debate. The Committee considers that statements of this nature could be dealt with under item (h) "Personal explanations" in Rule 18 (Order of Business at a Meeting). Although no detailed provision is made in the Rules of Procedure as to how personal explanations should be given at a meeting, it is noted from common parliamentary practices that the House should not permit such statements to be subject to intervention or debate, and that the personal explanations are delivered by the Members themselves. The precise contents of the proposed statements are submitted in advance to the Speaker to

ensure they are appropriate. **The Committee considers that these principles should be upheld. In the event that the Member concerned cannot be physically present at the meeting at which the personal explanation is to be given, the President may direct that the personal explanation submitted to the President be taken as read and the text be recorded in the Official Record of Proceedings. In no circumstances would the personal explanation be allowed to be read out by another Member of the Council.**

3.17 As to whether a representative of the Member could speak on behalf of the Member concerned at a motion debate, the Committee notes that existing rules do not allow any person, other than a Member of the Council or a designated public officer, to speak in the Council. The Committee does not consider it appropriate to change this principle and is of the view that if a statement made under “Personal explanations” has already served the purpose of providing an opportunity for the Member concerned to explain himself, there is no need to make any exceptional rules to facilitate the reading of a Member’s speech.

Voting Procedure

3.18 The Committee notes that the passage of the motion to relieve a Member of his duties under Article 79(6) requires a vote of “two-thirds of the Members of the Legislative Council present”. It is however noted that Annex II of the Basic Law also provides a voting procedure which is reflected in Rule 46 (Decision on Motions) of the Rules of Procedure. In response to Members’ request, the Committee has examined whether the voting method in respect of a bill or motion moved by a Member laid down in Annex II should also apply to the motion moved under Article 79(6) if it is moved by a Member. The question of whether the two voting methods are mutually exclusive has also been studied.

3.19 In considering this subject matter, the Committee has taken note of the advice given by the Legal Adviser as follows:

“The voting procedure provided by Annex II of the Basic Law is displaced by the provision in Article 79(6) in respect of a motion to relieve a Member of his duties. The expression “a motion passed by two-thirds of the Members of the Legislative Council present” falls within the category of provisions “otherwise provided for” as specified in Annex II. It has the effect of displacing the Annex II requirement of a simple majority vote of each of the two groups of

Members present by providing a special majority of two-thirds of Members present.”

3.20 The Committee has studied the various Articles where a special majority of vote has been specified for the passage of the relevant motions. These include Articles 49, 52(2), 73(9), 79(6) and (7), and 159 of the Basic Law. Annex II has stated that the Legislative Council shall adopt the procedures in the Annex for voting on bills and motions unless otherwise provided in the Basic Law. Since the voting requirement for the passage of the motion under Article 79(6) is clearly spelt out in the Article, the Committee concurs with the Legal Adviser’s advice that the two-thirds majority refers to all Members present and not each of the two groups of Members present. As such, **the Committee concludes that the passage of a motion to relieve a Member of his duties under Article 79(6) shall require a vote of two-thirds of the Members present. The voting procedures in Annex II of the Basic Law which are reflected in Rule 46 shall not apply to a motion moved under Article 79(6), but will be applicable to procedural motions moved in the same debate, such as a motion to adjourn the debate.**

3.21 As to whether the Member concerned could vote, the Committee has studied this subject in conjunction with Rule 84 (Personal Pecuniary Interest to be Disclosed). It is noted that the remuneration received by Members of the Legislative Council may be regarded as a direct pecuniary interest. If so, Rule 84(1), which states that a Member shall not vote upon any question in which he has a direct pecuniary interest, shall apply. However, if the Member concerned thinks otherwise and chooses to vote, a procedure has been provided in Rule 84(4) to (7) to disallow a Member’s vote. **As Rule 84 has laid down the broad principles regarding personal pecuniary interest and at the same time has provided an effective mechanism for disallowing such a vote, the Committee does not see a need to resort to other arrangements in this respect.**

Decision on the Motion

3.22 The Committee considers it appropriate for the President to declare that a Member is no longer qualified for the office immediately after the motion to relieve the Member of his duties is passed in the Council. Notification of the vacancy will then be published in the Gazette.

3.23 As to whether a decision on a motion under Article 79(6) could be rescinded, the Committee considers the subject of significant importance and has given it serious thoughts. The Committee has therefore examined the general application of Rule 32 (Motions on Previous Decisions of Council)

which governs the rescission of decisions and the manner in which this Rule would apply to motions moved under Article 79(6).

3.24 Rule 32 states that “Where the Council has taken a decision on a specific question no further motion shall be moved in relation to that question during the current session except a motion to rescind the decision, moved with the permission of the President”. In examining this Rule, the Committee has also referred to the parliamentary practices spelt out in Erskine May, and considers it appropriate to apply this Rule in conjunction with the principle that the power of rescission can only be exercised in the case of a resolution resulting from a substantive motion. “It cannot be exercised merely to override a vote of the House, such as a negative vote. Proposing a negatived question a second time for the decision of the House would be contrary to the established practice of the Parliament. Sufficient variation would have to be made, not only from the form but also from the substance of the rejected question, to make the second question a new question.”(Erskine May)

3.25 The Committee accepts that for general application of Rule 32, decisions which can be rescinded by way of another motion refer to motions agreed to by the Council. A motion, once carried, becomes an order or a resolution of the Council. No further motion should be moved in relation to such order or resolution during the same session except a motion to rescind the order or resolution with the permission of the President. However, if the original motion has been negatived, not only that the negatived question cannot be considered again in the same session, but also that no motion could be moved to rescind the relevant decision. The Committee notes that the way Rule 32 is presently written cannot fully reflect these principles and may create ambiguity in the general application of the Rule, and has therefore decided to rewrite this Rule.

3.26 In applying Rule 32 to motions moved under Article 79(6), the Committee is aware that if the motion is carried, the President will immediately declare the Member disqualified for the office. It is therefore impracticable for any motion to be moved to rescind the decision which has been acted upon and hence become irreversible. The Committee sees no conflict with the general application of Rule 32 as any motion to rescind a resolution within the same session requires the permission of the President who would inevitably consider the aspect of reversibility of the resolution in question.

3.27 The Committee also notes that if a motion to relieve a Member of his duties is not carried, no motion can be moved in respect of that specific

question within the same session. The Committee is aware that there might be a need for the Council to debate on the subject again due to changed circumstances, but considers that there are other means to achieve this result under Article 79. Besides, there is no restriction on the same motion being moved again in the next session. The Committee therefore does not find any justification to depart from the general application of Rule 32. It would also be unfair to the Member concerned if motions in respect of the specific question, once not carried, could be moved repeatedly within the same session.

3.28 On the basis of the above, the Committee has proposed amendments to the Rules of Procedure of the Council. In the course of examination of the issues involved, the Committee is aware that consideration may also have to be given to the arrangements for implementing Article 79(7) in view of the similarity in circumstances when implementing Article 79(6). Article 79(7) provides for the censure of a Member for misbehaviour or breach of oath by a vote of two-thirds of the Members present and has the same effect of relieving a Member of his duties. While the arrangements for implementing Article 79(7) will be studied by the Committee in a separate context, the amendments to existing rules have been drawn up on the basis of general application as far as possible. The need for providing specific rules for implementing Articles 52(2), 73(9) and 159 of the Basic Law will also be examined in due course.

IV. Resolution

4.1 The foregoing deliberations of the Committee were set out in a report and, as requested by the House Committee, forwarded for the consideration of the House Committee on 4 September 1998. With the support of the House Committee, the Chairman of the Committee on Rules of Procedure, Mrs Selina CHOW, will move a motion at the Council meeting on 9 September 1998 for the Rules of Procedure to be amended as proposed. A copy of the resolution is at **Appendix IV**.

V. Acknowledgement

5.1 Members of the Committee wish to record their appreciation of the valuable views on the subject from fellow Members of the Council and their support for the work of the Committee.

議事規則委員會名單
Membership list of Committee on Rules of Procedure

周梁淑怡議員(主席)	Hon Mrs Selina CHOW LIANG Shuk-ye, JP (Chairman)
吳靄儀議員(副主席)	Hon Margaret NG (Deputy Chairman)
李永達議員	Hon LEE Wing-tat
李卓人議員	Hon LEE Cheuk-yan
李柱銘議員	Hon Martin LEE Chu-ming, SC, JP
張永森議員	Hon Ambrose CHEUNG Wing-sum, JP
陳婉嫻議員	Hon CHAN Yuen-han
梁智鴻議員	Dr Hon LEONG Che-hung, JP
程介南議員	Hon Gary CHENG Kai-nam
黃宏發議員	Hon Andrew WONG Wang-fat, JP
劉健儀議員	Hon Mrs Miriam LAU Kin-ye, JP
劉慧卿議員	Hon Emily LAU Wai-hing, JP

立法會
Legislative Council

LC Paper No. CB(1) 113/98-99

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Committee on Rules of Procedure

Consultation Paper

on

Procedural Arrangements for implementing Article 79(6) of the Basic Law

Purpose

This consultation paper seeks Members' views on the procedural arrangements being studied by the Committee on Rules of Procedure (the Committee) for implementing Article 79(6) of the Basic Law. It outlines the requirements under the Article and sets out the different approaches or options considered by the Committee for drawing up procedural arrangements to relieve a Member of his duties under Article 79(6).

Background

2. Under Article 79(6), when a Member of the Legislative Council "is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present", the President of the Legislative Council shall declare that the Member is no longer qualified for the office. While no specific procedures have been laid down in the Basic Law for implementing this Article, Article 75 provides that the rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene the Basic Law.

3. The current Rules of Procedure of the Council, which were adopted on 2 July 1998 to facilitate the efficient and effective commencement of operation of the first term of the Legislative Council of the Hong Kong Special Administrative Region, have not yet provided any specific rules to implement the Article concerned, but the subject has been placed on a list of outstanding issues to be dealt with by the Committee on Rules of Procedure within the current session.

4. Following the conviction of Hon CHIM Pui-chung on one count of conspiracy to forge, contrary to common law and section 71 of the Crimes Ordinance (Cap 200), and his being sentenced to three years' imprisonment on 3 August 1998, the House Committee held an urgent meeting on 5 August 1998 to consider the matter. At the meeting, there was consensus among members that a motion ought to be moved to relieve Mr CHIM of his duties as a Member of the Legislative Council as soon as practicable, preferably at the first meeting after the summer break on 9 September 1998, and that Dr Hon LEONG Che-hung should move the motion in his capacity as Chairman of the House Committee. As regards the procedural arrangements for dealing with the motion, members agreed that the Committee on Rules of Procedure should be requested to study such arrangements and any issues relating to the implementation of Article 79(6), and to recommend the course of action to be taken in respect of such arrangements at the House Committee meeting on 4 September 1998.

5. The Committee on Rules of Procedure met on 8 and 10 August 1998 to conduct a preliminary study of issues relating to the implementation of Article 79(6). The Committee considers it necessary to draw up the relevant rules with a view to incorporating them in the Rules of Procedure at the earliest opportunity, i.e. by resolution in Council on 9 September 1998, before the Council deals with the motion to relieve Mr CHIM of his duties.

6. In view of the importance of the matter, the Committee considers it necessary to consult all Members before finalizing its recommendations and drawing up the relevant rules for consideration by the House Committee.

Issues to be considered

7. The Committee considers that it is explicit from the Rules of Procedure and Article 79(6) that it is necessary for a motion to be moved to relieve the Member concerned of his duties and for the motion to be passed by two-thirds of the Members of the Legislative Council present. As the procedures governing motions are clearly spelt out in the Rules of Procedure, the Committee is of the view that as far as practicable, existing rules governing motions should apply. Suitable amendments or adaptations may be required in certain areas, but the general philosophy and principles underlying the way Council business is conducted should be maintained.

8. The Committee suggests that the following areas be given careful consideration:

- (a) the form of the motion, including how it is worded, who could move the motion, and whether it is amendable;
- (b) the rules of speaking, including the restriction on time, and the opportunity for the Member concerned to address the Council or make representations;

- (c) the voting procedure; and
- (d) decision on the motion, i.e. whether another motion could be moved to rescind the decision.

Form of motion

Moving of the motion

9. Under the Rules of Procedure, a motion may be moved by any Member of the Council or any public officer designated by the Government of the Hong Kong Special Administrative Region. There is no distinction between a Member or a public officer in the business of the Council except in those areas specified in Rule 10 (Participation of Public Officers in Proceedings). Unless the Rules are amended to the contrary, a motion to relieve a Member of his duties may be moved by a Member or a designated public officer.

10. Members of the Committee do not see any particular reason to bar public officers from moving a motion under Article 79(6) or speaking on the motion. Public officers in any case do not have the right to vote, and any decision will have to be made entirely by Members of the Council.

11. As regards the need for any triggering-off mechanism, the Rules allow any Member to move the motion at any time. It will be up to the mover of the motion to consider if any papers, such as the Court's record on the conviction and sentence, should be presented to the Council. The case will inevitably be raised at the House Committee at an appropriate time if such a motion is to be moved in the Council. As such, members of the Committee do not see any need to lay down any special procedure to trigger off the moving of the motion.

Wording of the motion

12. The purpose and effect of a motion under Article 79(6) should be "single-barrelled" and unequivocal. It is therefore possible to prescribe the wording of the motion in the Rules of Procedure. Examples include the motion of thanks in respect of the Chief Executive's Policy Address under Rule 13(2), and amendments to Heads of Estimates in Committee of the Whole Council on the Appropriation Bill under Rule 69(3).

13. Members of the Committee have considered two options for the wording of the motion: a short version stating merely the effect of the motion; and a more elaborate one including also the conviction and the sentence. Having considered the complications involved in the case of a conviction outside Hong Kong, members of the Committee

believe that a simple version would serve the purpose. It is suggested that the wording of the motion be prescribed as follows:

“議決本會謹依據《中華人民共和國香港特別行政區基本法》第七十九(六)條，解除_____ 議員身為中華人民共和國香港特別行政區立法會議員的職務。”

“Resolved that this Council under Article 79(6) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, relieves _____ of his/her duties as a Member of the Legislative Council of the Hong Kong Special Administrative Region of the People’s Republic of China.”

Should the motion be amendable

14. As a general rule, amendments to motions may be moved subject to the notice requirements given in Rule 29 (Notice of Motions and Amendments) and the restrictions in Rule 31 (Restriction on Motions and Amendments). However, some motions are not subject to amendments, e.g. the motion to pass a bill returned by the Chief Executive in accordance with Article 49 of the Basic Law after reconsideration under Rule 66. On the other hand, the motion of thanks in respect of the Chief Executive’s Policy Address can only be amended by way of adding words at the end of the motion.

15. Members of the Committee have considered the merits of the various options. It is generally felt that as the purpose of the motion should be very specific, the scope for amendments is rather limited. The motion therefore should not be amendable. Even if it could be amended, existing rules for the President to rule out of order any amendment, which may deviate from the purpose of the motion or render the motion uncertain in its effect and difficult to implement, should apply.

Notice requirements

16. The Rules of Procedure provide that the normal notice period for moving a motion is 12 clear days. There are also exceptions, such as the motion of thanks, which may be moved without notice. Most procedural motions, e.g. motions to adjourn a debate or proceedings of a committee of the Whole Council, or to shorten the time of the division bell, may also be moved without notice.

17. In view of the important nature of the motion, members of the Committee are generally of the view that existing rules governing notices should apply. If it is decided that amendments to the motion are allowed, the requirement of 5 clear days’ notice for amendments should be maintained.

Rules of speaking

Speaking time

18. Under Rule 36(5) (Time and Manner of Speaking), a Member shall not make a speech lasting more than 15 minutes without the permission of the President which is given only in exceptional circumstances. Under Rule 38 (Occasions when a Member may Speak more than once), a Member may not speak more than once on a question except in situations listed in the Rule or with the leave of the President, such as the mover of a motion making a reply after all other Members present have had the opportunity of speaking.

19. Members of the Committee consider that the existing rules of speaking in Part H of the Rules of Procedure should apply. Rule 37 (Recommendations of House Committee as to time of speaking) however should not be made applicable as this Rule refers to a motion not intended to have legislative effect.

Contents of speeches

20. Members of the Committee have also examined rules on the contents of speeches. Rule 41 (Contents of Speeches) sets out the current restrictions on Members' speeches. Attention has been focused in particular on Subrules (2), (5) and (7).

21. Rule 41(2) provides that "Reference shall not be made to a case pending in a court of law in such a way as, in the opinion of the President or Chairman, might prejudice that case." Members of the Committee are aware that if an appeal is in the pipeline, it is very difficult to avoid referring to matters which may be relevant to the appeal. However, it will clearly not be in the interest of justice to suspend the Subrule. Noting that the appeal would be heard by judges alone (as opposed to trial by jury), members of the Committee are of the view that it should be left to the President to make her own judgement, between the need of the Legislature to regulate its Members and to avoid any real and substantial prejudices to the administration of justice by the Judiciary. Opinions expressed by Members of the Council in this respect will also be collated for the President's reference.

22. Rule 41(5) provides that "A Member shall not impute improper motives to another Member". It is felt that this Subrule should stay as Members ought to be speaking on the convicted offence, i.e. the established facts, and should not be acting against the rule. This Subrule ensures that if any Members' speeches stray beyond these facts, the Member concerned would continue to be protected by the Subrule.

23. Rule 41(7) provides that "The conduct of the Chief Executive or Members of the Executive Council or Members of the Legislative Council otherwise than in the performance of their official duties shall not be raised." This Subrule, if applied to a motion under Article 79(6) will hinder the expression of opinions by Members as

statements made on the conduct of the Member concerned are inevitable in a motion of that nature. However, to avoid suspending the Subrule, members of the Committee suggest that this Subrule be amended to provide for exceptions, e.g. “except on a question in connection with the relief of a Member’s duties or a sanction against a Member”, to cater for Article 79(6), Rule 85 and eventually Article 79(7).

Member concerned to speak

24. As regards the Member concerned, it is generally felt that if the Member is able to attend at the meeting, he should be allowed to speak in the same way as any other Members present. The President may, if the Member so requests, allow him to speak for a second time after all other Members have spoken but before the reply by the mover of the motion.

25. The question of allowing a representative of the Member to speak on behalf of the Member, if he cannot be present at the meeting, was also discussed. Current Rules do not allow any person, other than a Member of the Council or a designated public officer, to speak in the Council. No reference can be drawn from other jurisdictions as there are no such precedents or practices of allowing a representative of the Member to speak at a meeting of the legislature. Members of the Committee therefore do not consider it appropriate to propose any change to the principle that only Members of the Council and designated public officers may speak at the Council.

26. If the Member concerned were to submit a written speech, members of the Committee have also discussed how it could be fitted into the order of business of the Council, or if the President should cause a copy of the speech to be circulated to Members. If the written speech were to be read at a Council meeting, then the question would arise as to the appropriate stage when the speech should be read, i.e., whether under “Personal explanations” or at the commencement of the motion debate. As to who should be the most appropriate person to read out the written representation, members of the Committee consider that views from all Members should be invited. Options considered include the President, other Members of the Council or the Clerk. While there is a precedent in the United Kingdom for the Speaker to read out personal statements from a Member, reservation has been expressed as to whether the neutrality of the President may be jeopardized and public conception of the role of the President confused, if the President were to read out the representation on the one hand and, if the motion were passed, declare the Member disqualified for the office on the other.

Voting procedure

27. The passage of the motion to relieve a Member of his duties under Article 79(6) requires a vote of “two-thirds of the Members of the Legislative Council present”. This requirement is laid down in the Article.

28. At the House Committee meeting on 5 August 1998, a Member requested the Committee on Rules of Procedure to examine the applicability of the voting procedures in Annex II of the Basic Law (**Annex I**) to motions moved under Article 79(6), and whether the two voting methods are mutually exclusive. His question is whether the bicameral voting method should apply if the motion to relieve a Member of his duties is moved by a Member of the Council.

29. In this respect, the Legal Adviser has given the following advice:

“The voting procedure provided by Annex II of the Basic Law is displaced by the provision in Article 79(6) in respect of a motion to relieve a Member of his duties. The expression “a motion passed by two-thirds of the Member of the Legislative Council present” falls within the category of provisions “otherwise provided for” as specified in Annex II. It has the effect of displacing the Annex II requirement of a simple majority vote of each of the two groups of Members present by providing a special majority of two-thirds of Members present.”

30. Members of the Committee have examined the various Articles where a special majority of vote has been specified for the passage of the relevant motions. These include Articles 49, 52(2), 73(9), 79(6) and (7), and 159 of the Basic Law. Annex II has stated that the Legislative Council shall adopt the procedures in the Annex for voting on bills and motions unless otherwise provided in the Basic Law. Since the voting requirement for the passage of the motion under Article 79(6) is clearly spelt out in the Article, most members of the Committee concur with the Legal Adviser’s advice that the two-thirds majority refers to all Members present and not each of the two groups of Members present. The same principle should also apply to voting on amendments to the motion, if amendments are allowed.

31. As to whether the Member concerned could vote, the subject would have to be considered in conjunction with Rule 84 (Personal Pecuniary Interest to be Disclosed) (**Annex II**). Members of the Legislative Council receive a remuneration which can be regarded as the direct pecuniary interest which the Member concerned has. If so, Rule 84(1), which states that a Member shall not vote upon any question in which he has a direct pecuniary interest, shall apply. However, if the Member concerned thinks otherwise and chooses to vote despite this understanding, a procedure has been provided in Rule 84(4) to (7) to disallow a Member’s vote. As Rule 84 has laid down the broad principles and at the same time has provided an effective mechanism for disallowing such a vote, members of the Committee do not consider there to be a need to draw up specific rules in this respect. Nevertheless, it is important that Members of the Council should be reminded of the procedure.

Decision on the motion

32. Once the Council has passed a motion to relieve a Member of his duties, it is considered that the President should declare forthwith that the Member is no longer qualified for the office. Notification of the vacancy would then be published in the Gazette.

33. As to whether a motion could be moved to rescind the decision and another motion on the same question be moved again in the Council, members of the Committee are of the view that such a situation should not arise if the relieving of the Member of his duties has already taken effect. However, if the motion was negatived, there is no provision in the Rules of Procedure to disallow the moving of such a motion unless it is moved within the same session. Under such circumstances, Rule 32 (Motions on Previous Decisions of Council) will apply.

34. Rule 32 states that “Where the Council has taken a decision on a specific question no further motion shall be moved in relation to that question during the current session except a motion to rescind the decision, moved with the permission of the President”. In other words, a motion to rescind the decision would have to be moved and passed in the Council before a Member could move another motion on the same question. Members of the Committee do not consider it necessary to amend Rule 32, as a Member might wish to move the motion again in the light of changed circumstances, for example, upon the rejection of an appeal or the availability of detailed information in respect of a conviction outside Hong Kong. The motion to rescind the decision would also require the support of two-thirds of Members present.

Other issues considered by the Committee

35. The Committee has also studied other matters which may have relevance to the implementation of Article 79(6). These include:

- (a) Rule 18 (Order of Business at a Meeting): that the representation of the Member concerned can be presented through another Member under item (d) “Presentation of petitions”, or be read out by the Member himself under item (h) “Personal explanations”;
- (b) Rule 20 (Presentation of Petitions): that a petition shall stand referred to a select committee with the support of 20 Members present, and that this may be applicable in the case of convictions outside Hong Kong; and
- (c) the rule of anticipation: that a petition, which is a less effective form than a motion, should not be allowed if notice for moving a motion under Article 79(6) has been given.

Advice sought

36. Members are invited to give views on the above to the Committee on Rules of Procedure at the meeting on 15 August 1998. Alternatively, Members may wish to forward such views in writing to the Committee as soon as possible and preferably before the date of the meeting. The Committee will have regard to Members' views in drafting the relevant rules and drawing up its recommendations on 22 August 1998 for consideration by the House Committee on 4 September 1998.

Legislative Council Secretariat

13 August 1998

84. Personal Pecuniary Interest to be Disclosed

(1) A Member shall not vote upon any question, whether in the Council or in any committee or subcommittee, in which he has a direct pecuniary interest.

(2) A Member shall not move any motion or amendment relating to a matter in which he has a pecuniary interest, whether direct or indirect, or speak on any such matter, whether in the Council or in any committee or subcommittee, without disclosing the nature of that interest.

(3) In any debate or proceedings of the Council or any committee or subcommittee at which a Member is present he shall declare any direct pecuniary interests which he has in the matter.

(4) A motion to disallow a Member's vote on the ground of his direct pecuniary interest under subrule (1) may be moved without notice by any Member immediately upon the statement of the numbers voting in the division by the President, Chairman of a committee of the whole Council or chairman, but not otherwise.

(5) The President, Chairman of a committee of the whole Council or chairman shall have discretion whether or not to propose the question upon such a motion; and in exercising such discretion he shall have regard to the nature of the question upon which the vote was taken and to the consideration whether the interest therein of the Member whose vote is challenged is direct and pecuniary and not an interest in common with the rest of the inhabitants of Hong Kong and whether his vote was given on a matter of state policy.

(6) If the question for the disallowance of a Member's vote is proposed, the Member concerned may be heard in his place but he shall then withdraw from the Council, a committee of the whole Council, a committee or subcommittee for the duration of the debate and any vote on the question.

(7) If a motion for the disallowance of a Member's vote is agreed to, the President, Chairman of a committee of the whole Council or chairman shall direct the Clerk to the Legislative Council or the clerk to alter the numbers voting in the original division accordingly.

**Attendance at the meeting on
Saturday, 15 August 1998, at 9:00 am
in Conference Room B of the Legislative Council Building**

Committee members

Hon Margaret NG (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon Gary CHENG Kai-nam
Hon Andrew WONG Wang-fat, JP

Non-Committee members

Hon James TIEN Pei-chun, JP
Hon HO Sai-chu, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, JP
Hon Andrew CHENG Kar-foo

BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OF THE PEOPLE'S REPUBLIC OF CHINA

RESOLUTION

(Under Article 75 of the Basic Law of the Hong Kong Special Administrative
Region of the People's Republic of China)

RULES OF PROCEDURE OF THE LEGISLATIVE COUNCIL OF THE HONG
KONG SPECIAL ADMINISTRATIVE REGION

RESOLVED that the Rules of Procedure of the Legislative Council of the Hong
Kong Special Administrative Region be amended -

- (1) in Part F -
 - (a) in the heading, by adding "AND PERSONAL EXPLANATIONS" after "STATEMENTS";
 - (b) by adding -

"28A. Personal Explanations

(1) A Member who wishes to make an explanation of personal matters shall inform the President of his wish, and provide an advance copy of the intended explanation to the President for agreement to ensure that the explanation will not provoke a debate and that the contents are appropriate. If leave is given by the President for making the explanation, the Member shall not depart from the agreed contents.

(2) No debate may arise on such an explanation but the President may in his discretion allow short questions

to be put to the Member making the explanation for the purpose of elucidation.

(3) Where the explanation is made in relation to a motion moved under Part JA (Procedures for Particular Motions) and the Member is unable to attend the meeting at which it is intended to be made, the President may direct that a copy of the explanation be sent to every Member and the text of the explanation be taken as read.”;

(2) in Rule 32 -

(a) by renumbering it as Rule 32(1);

(b) in subrule (1), by adding “and the question has been decided in the affirmative,” after “specific question”;

(c) by adding -

“(2) Where the Council has taken a decision on a specific question and the question has been decided in the negative, no further motion shall be moved in relation to that question during the current session.”;

(3) in Rule 37(1), by adding “or to which Part JA (Procedures for Particular Motions) applies” after “legislative effect”;

(4) in Rule 41(7) -

(a) by repealing “The” and substituting “Except where his conduct is the subject of a motion to which Part JA (Procedures for Particular Motions) applies, the”;

(b) by repealing “or Members of the Executive Council” and substituting “, a Member of the Executive Council”;

(c) by repealing “Members of the Legislative Council” and substituting “a Member of the Legislative Council”;

(d) by repealing “their” and substituting “his”;

(5) in Rule 46 -

(a) in subrule (1), by repealing “Articles 49, 52(2), 73(9), 79(6) and (7)” and substituting “Rules 49B (Relieving a Member of His

Duties) and 66 (Bills Returned for Reconsideration) and Articles 52(2), 73(9) (in respect of a motion of impeachment), 79(7)”;

(b) in subrule (2), by repealing “(other than the motion “That theBill returned by the Chief Executive in accordance with Article 49 of the Basic Law do pass after reconsideration” referred to in Rule 66 (Bills Returned for Reconsideration))” and substituting “(other than a motion moved under any of the excepted Rules or Articles of the Basic Law referred to in subrule (1))”;

(c) by adding -

“(3) Any motion not passed shall be deemed to be decided in the negative.”;

(6) in Rule 47 -

(a) in subrule (1)(b), by adding “required” before “majority”;

(b) in subrule (2), by repealing “When” and substituting “Other than in relation to a motion moved under Rule 49B (Relieving a Member of His Duties) or 66 (Bills Returned for Reconsideration) or Article 52(2), 73(9) (in respect of a motion of impeachment), 79(7) or 159 of the Basic Law, when”;

(c) in subrule (2)(b), by adding “a majority of” before “each of the two groups”;

(7) by adding -

“PART JA

PROCEDURES FOR PARTICULAR MOTIONS

49A. Application of this Part

In any matter not provided for in this Part, the Rules in other Parts shall apply as appropriate.

49B. Relieving a Member of His Duties

(1) A motion to relieve a Member of his duties as a Member under Article 79(6) of the Basic Law shall be moved in the following form:

“That whereas (name of Member) was convicted on (date) in (court) in (place) of a criminal offence(s) and was sentenced on (date) by (court) to imprisonment for one month or more (as particularized in the Schedule to this motion), this Council relieves (name of Member) of his/her duties as a Member of the Legislative Council.”.

(2) No amendment may be moved to a motion moved under subrule (1).

(3) The passage of a motion moved under subrule (1) shall require a two-thirds majority vote of the Members present.

(4) Where the Council has decided to relieve a Member of his duties, the President shall declare forthwith that the Member is no longer qualified for his office.”.