Chapter 11 to Chapter 12

Part II

Conduct of business in the Council and committees
(Chapter 11 to Chapter 12)
Report on the Companion to the history, rules and practices of the Legislative Council

Introduction

1. The completion of the Legislative Council Companion, after a period of over three years of intensive work, is a major achievement which puts the Legislative Council on a comparable footing to many overseas jurisdictions in terms of having an exposition of its own procedure and practices and how they have evolved in a single, authoritative commentary.

Format and Content

2. The general format & purpose of the Companion are set out in the Preface with some explanation of its compilation. In Part 1 there is a logical progression through the chapters from the history of the organisation and its predecessors to the arrangement of business and rules of order, the role of Members, the administrative structures, relations with the Chief Executive and the Committee system. The principles behind these arrangements are set out against the background of the general framework of the Basic Law and the common law tradition of Hong Kong.

3. In Part 2 further detail on the workings of the institution and its committees is set out, as well as the inevitably complex arrangements for financial business. The information in this section is accurately supported by rulings from the President and chairpersons of committees, as well as by precedents in the handling of business and, where appropriate, references to practices in overseas jurisdictions.

4. Finally, a third part deals with the subject of public participation and outreach, which are regarded as highly important activities in all modern legislatures. The system for redress of grievances is set out and the steps taken to engage the public of all sorts, including disadvantaged minorities, with the work of the Legislative Council. The important work of establishing an archive is described and explained.

Style and Language

5. Given this considerable coverage and the diverse readership the Companion is likely to attract, there is inevitable overlap of certain details between the sections and across chapters but each chapter may be used discretely for reference.
6. A clear and direct language, free of jargon, is maintained throughout the text which is important both from the point of view of clarity but also from that of transparency, making the account readable for experts and the general public alike.

7. It will be important to provide a good index in such a way as to facilitate searches for procedural and constitutional information. It could be available electronically.

**Editing**

8. I have found no reason to change the overall structure of the work. Therefore I have concentrated on elucidating the text to make its meaning clearer, adding material where I have thought it might be relevant or useful and correcting grammar and syntax as appropriate.

9. The various annexes and appendices provide useful, organisational charts and organograms on the workings of the Council and its Committees, as well as details of the administrative structure, staffing etc.

**Conclusion**

10. It has been a great pleasure for me to have been involved in the work on the *Companion* during the period of its preparation. As an editor of Erskine May’s *Parliamentary Practice*, I am well aware of the amount of work, effort and consultation that goes into producing an edition of this nature, with its accurate references to the Basic Law, the Ordinances, the Rules of Procedure, House Rules as well as the precedents and practices that guide day-to-day business. I have no doubt that the *Companion* now stands as a comprehensive and authoritative guide to the Legislative Council which will serve specialists, the general public and Honourable Members for generations to come.

Sir Malcolm Jack
17th March 2016
# Table of Contents

## Part II Conduct of business in the Council and committees

### Chapter 11 Legislative process

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductory</td>
<td>11-1</td>
</tr>
<tr>
<td>Legislative Council's power and function to make and amend laws</td>
<td>11-1</td>
</tr>
<tr>
<td>Bills</td>
<td>11-3</td>
</tr>
<tr>
<td>Classification of bills</td>
<td></td>
</tr>
<tr>
<td><em>Public and private bills</em></td>
<td></td>
</tr>
<tr>
<td><em>Government bills and Members' bills under the Basic Law</em></td>
<td></td>
</tr>
<tr>
<td>Form of Bills</td>
<td></td>
</tr>
<tr>
<td><em>Title of a bill</em></td>
<td></td>
</tr>
<tr>
<td><em>Long title</em></td>
<td></td>
</tr>
<tr>
<td><em>Enacting formula and preamble</em></td>
<td></td>
</tr>
<tr>
<td><em>Short title and commencement date</em></td>
<td></td>
</tr>
<tr>
<td><em>Language</em></td>
<td></td>
</tr>
<tr>
<td><em>Structure of a bill</em></td>
<td></td>
</tr>
<tr>
<td><em>Explanatory memorandum</em></td>
<td></td>
</tr>
<tr>
<td>*Saving provision for &quot;private bills&quot;</td>
<td></td>
</tr>
<tr>
<td>Subsidiary legislation and subordinate legislation</td>
<td>11-12</td>
</tr>
<tr>
<td>Publication and numbering of subsidiary legislation</td>
<td></td>
</tr>
<tr>
<td>Commencement notice</td>
<td></td>
</tr>
<tr>
<td>Pre-legislative scrutiny</td>
<td>11-15</td>
</tr>
<tr>
<td>Compliance with Article 74 of the Basic Law</td>
<td>11-17</td>
</tr>
<tr>
<td>Purpose of Article 74 of the Basic Law</td>
<td></td>
</tr>
<tr>
<td>Interpretation of specific terms in Article 74</td>
<td></td>
</tr>
<tr>
<td><em>&quot;Relate to&quot;</em></td>
<td></td>
</tr>
<tr>
<td><em>&quot;Public expenditure&quot;</em></td>
<td></td>
</tr>
<tr>
<td><em>&quot;Operation of the Government&quot;</em></td>
<td></td>
</tr>
<tr>
<td><em>&quot;Government policies&quot;</em></td>
<td></td>
</tr>
<tr>
<td><em>&quot;Political structure&quot;</em></td>
<td></td>
</tr>
<tr>
<td>Legislative procedures</td>
<td>11-26</td>
</tr>
<tr>
<td>Gazettal and presentation of bills</td>
<td></td>
</tr>
<tr>
<td><em>Government bills</em></td>
<td></td>
</tr>
<tr>
<td><em>Members' bills</em></td>
<td></td>
</tr>
<tr>
<td><em>Member or public officer in charge of a bill</em></td>
<td></td>
</tr>
<tr>
<td><em>Bills with substantially the same provisions</em></td>
<td></td>
</tr>
<tr>
<td>Three-reading process</td>
<td></td>
</tr>
<tr>
<td><em>First Reading</em></td>
<td></td>
</tr>
<tr>
<td><em>Second Reading</em></td>
<td></td>
</tr>
<tr>
<td><em>Referral to House Committee</em></td>
<td></td>
</tr>
<tr>
<td><em>Forming of a Bills Committee</em></td>
<td></td>
</tr>
<tr>
<td><em>Queuing system for Bills Committees</em></td>
<td></td>
</tr>
</tbody>
</table>
Table of Contents

Chapter 11  (Cont'd)

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consideration of a bill by a Bills Committee</td>
<td></td>
</tr>
<tr>
<td>Notice for resumption of the second reading debate on a bill</td>
<td></td>
</tr>
<tr>
<td>Resumption of the second reading debate on a bill</td>
<td></td>
</tr>
<tr>
<td>Committee Stage - committal of bills to a committee of the whole Council or to a select committee</td>
<td></td>
</tr>
<tr>
<td>Proceedings of a committee of the whole Council</td>
<td></td>
</tr>
<tr>
<td>Report of the bill to the Council</td>
<td></td>
</tr>
<tr>
<td>Recommittal of a bill</td>
<td></td>
</tr>
<tr>
<td>Third reading</td>
<td></td>
</tr>
<tr>
<td>Amendments to bills</td>
<td>11-47</td>
</tr>
<tr>
<td>Notice of amendments to bills</td>
<td></td>
</tr>
<tr>
<td>Form of amendments to bills</td>
<td></td>
</tr>
<tr>
<td>Restrictions</td>
<td></td>
</tr>
<tr>
<td>Relevance to the bill and to the clause</td>
<td></td>
</tr>
<tr>
<td>Consistency with the clause agreed to and previous decision of the committee</td>
<td></td>
</tr>
<tr>
<td>Amendment making a clause unintelligible</td>
<td></td>
</tr>
<tr>
<td>Amendment considered by the Chairman frivolous or meaningless</td>
<td></td>
</tr>
<tr>
<td>Language of amendments</td>
<td></td>
</tr>
<tr>
<td>Amendment dependent on another amendment</td>
<td></td>
</tr>
<tr>
<td>Amendment with charging effect</td>
<td></td>
</tr>
<tr>
<td>Withdrawal or postponement of bills</td>
<td>11-57</td>
</tr>
<tr>
<td>Signing of the bill by the Chief Executive and Promulgation</td>
<td></td>
</tr>
<tr>
<td>Subsidiary legislation</td>
<td>11-59</td>
</tr>
<tr>
<td>Nature of subsidiary legislation</td>
<td></td>
</tr>
<tr>
<td>Consultation with Panels</td>
<td></td>
</tr>
<tr>
<td>Consideration by the House Committee</td>
<td></td>
</tr>
<tr>
<td>Proceedings in the Council for consideration of subsidiary legislation</td>
<td></td>
</tr>
<tr>
<td>Withdrawal of subsidiary legislation</td>
<td></td>
</tr>
<tr>
<td>Matters to be recorded in the minutes of proceedings</td>
<td>11-64</td>
</tr>
</tbody>
</table>

Chapter 12  Financial Procedure

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introductory</td>
<td>12-1</td>
</tr>
<tr>
<td>The financial procedure</td>
<td>12-2</td>
</tr>
<tr>
<td>The respective roles of the government and the legislature under the Basic Law</td>
<td></td>
</tr>
</tbody>
</table>
# Table of Contents

## Chapter 12  (Cont'd)

The budget
- Appropriations and supplementary appropriations
- Revenue proposals
Charges upon public revenue or upon public funds
Control of finances
- Controlling Officers
- General Revenue Account
- Funds
- Fiscal reserves

### The Budget Cycle and related financial procedures 12-13
- Resource Allocation Exercise
- Consultation on the budget
- Introduction of the Appropriation Bill to the Legislative Council
- Contents of an Appropriation Bill
- Approval for presentation to the Legislative Council
- Historical background on the tabling of the Estimates of Expenditure

### Schedule of Budget meetings
- Examination of the Estimates by the Finance Committee
  - Written questions prior to special meetings
  - Schedule of special meetings
- Debate on the second reading of the Appropriation Bill
- Procedure in the committee of the whole Council
  - Amendment to heads of expenditure in the Estimates
  - Contents of debates at Committee Stage
- Third reading of the Appropriation Bill

### Procedure relating to refusal to pass the budget 12-26
- Vote on Account Resolution 12-26

### Procedure relating to changes to the approved estimates 12-28
- Role of the Finance Committee
  - Finance Committee Agenda Items
  - Motions to impose conditions, exceptions or limitations
- Role of subcommittees of the Finance Committee
  - Establishment Subcommittee
  - Public Works Subcommittee

### Capital Works Reserve Fund 12-34
Table of Contents

<table>
<thead>
<tr>
<th>Chapter 12</th>
<th>(Cont'd)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12-38</td>
</tr>
<tr>
<td>Capital Works Programme</td>
<td>12-38</td>
</tr>
<tr>
<td>Public Works Programme</td>
<td>12-38</td>
</tr>
<tr>
<td>Block allocations</td>
<td>12-38</td>
</tr>
<tr>
<td>Consultation on public works projects</td>
<td>12-38</td>
</tr>
<tr>
<td>Procedure for the re-submission of a rejected financial proposal</td>
<td>12-38</td>
</tr>
<tr>
<td>Role of the Public Accounts Committee over the control of public funds</td>
<td>12-38</td>
</tr>
<tr>
<td>Annual accounts of the Government</td>
<td>12-38</td>
</tr>
<tr>
<td>Serious irregularities</td>
<td>12-38</td>
</tr>
<tr>
<td>Value-for-money audits</td>
<td>12-38</td>
</tr>
<tr>
<td>Procedures of the Public Accounts Committee</td>
<td>12-38</td>
</tr>
<tr>
<td>Pre-hearing arrangements</td>
<td>12-38</td>
</tr>
<tr>
<td>Hearings</td>
<td>12-38</td>
</tr>
<tr>
<td>The Committee's report</td>
<td>12-38</td>
</tr>
<tr>
<td>Government Minutes</td>
<td>12-38</td>
</tr>
<tr>
<td>Progress reports on subjects not selected for detailed examination</td>
<td>12-38</td>
</tr>
<tr>
<td>Relationship between the Public Accounts Committee and the Director of Audit</td>
<td>12-38</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 13</th>
<th>Conduct of business in committees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13-1</td>
</tr>
<tr>
<td>Introductory</td>
<td>13-2</td>
</tr>
<tr>
<td>Powers and functions of committees</td>
<td>13-4</td>
</tr>
<tr>
<td>Nature of the practice and procedure of committees</td>
<td>13-15</td>
</tr>
<tr>
<td>Finance Committee</td>
<td>13-16</td>
</tr>
<tr>
<td>Public Accounts Committee</td>
<td>13-16</td>
</tr>
<tr>
<td>Committee on Members' Interests</td>
<td>13-16</td>
</tr>
<tr>
<td>Select committees</td>
<td>13-16</td>
</tr>
<tr>
<td>House Committee, Bill Committees and Panels</td>
<td>13-16</td>
</tr>
<tr>
<td>Committee on Rules of Procedure</td>
<td>13-16</td>
</tr>
<tr>
<td>Investigation Committee</td>
<td>13-16</td>
</tr>
<tr>
<td>Committee on Access to the Legislature's Documents and Records</td>
<td>13-16</td>
</tr>
<tr>
<td>General practice and rules for committees</td>
<td>13-19</td>
</tr>
<tr>
<td>Formation of committees</td>
<td>13-19</td>
</tr>
<tr>
<td>Responsibilities and terms of reference of committees</td>
<td>13-19</td>
</tr>
<tr>
<td>Membership of committees</td>
<td>13-19</td>
</tr>
<tr>
<td>Membership size</td>
<td>13-19</td>
</tr>
<tr>
<td>President not to take part in the work of committees</td>
<td>13-19</td>
</tr>
<tr>
<td>Appointment of committee members by the President</td>
<td>13-19</td>
</tr>
</tbody>
</table>
Chapter 13 (Cont'd)

Election of members to committees
  Committee on Access to the Legislature's Documents and Records
Signification of membership
  Panels
  Subcommittees of the Finance Committee
  Bills Committees
  Subcommittees of the House Committee, Panels and Bills Committees
Late membership
Chairman and deputy chairman of a committee 13-30
Election procedure
Chairman's role in determining the time and place of meetings
  Extension of meeting time
  Scheduling of meetings
  Meeting time of the Finance Committee
  Meeting time of the House Committee
  Written notice of meeting
Chairman's role in deciding the agenda of a meeting
  Practice in the Finance Committee
Chairman's role in maintaining order at meetings
Chairman's power to curtail discussion on agenda items
Voting rights of chairmen
Provision of papers 13-43
Quorum of committees 13-44
Modes of deliberations 13-47
Motions
Moving of motions at Panel meetings
  Rule 22(p) of the House Rules
  Rule 24A(e) and (f) of the House Rules
Moving of motions at Finance Committee meetings
  Background
    Adoption of Rule 22(p) of the House Rules by the Establishment Subcommittee
    Adoption of the new Paragraph 37A by the Finance Committee
    Moving of motions under Paragraph 37A of the Finance Committee Procedure
    Number of motions that may be moved by each member
    Imposition of a cut-off time for receiving motions moved under 37A
# Table of Contents

## Chapter 13  (Cont'd)

*Moves to amend Paragraph 37A and equivalent provisions in the Subcommittees' Procedures*

*Speaking on a motion moved under Paragraph 37A*

**Adjournment of proceedings**

**Voting**
- Interpretation of "a majority of members voting"
- Ringing of voting bell at committee meetings

**Duty visits**

**Minutes of reports**
- Keeping of minutes
- Submission of reports
  - *Tabling of reports in the Council*
  - *Submission of reports to the House Committee*

**Mode of operation of committees subject to the House Rules**

*House Committee*
- *Special meetings with the Chief Secretary for Administration*
- *Subcommittees of the House Committee*
- *Parliamentary Liaison Subcommittees*
- *Subcommittee on Members' Remuneration and Operating Expenses Reimbursement*

*Bills Committees*

*Panels*
- *Joint Panel meetings*
- *Subcommittees of Panels*

**Activation of the work of subcommittees**

## Chapter 14  Conduct of Inquiries

**Introductory**

**Purposes of an inquiry**

**Historical background on the conduct of inquiries**
- Nature of inquiries
  - *Before July 1997*
  - *After the establishment of the HKSAR*

**Preparatory work**

**Process in conducting an inquiry**
- Duration of inquiry
- Chairmanship
- Practice and Procedure
- Work plan
- Invitation for information and views from the public
- Scheduling of meetings
### Table of Contents

**Chapter 14 (Cont'd)**

- Quorum
- Voting
- Participation of other Members
- Disclosure of interests
- Conduct of meetings
  - *Public and closed hearings*
  - *The issue of a summons*
  - *Examination of witnesses*
  - *Internal deliberations*
- Handling of documents
- Minutes of proceedings
- Report on the inquiry
- Premature publication of evidence
- Safeguarding the rights of witnesses
  - Rights and privileges of a witness under the Powers and Privileges Ordinance
  - Actions taken to protect the rights of witnesses in the course of an inquiry
  - Practice of ordering attendance by summons
- Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safeguarding the rights of witnesses</td>
<td>14-21</td>
</tr>
<tr>
<td>Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings</td>
<td>14-23</td>
</tr>
</tbody>
</table>
# Table of Contents

## Part III Partnership with people

### Chapter 15 Redress System

- Partnership with people
- Legislative Council's power and function to handle complaints from members of the public
- Redress System
  - Historical background
    - Before 1963
    - 1963 – 1985
    - 1986 – 1997
    - 1997 – present
- Nature of cases handled under the Redress System
- Secretariat's support
- The Duty Roster Member System
  - The Ward System
  - Meeting with deputations
- Procedure for handling complaints and representations
  - Handling complaints against Government decisions or actions
  - Handling of representation of views on Government policies and issues of public concern
  - Handling of complaints relating to constituency and individuals' issues
  - Handling of complaints against Members of the Legislative Council
- Role of the House Committee

### Chapter 16 Public Engagement

- Introductory
- Soliciting and representing public views
  - Historical background
  - Conduct of public hearings
    - Procedure governing the making of oral representations by members of the public
    - Disorderly conduct of members of the public attending meetings
  - Corporate liaison with local community
- Enhancing the transparency of the Legislature
  - Observance of the proceedings of the Council and committees
  - Facilitating the reporting on the work of the Council by the media
  - Broadcasting of proceedings
  - Dissemination of information
<table>
<thead>
<tr>
<th>Chapter 16 (Cont'd)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>On the website</td>
<td></td>
</tr>
<tr>
<td>On webcast</td>
<td></td>
</tr>
<tr>
<td>Through social media</td>
<td></td>
</tr>
<tr>
<td>Building institutional memory to facilitate understanding and growth</td>
<td>16-11</td>
</tr>
<tr>
<td>Legislative Council Library</td>
<td></td>
</tr>
<tr>
<td>Historical background</td>
<td></td>
</tr>
<tr>
<td>Transformation into a Constitutional Library</td>
<td></td>
</tr>
<tr>
<td>Current library services</td>
<td></td>
</tr>
<tr>
<td>Future development</td>
<td></td>
</tr>
<tr>
<td>Information and reference service</td>
<td></td>
</tr>
<tr>
<td>The Legislative Council Archives</td>
<td>16-15</td>
</tr>
<tr>
<td>Historical background</td>
<td></td>
</tr>
<tr>
<td>Missions of the Legislative Council Archives</td>
<td></td>
</tr>
<tr>
<td>Archives and Records Management Policy of the Legislative Council</td>
<td></td>
</tr>
<tr>
<td>Archives' services</td>
<td></td>
</tr>
<tr>
<td>Access to information policy</td>
<td>16-18</td>
</tr>
<tr>
<td>Review conducted by The Legislative Council Commission</td>
<td></td>
</tr>
<tr>
<td>Recommendations of the Committee on Rules of Procedure</td>
<td></td>
</tr>
<tr>
<td>Resolution of the Council on access to information</td>
<td></td>
</tr>
<tr>
<td>Committee on Access to the Legislature's Documents and Records</td>
<td></td>
</tr>
<tr>
<td>Policy on Access to the Legislature's Documents and Records</td>
<td></td>
</tr>
<tr>
<td>Clerk to the Legislative Council's responsibilities</td>
<td></td>
</tr>
<tr>
<td>Sustainable development of the Legislature</td>
<td>16-22</td>
</tr>
<tr>
<td>Guided educational tours and education facilities</td>
<td></td>
</tr>
<tr>
<td>Facilities for persons with disabilities</td>
<td></td>
</tr>
</tbody>
</table>
Table of Contents

List of Appendices


11-B President's ruling on the Labour Relations (Right to Representation, Consultation and Collective Bargaining) Bill proposed by the Hon LEE Cheuk-yan

11-C President's ruling on the Employment (Amendment) Bill 1999 proposed by Hon Andrew CHENG Kar-foo

11-D Form No. CB(3)-12 for giving notice of presentation of Bill

11-E Three-reading process of a bill

11-F President's ruling on Committee Stage Amendments proposed by Members to the Building Management (Amendment) Bill 2000

11-G President’s ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013

11-H President’s ruling on Committee stage amendments proposed by 14 Members to the Appropriation Bill 2014

11-I President’s ruling on Committee stage amendments proposed by 17 Members to the Appropriation Bill 2015

12-A Paragraphs 49 to 53 of the Finance Committee Procedure - Procedure of Special Meetings to Examine the Estimates of Expenditure

13-A Summary of key features of the committees of the Legislative Council

13-B Procedure of the Committee on Members' Interests for Handling Complaints

13-C Practice and Procedure of the Select Committee to Study Mr LEUNG Chun-ying's Involvement as a Member of the Jury in the West Kowloon Reclamation Concept Plan Competition and Related Issues

13-D Practice and Procedure of the Select Committee to Inquire into Matters Relating to Mr Timothy TONG's Duty Visits, Entertainment, and Bestowing and Receipt of Gifts during his Tenure as Commissioner of the Independent Commission Against Corruption

13-E Practice and Procedure of the Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the motion to censure Honourable KAM Nai-wai
# Table of Contents

**List of Appendices (Cont'd)**

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13-F</td>
<td>Procedure for Election of the Chairman and Deputy Chairman of a Committee</td>
</tr>
<tr>
<td>13-G</td>
<td>Note from the then Secretary General to the Chairman of Finance Committee dated 14 January 2010 giving advice on some procedural arrangements for Finance Committee meetings</td>
</tr>
<tr>
<td>13-H</td>
<td>Ruling of the Chairman of the Finance Committee on the decision to stop dealing with proposed motions presented by members to the Chairman under paragraph 37A of the Finance Committee Procedure</td>
</tr>
<tr>
<td>13-I</td>
<td>Summary of Judgment of Hon Mr Justice AU on Application for Leave for Judicial Review made by Hon WONG Yuk-man (HCAL 78/2014), prepared by the Legal Service Division of the Legislative Council Secretariat</td>
</tr>
<tr>
<td>13-K</td>
<td>Mechanism for handling Members' visits conducted under the name of the Council or its committees outside Hong Kong in response to invitations</td>
</tr>
<tr>
<td>13-L</td>
<td>Terms of Reference of the Panels</td>
</tr>
<tr>
<td>14-A</td>
<td>Rule 79 of the Rules of Procedure - Procedure of Select Committees</td>
</tr>
<tr>
<td>14-B</td>
<td>Resolution under Legislative Council (Powers and Privileges) Ordinances passed on 25 May 1994 and amended on 20 November 1996 and further amended on 16 April 1997</td>
</tr>
<tr>
<td>14-C</td>
<td>Practice and Procedure of the Select Committee to Inquire into Matters relating to the Post-service Work of Mr LEUNG Chin-man</td>
</tr>
<tr>
<td>14-D</td>
<td>Revised work plan and time frame of the Select Committee on Building Problems of Public Housing</td>
</tr>
<tr>
<td>14-E</td>
<td>A sample of summons</td>
</tr>
<tr>
<td>14-F</td>
<td>Allowance for witnesses attending before a committee to give evidence or to produce any document</td>
</tr>
<tr>
<td>14-G</td>
<td>A sample of the procedure adopted by the Select Committee on Building Problems of Public Housing Units for the provision of transcripts of evidence to witnesses and prospective witnesses</td>
</tr>
<tr>
<td>15-A</td>
<td>How is a complaint handled?</td>
</tr>
<tr>
<td>15-B</td>
<td>Legislative Council Redress System – Complaint Form</td>
</tr>
</tbody>
</table>
# Table of Contents

## List of Appendices (Cont'd)

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>16-A</td>
<td>Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382A)</td>
</tr>
<tr>
<td>16-B</td>
<td>Guidelines and Arrangements for Media Representatives in the Legislative Council Complex</td>
</tr>
<tr>
<td>16-C</td>
<td>A resolution passed by the Council on 8 January 2014 on a report summarizing the deliberations of the Commission on the proposal to launch LegCo Apps and to use social media to disseminate information of the Legislative Council and the related legal issues</td>
</tr>
<tr>
<td>16-D</td>
<td>Archives and Records Management Policy of the Legislative Council</td>
</tr>
<tr>
<td>16-E</td>
<td>Rules on Use of Services of the Legislative Council Archives</td>
</tr>
<tr>
<td>16-F</td>
<td>A list of exempted categories of documents and records proposed by the Committee on Access to the Legislature's Documents and Records</td>
</tr>
<tr>
<td>16-G</td>
<td>Access to information policy</td>
</tr>
<tr>
<td>16-H</td>
<td>Practice and Procedure of the Committee on Access to the Legislature's Documents and Records</td>
</tr>
<tr>
<td>16-I</td>
<td>Policy on Access to the Legislature’s Documents and Records</td>
</tr>
</tbody>
</table>

## References

- General Index
- Index of Reference to the Basic Law of the HKSAR
- Index of Reference to the Rules of Procedure of the Legislative Council of the HKSAR
- Index of Reference to the House Rules of the Legislative Council of the HKSAR
11. Legislative process

Chapter 11

Legislative process

11.1 The Legislative Council is the law-making body of the HKSAR. Under Article 73(1) of the Basic Law, the Legislative Council has the power and function to enact, amend or repeal laws in accordance with the provisions of the Basic Law and legal procedures. As explained in Chapter 2, this power and function includes passing new laws and amending or repealing existing laws. These laws include principal ordinances and subsidiary legislation. This Chapter explains the process adopted by the Legislative Council in scrutinizing a legislative proposal, be it a bill or an item of subsidiary legislation, and taking it through the various stages of deliberations and decisions in the Council and in committee before the proposal itself as well as any proposed amendments to it are passed into law.

11.2 This chapter also describes the roles of various committees of the Council in the legislative process and how a bill or an item of subsidiary legislation may be amended in the process. The procedure for the introduction of a Members' bill is also examined to facilitate understanding of the restrictions under Article 74 of the Basic Law over the introduction of bills by Members and the obligations of a Member to comply with the requirements set out in Rules 50 and 51 of the Rules of Procedure over the form and presentation of a Members' Bill. Previous rulings of the Presidents on draft Members' bills and on the admissibility of Committee Stage amendments are also explained.

Legislative Council's power and function to make and amend laws

11.3 The legislative system which had existed in Hong Kong under British rule since 1843 has been adopted under the Basic Law (including the Provisional Legislative Council from July 1997 to 30 June 1998 and the Legislative Council from 1 July 1998 onwards) after the establishment of the HKSAR in July 1997. Article 8 of the Basic Law provides that the laws

---

1 Article 66 of the Basic Law provides that "[t]he Legislative Council of the Hong Kong Special Administrative Region shall be the legislature of the Region."

2 Chapter 2, para. 2.4 – 2.5.
11. Legislative process

previously in force in Hong Kong (except those that contravene the Basic Law) are maintained. These laws are the common law, rules of equity, ordinances, subordinate legislation and customary law and they are subject to amendment by the legislature of the HKSAR. The statute law (i.e. legislation) of Hong Kong is published in the loose-leaf edition of the Laws of Hong Kong which comprises ordinances (being primary legislation) and subsidiary legislation (being subordinate legislation). Legislation published in the loose-leaf edition has an important legal status in that it is presumed to be correct unless the contrary is proved. According to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), subsidiary legislation means any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect.

11.4 Whilst the primary law-making power of the Legislative Council is conferred upon it by Article 73(1) of the Basic Law, the power to make subsidiary legislation is given to delegates that include the Chief Executive and other public officers by provisions contained in individual ordinances.

11.5 Under the Basic Law, both the Government and Members of the Legislative Council may introduce legislative proposals to the Legislative Council in accordance with relevant provisions in the Basic Law. The Legislative Council scrutinizes the proposed legislation and passes it into law in accordance with the legislative procedure set out in the Rules of Procedure.

11.6 In respect of subsidiary legislation, the power of the Legislative Council, as explained in Chapter 7, may be a positive power to vet and approve an item of subsidiary legislation pursuant to section 35 of Cap. 1, or a scrutiny and intervention power to be exercised in accordance with the negative vetting procedure provided in section 34 of Cap. 1. The extent of power of the Legislature to amend a proposed resolution or an item of subsidiary legislation tabled in the Council has been discussed in Chapter 10.

3 Laws (Loose-leaf Publication) Ordinance 1990, section 3; and legislative provisions for the legal status of an electronic database of legislation of Hong Kong have been made in the Legislation Publication Ordinance (Cap. 614) but have not yet been brought into effect.
4 Articles 56, 62(5) and 74 of the Basic Law.
5 Chapter 7, para. 7.81 – 7.83.
6 Chapter 10, para. 10.36 – 10.44.
Bills

11.7 A proposal to put in place a new law, be it a new principal ordinance or an amendment to an existing ordinance, is called a "bill" although the latter is often referred to as an "amendment bill".

Classification of bills

Public and private bills

11.8 Although the HKSAR Legislature has adopted the same legislative process as that used by the pre-1997 Legislature and legislatures in other common law jurisdictions, the classification of bills commonly used in these legislatures, namely public and private bills, is not explicitly provided for in the Rules of Procedure. According to Erskine May, public bills in the House of Commons of the UK Parliament relate to matters of public policy and are introduced directly by the Member in charge, who may be, and in the majority of cases is, a Government Minister while private bills are for the particular interest or benefit of any person(s), public company or corporation, or local authority, and are promoted by the interested parties themselves by means of petitions. Such classification was more commonly adopted for use in the pre-1997 Legislature. The term "Private Bill" first appeared in the 1884 Standing Orders when referring to proposed legislation involving private rights. In the 1968 Standing Orders, a more generic term was used. This type of bill was then referred to as a bill "not being a Government measure, intended to affect or benefit some particular person, association or corporate body". On 3 July 1991, the Private Bills Bill 1990 was passed to stipulate a fee for the presentation of a Private Bill unless the bill is for a charitable purpose or for a Government measure. In section 2 of the Private Bills Ordinance (Cap. 69), "private bill" is defined as a bill which provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public; and is not a Government measure.

---

8 In the 1884 Standing Orders, before any Private Bill, whereby the property of any private person might be affected, was introduced, notification of the intention of the parties to apply for such Private Bill had to be given by the parties, by advertisements in the Gazette, and by circulation of the proposed bill, once at least in the Gazette (Rule 49 of the Rules of Procedure). The provision was changed in the 1912 Standing Orders where publication in Chinese newspaper was also required if the parties affected were Chinese. No Private Ordinance was allowed to be passed without a saving provision to safeguard the rights of the Crown and all bodies politic or corporate and all other persons except those mentioned in the Ordinance (Rule 50 of the Rules of Procedure).
9 Standing Order No. 38(8) of the 1968 Standing Orders.
11. Legislative process

Cap. 69 is one of the Ordinances which continues to be in force in the HKSAR after 30 June 1997.  

11.9 It has been the practice, even up to this date, that bills relating to private interests, such as legislation to regulate tertiary institutions, charitable organizations and banks, etc. are sponsored by individual Members of the Council. These Members are required to follow the procedures which apply to "a bill to be presented by a Member" commonly known as a "Members' Bill". Details on these procedures are provided in the latter part of this Chapter.

11.10 As Members' bills during the pre-1997 period were only subject to the "charging effect" restriction in the Standing Orders, quite a number of Members' bills relating to public policies were proposed in the last few years before reunification and some of them were passed into law. These bills relating to public policies presented by Members were often referred to as "Members' Public Bills" as they related to public policies while those relating to private interests were called "Members' Private Bills". There was no differentiation between public and private bills in the way they were scrutinized and processed in the Council though bills presented by the Government had precedence on the Order Paper over bills moved by individual Members.

Government bills and Members' bills under the Basic Law

11.11 Although the concept of public and private bills continued to apply to the drafting of bills after the Basic Law came into effect on 1 July 1997,
some modifications have been made to the procedures provided in the Rules of Procedure relating to the introduction of bills to ensure conformity with the Basic Law. In the Basic Law, there is no mention of "public bill" or "private bill", but only "bills introduced by the government" (also called government bills) and "bills introduced by Members". "Bills introduced by the government" and "government bills" are referred to in various parts of the Basic Law, such as in Article 50 which refers to the circumstances where the Legislative Council may be dissolved, Article 72(2) which requires priority to be given to government bills for inclusion in the agenda of the Council, and Annex II which includes reference to procedures for voting on bills. On the other hand, as Members of the Legislative Council may introduce bills under Article 74 of the Basic Law, "bills introduced by individual Members" is also referred to in Annex II to the Basic Law.

11.12 The term "Members' bills" is more often used in internal communication with Members when referring to the requirements for bills which are to be introduced by Members as distinct from public officers. The procedure which applied to "Members' bills" in the pre-1997 Legislature has continued to apply, except that such bills must not relate to public expenditure or political structure or the operation of the government, and where the bills relate to government policies, the written consent of the Chief Executive shall be required, as stipulated in Article 74 of the Basic Law. The restrictions and requirement in this Article are reflected in Rule 51(3) and (4) of the Rules of Procedure. It has been a practice for individual Members to seek a ruling from the President on whether their proposed Members' bills contravene the Rules of Procedure before they proceed with the formal procedure for the presentation of the bills, which will be discussed in the latter part of this Chapter. As these rulings are sought before formal procedures begin, they are also known as "private rulings" in order to distinguish them from rulings of the President made pursuant to specific powers given to him under the Rules of Procedure.

Form of Bills

11.13 A bill, after it is passed by the Legislative Council, shall be signed by the Chief Executive and promulgated as a law. The promulgation is done by
11. Legislative process

way of publication in the Gazette and the bill then becomes an "Ordinance". It is therefore necessary that a bill for presentation to the Council conforms to the requirements laid down in Rule 50 (Form of Bills) of the Rules of Procedure. In the case of a bill to be presented by a Member, a certificate must be obtained from the Law Draftsman of the Department of Justice to confirm that the bill conforms to the requirements of Rule 50 and the general form of Hong Kong legislation. The certificate signed by the Law Draftsman must be attached to the notice given to the Clerk in respect of the presentation of the bill.

Title of a bill

11.14 Each bill is given a short title which corresponds with the title by which it is to be cited if it becomes law. This citation title is usually given in the first clause of the bill. The title should describe the bill in a straightforward manner and should not duplicate, after it becomes law, any of the existing Ordinances. Throughout the passage of the bill, the title remains unchanged. The short title of a bill, however, is subject to amendment if it is made necessary by an amendment to the bill, but such amendment is dealt with at the end of the proceedings at Committee Stage.

11.15 For proposed new principal legislation, the title of the bill does not carry the year of introduction. For example, the Government introduced proposed new legislation to the Legislative Council on 2 July 2010 to prohibit conduct that prevents, restricts or distorts competition in Hong Kong. The proposed new legislation was entitled "Competition Bill". After the Bill was passed by the Council on 14 June 2012, it was published in Legal Supplement No. 1 of the Gazette with a number given to it according to the order in the year in which it was signed and promulgated by the Chief Executive, namely Competition Ordinance (14 of 2012). It was then published in the loose-leaf

---

18 See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 1.2.1 – 1.2.2.
19 These requirements follow those set out in the pre-1997 Legislative Council Standing Orders, some of which were requirements provided by the Royal Instructions, e.g. the requirements of a savings provision. The saving provision for private bills was mentioned in para. 27(XXVII) of the Hong Kong Royal Instructions 1917 (as amended to 17 February 1993). The numbering and internal arrangement of ordinances were mentioned in para. 25 (XXV) subpara. 2 of the Royal Instructions.
20 Rule 51(2) of the Rules of Procedure.
21 Rule 51(1) of the Rules of Procedure.
22 Rule 50(2) of the Rules of Procedure.
23 Rule 50(2) of the Rules of Procedure.
24 Rule 58(9) of the Rules of Procedure.
11. Legislative process

11.16 As regards an amendment bill, the title of the bill carries the same title of the Ordinance to which amendment is to be made together with the year of its publication in the Gazette. For example, the Stamp Duty (Amendment) Bill 2012 was published in the Gazette on 28 December 2012 and its title remained the same throughout the legislative process although it was first read in the Council on 9 January 2013. The Bill was subsequently passed on 22 February 2014 and was published in the Gazette as the Stamp Duty (Amendment) Ordinance 2014 (2 of 2014) on 28 February 2014.27 In relation to omnibus bills which seek to amend more than one ordinance, the title may contain general descriptions such as "miscellaneous amendments" that reflect the object or nature of the bill.28 No separate chapter number is given to an amending ordinance as its contents are incorporated into the relevant principal ordinance(s).29

11.17 Where the word "The" is included as part of the name of a body in the title, as in the case of The Legislative Council Commission Bill, the word "The" ought to be included each time when the full title of the Bill is mentioned. For example, if a Bills Committee is to be formed, the name of the committee should be "Bills Committee on The Legislative Council Commission Bill".

Long title

11.18 According to Rule 50(3) of the Rules of Procedure, a bill shall be given a long title setting out the purposes of the bill in general terms. This

25 Under section 2(2) of the Laws (Loose-leaf Publication) Ordinance 1990, Instrument A603, the Secretary for Justice may, in the loose-leaf edition, give a chapter number to an Ordinance and alter the title, short title or citation of the Ordinance; and arrange the grouping and sequence of legislation.

26 All principal Ordinances and subsidiary legislation are accessible in electronic form on the Bilingual Laws Information System operated by the Government although the texts in electronic form do not yet have legal status.

27 Under Rule 58(10) of the Rules of Procedure, it is not necessary to amend the reference to the year or to any number in the title by which the bill is to be cited if it becomes law. Any such reference may be changed by the Law Draftsman to refer to the year, or to reflect the order, in which the bill becomes law.

28 For example, according to the long title of the Statute Law (Miscellaneous Provisions) Bill 2008, the Bill provides for miscellaneous amendments to various Ordinances and for connected purposes. The Bill was passed on 2 July 2008.

29 See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 1.2.15.
11. Legislative process

long title is positioned before the citation or short title clause. Historically, the long title of a bill served no more than a general statement of the purposes of the bill although in UK practice it must cover the scope of the Bill which affects how it can be amended. For example, the long title of District Councils Bill introduced to the Council on 11 December 1998 read as follows:

"A Bill to provide for the declaration of Districts, the establishment, composition and functions of District Councils, the procedure for election of persons to be members of District Councils; and to provide for related matters."

11.19 The current drafting practice is that the long title "has to be wide enough to embrace the whole of the contents of the Bill and is usually drafted to be specific enough to give fair notice of the subject of the Bill". For example, the long title of the Stamp Duty (Amendment) Bill 2012 read as follows:

"A Bill to amend the Stamp Duty Ordinance to impose a higher rate of special stamp duty on certain transactions of residential property acquired on or after 27 October 2012 if those transactions occur within 36 months after the acquisition, and to impose buyer's stamp duty on certain agreements for sale and conveyances on sale of residential property executed on or after 27 October 2012; and to provide for incidental and related matters."

11.20 Given that the requirement for a long title under the Rules of Procedure is to set out the purposes of the bill in general terms, there is no hard and fast rule on how exactly a long title should be drafted. Nevertheless, where the long title contains too much of the substantial details of the bill any changes to the clauses may render it necessary to amend the long title of the bill. The long title is usually not subject to amendment at the Committee Stage unless an amendment made to the provisions in the bill makes it necessary to do so that it covers the scope of the Bill. But the scope cannot be extended merely by amending the words of the long title. An amendment to the long title only follows from a substantive amendment to the body of the Bill. It may also be amended for some technical reasons such as to improve

---

30 Rule 50(3) of the Rules of Procedure.
31 See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 2.1.7.
the language or to clarify a certain point which is within the scope of a bill.\textsuperscript{32, 33}

\textit{Enacting formula and preamble}

11.21 Immediately after the long title and before the clauses of the bill, there is the enacting formula which announces the authority under which the law is enacted. The wording of the enacting formula after reunification is "Enacted by the Legislative Council". Enacting formula was a requirement of the Royal Instructions which signified the authority for enacting. Previously it was written along the line of "with the advice and consent of the Legislative Council …". With the coming into operation of the Basic Law, bills passed by the Legislative Council do not become law until they are signed and promulgated by the Chief Executive under Article 76 of the Basic Law. The enacting formula currently only reflects the position up to the completion of the enacting stage.

11.22 On occasions, a preamble may be included to precede the enacting formula to state the reasons for and the intended effects of the proposed legislation\textsuperscript{34}, but it is no longer a common practice in recent years. An example may be found in the Shenzhen Bay Port Hong Kong Port Area Bill\textsuperscript{35} in which a preamble was provided to set out the decision of the Standing Committee of the Tenth National People's Congress on the need to set up a Hong Kong Port Area at the Shenzhen Bay Port for customs clearance and inspection of people.

\textit{Short title and commencement date}

11.23 The short title is set out in the first clause of a bill. Where a commencement date of the ordinance is to be provided as one other than the date of publication of the ordinance in the Gazette, that date or the mechanism for appointing that date is normally provided in a sub-clause separated from that for the short title.\textsuperscript{36} A notice that appoints the commencement date of an

\textsuperscript{32} Rule 58(9) of the Rules of Procedure.
\textsuperscript{33} See the deliberation on long titles by the Bills Committee on Mainland Judgments (Reciprocal Enforcement) Bill (see Report of the Bills Committee to the Council at http://www.legco.gov.hk/yr06-07/english/bc/bc56/reports/bc560423cb2-1666-e.pdf). The long title of Pesticides (Amendment) Bill 2013 was amended due to amendments made to the content of the Bill.
\textsuperscript{34} Erskine May (24th Edition) p. 528.
\textsuperscript{36} See section 20 of Interpretation and General Clauses Ordinance (Cap. 1).
11. Legislative process

ordinance in accordance with such provision in an ordinance is generally entitled a commencement notice. It is subsidiary legislation that has to be made by the appointing authority, which is normally the authority responsible for the implementation of the ordinance.

Language

11.24 All bills must be presented in the Chinese and English languages. However, Rule 50(4) of the Rules of Procedure provides for this requirement to be subject to a direction given by the Chief Executive in Council under section 4(3) of the Official Languages Ordinance (Cap. 5) if the Chief Executive in Council is of the opinion that a Bill is urgent and its enactment as an Ordinance in both official languages will occasion unreasonable delay. This requirement does not apply to subsidiary legislation.

Structure of a bill

11.25 A bill is divided into clauses numbered consecutively. Each clause will become a section of the Ordinance after enactment, except in the case of amendment bills. To facilitate reading, Rule 50(6) of the Rules of Procedure stipulates that a descriptive section heading is required for each clause. Where subclauses are used, each subclause is referred to as a subsection after enactment. A subclause may be divided into paragraphs and then subparagraphs. Grouping of clauses into Parts (and dividing a Part into Divisions) is common in the case of long and complicated bills.

11.26 Where technical matters or matters of detail are to be provided, they may be set out in the form of Schedules which are placed after the main body of the bill. A Schedule is part of the bill but is dependent on specific provisions in the bill which give effect to the Schedule. Matters in an

---

37 See paragraph 11.36.
38 Section 4(5) of the Official Languages Ordinance (Cap. 5) provides that this section does not extend to subsidiary legislation. Rule 30(2) of the Rules of Procedure also provides that a notice of an amendment to a motion (which may include a motion to approve or amend an item of subsidiary legislation) shall be in Chinese if the motion is in Chinese and in English if the motion is in English.
39 Typical examples are those relating to financial and companies matters. The Securities and Futures Ordinance (Cap. 571) contains 409 sections grouped under 17 Parts. Some Parts are divided up to 13 Divisions. The new Companies Ordinance (Cap. 622) re-written in 2013 contains 921 sections grouped under 21 Parts. Most Parts are divided into Divisions and Subdivisions.
40 See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 4.1.5.
ordinance which are subject to amendment by a delegated authority in the form of subsidiary legislation are usually provided in Schedules 41.

11.27 In the case of an amendment bill, the clauses will not become sections. Each clause in the amendment bill aims to delete or add words in a specific provision in an existing ordinance. Where the bill is passed, the amendments proposed to be effected by the clauses of the passed bill are subsumed accordingly into the existing ordinance. Where new provisions are added, the next Arabic numeral in numerical sequence is used if the new provision appears at the end of a section / subsection / paragraph / subparagraph. If the new provision is between two existing provisions, alphabetical letters are used, e.g. section 23A will be inserted between section 23 and section 24.

11.28 Regarding the numbering of clauses and schedules, a new numbering system was originally proposed for use in the Companies Bill in 2011. Under that system, each clause was to be identified by two sets of numbers connected by a decimal, with the first set representing the number of a part of the bill that the clause is under, and the second representing the numeric position of the clause within that part. Noting this proposed change in the numbering system, the then Secretary General of the Legislative Council Secretariat (who is also Clerk to the Legislative Council) advised that Rule 50(6) of the Rules of Procedure required that a bill "shall be divided into clauses numbered consecutively". Under the new system, the clauses would not be numbered consecutively and there would be a number gap between the last clause of a part and the first clause of the part that followed. It was therefore considered that the new numbering system did not comply with the requirement of Rule 50(6). In the light of this advice, the Government decided that the new numbering system would not be used for the Companies Bill. At the House Committee's meeting on 7 January 2011, it was considered that should the Government plan to adopt a new numbering system in future, consultation with the Legislative Council would be necessary.42

41 See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 4.1.6.
42 See minutes of the meeting of the House Committee on 7 January 2011, para. 4 – 9.
11. Legislative process

Explanatory memorandum

11.29 An explanatory memorandum which states the contents and objects of the bill in non-technical language must be attached to the bill.\(^{43}\) It should provide a summary of the bill including the background to its enactment and an explanation of the various provisions. The explanatory memorandum does not form part of the bill but should be read in conjunction with it. The explanatory memorandum is not published in the Gazette with the enacted Ordinance or in the loose-leaf edition of the Laws of Hong Kong.

Saving provision for "private bills"

11.30 In the case of a Members' bill which falls within the definition of a "private bill" in the Private Bills Ordinance (Cap. 69), a saving provision must be included in the bill, as follows:\(^{44}\):

"Saving

Nothing in this Ordinance shall affect or be deemed to affect the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them."

Subsidiary legislation and subordinate legislation

11.31 "Subsidiary legislation" and "subordinate legislation" are treated as expressions having the same meaning.\(^{45}\) The more commonly used expression is the former, which embraces the various forms of subsidiary legislation which are made by holders of public offices or other authorities (delegates) pursuant to enabling provisions in an ordinance to do so. As explained in Chapter 7\(^{46}\), subsidiary legislation may take the form of a

---

\(^{43}\) Rule 50(7) of the Rules of Procedure.

\(^{44}\) Rule 50(8) of the Rules of Procedure. "Private bill" is one which provides primarily for the particular interest or benefit of any individual association or body corporate rather than the interest or benefit of the public, and is not a government bill (section 2 of Private Bills Ordinance Cap.69).

\(^{45}\) Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1).

\(^{46}\) Chapter 7, para. 7.81 – 7.83.
proclamation, rule, regulation, order, resolution, notice, rule of court or bylaws. It may be amended at any time by the same delegates and in the same manner by and in which it was made. Details on the making of subsidiary legislation are provided in Part V of the Interpretation and General Clauses Ordinance (Cap. 1) which also sets out the Legislative Council's power of scrutiny and intervention through the negative and positive vetting procedures provided respectively in section 34 and section 35 of Cap. 1 and in accordance with the provisions of the Rules of Procedure.

**Publication and numbering of subsidiary legislation**

11.32 Subsidiary legislation must be published in the Gazette. For subsidiary legislation subject to the negative vetting procedure, the publication in the Gazette normally takes place on a Friday before the subsidiary legislation is laid on the Table of the Legislative Council at a meeting following that Friday (usually on the following Wednesday). Subsidiary legislation is published in Legal Supplement No. 2 of the Gazette. Each item is given a Legal Notice Number (L.N. No.) in accordance with the order in which it was published starting with L.N. No. 1 in the beginning of a calendar year. For example, the first item of subsidiary legislation subject to negative vetting procedure in 2015 was the Employment (Amendment) Ordinance 2014 (Commencement) Notice which was published in Legal Supplement No. 2 of the Gazette issued on 2 January 2015 as L.N. 1 of 2015.

11.33 It has been the practice of the Department of Justice to assign an identification reference to an item of subsidiary legislation by giving it the chapter number of its principal ordinance followed by an alphabetical letter in the upper case to indicate the order in which the item was first made in relation to other items of subsidiary legislation that were made under the same ordinance. For example, there are 19 items of subsidiary legislation made under the Public Finance Ordinance (Cap. 2); their numbering is from Cap. 2A to Cap. 2S. An item of amending subsidiary legislation is not given a

---

47 Section 28(1)(c) of the Interpretation and General Clauses Ordinance (Cap. 1).
48 Section 28(2) of the Interpretation and General Clauses Ordinance (Cap. 1).
49 There may be extraordinary issues of the Gazette published on other days of the week: for example, orders made under the Public Revenue Protection Ordinance (Cap. 120) are published on the Wednesday and at the time when the Financial Secretary delivers his budget speech at the start of the second reading debate on an Appropriation Bill at a meeting of the Legislative Council.
11. Legislative process

separate Cap. No. with alphabetical letter as its contents will be incorporated into the existing subsidiary legislation.50

11.34 Subsidiary legislation that is subject to the positive vetting procedure is not published in the Gazette until after the motion to approve it is passed. A notice must be given to the Clerk not later than 12 clear days before the date of the Council meeting at which the motion is to be considered by the Council.51 When the motion for the approval of the subsidiary legislation is passed it becomes a resolution which will be published in the Gazette. The subsidiary legislation so approved under this procedure will have the force of law and will be incorporated into the Laws of Hong Kong in accordance with its provisions.

Commencement notice

11.35 Subsidiary legislation comes into effect at the beginning of the day on which it is published in the Gazette or another day as specified in the subsidiary legislation.52 Where the subsidiary legislation is to commence on, or be repealed from, a date to be notified in the Gazette, a separate commencement notice is required for fixing the date of commencement or date of repeal. A notice may fix different commencement dates for different provisions.53 The commencement notice is published in Legal Supplement No. 2 and, unless otherwise stated in the principal ordinance or the subsidiary legislation concerned, such notice is subject to the negative vetting procedure of the Legislative Council under section 34 of Cap. 1.

11.36 The question of whether a commencement notice is subsidiary legislation was discussed in June 1996. In a ruling on a Member's proposed amendments to two commencement notices of the Sex Discrimination Ordinance (67 of 1995 and 86 of 1995), President Andrew WONG made it clear that a commencement notice is part of the legislative process because such an order brings the legislation into effect, i.e. a delegated legislative act which has legislative effect. The President also referred to Erskine May (21st Ed p.538) that "[t]he commencement of a statute may more conveniently

---

50 See "Drafting Legislation in Hong Kong - A Guide to Styles & Practice" (2012), published by Law Drafting Division, Department of Justice, para. 1.3.4 – 1.3.6.
51 Rule 29(1) of the Rules of Procedure.
52 Section 28(3) of the Interpretation and General Clauses Ordinance (Cap. 1).
53 Section 28(5) of the Interpretation and General Clauses Ordinance (Cap. 1).
11. Legislative process

be provided for by delegated legislation" to stress that this was to be preferred in the Hong Kong context. The President's ruling is at Appendix 11-A.

11.37 Where the commencement date of an enacted ordinance is other than the date on which such ordinance is published in the Gazette, a separate commencement notice is required for appointing another date for the commencement of the ordinance. In such case, the bill is regarded to have been enacted as an ordinance but not yet coming into operation until the beginning of the day appointed by the commencement notice.

Pre-legislative scrutiny

11.38 The Government is primarily responsible for proposing new legislation or amendments to existing legislation. Where a Government measure is to be enacted by statute, it is important that the proposed legislation is accepted by the general public and that any parties whose interests may be affected have the opportunity to express their opinions and seek redress before the new legislation is enacted. Owing to the limited time available for scrutiny after a bill or an item of subsidiary legislation is formally presented to the Council, it is the practice in the Hong Kong Legislature to start discussion on the principles and merits of proposed legislation and to engage the public well before a decision is made on its final form. The process of discussion should also be conducted in an open and transparent manner.

11.39 As mentioned in Chapter 5, there is an established understanding with the Government that the Legislature should be given ample time to study and scrutinize a bill or an item of subsidiary legislation. It has been a practice since the First Legislative Council that at the start of a new session, each Director of Bureau would inform the corresponding Legislative Council Panel of the major legislative proposals to be introduced to the Council within the session. This will facilitate the relevant Panel, which has a responsibility to oversee the policies of the Bureau, to plan how and when discussions on the legislative proposals should be conducted. The Government is encouraged to conduct its own public consultation in the course of drawing up a legislative proposal and to provide a summary of the views collected when it briefs the Legislative Council Panel on the proposal. This will enable Members of the

54 Chapter 5, para. 5.88 – 5.93.
Legislature to have a comprehensive understanding of its likely impact of the proposal on any sector and on the community at large.

11.40 When the legislative proposal comes before the Panel, the Government normally provides a brief on the purpose and merits of the proposal with some details of the proposal but not the text of the proposed legislation. Initial discussion on the legislative proposal will take place at the Panel's regular meeting or series of meetings dedicated for the purpose, depending on the complexity of the proposed legislation. The Panel may decide to conduct public hearings to enable all affected and interested parties to come forward with their views and suggestions on how the proposed legislation may be improved. Where public hearings are to be conducted, notice is given through the Legislative Council's website and, if appropriate, also by invitation to relevant bodies and all District Councils. All parties are invited to submit written views before the hearings and the submissions are circulated to all members. The Panel may also invite any parties who have expressed interest in appearing before the Panel to give an oral presentation.

11.41 At the conclusion of public hearings, the Panel will consider the views collected before it advises the Government whether the proposed legislation is ready for formal presentation or whether further study is required. Where the proposed legislation is of a complex nature, Members may ask for a draft bill (or subsidiary legislation) to be prepared for further consultation before formal introduction. This draft bill, usually referred to as a White Bill, is normally considered by a subcommittee formed under the House Committee so that any Member who may not be a member of the Panel may take part in the study of the White Bill. However, the provision of a draft bill for pre-legislative scrutiny is no longer a common practice in recent years.

55 For example, the discussion on the proposed legislative framework to regulate the conduct of interception of communications and covert surveillance by law enforcement agencies at 5 meetings of the Panel on Security before the relevant bill was presented to the Council in March 2006. Another example is the proposal for establishing an independent Insurance Authority, which involved substantial legislative amendments to the Insurance Companies Ordinance (Cap. 41), and was discussed by the Panel on Financial Affairs at a series of meetings from 2010 to 2013 before the relevant bill was first read in Council on 30 April 2014.

56 An example is the Urban Renewal Authority White Bill gazetted on 22 October 1999, which sought to provide a legislative framework for the establishment of the Urban Renewal Authority. A subcommittee was formed under the House Committee to study the White Bill in detail. Another example is the setting up of a subcommittee under the House Committee in February 2015, in response to the request of the Panel on Administration of Justice and Legal Services, to study four proposed items of subsidiary legislation on the procedures to be adopted by the Competition Tribunal, so as to allow more time for scrutiny before they were gazetted and laid on the table of the Council.
11. Legislative process

Compliance with Article 74 of the Basic Law

11.42 As the same rules governing the introduction of bills applied to both Members and public officers under the Standing Orders, Members in the pre-1997 Legislature were not subject to restrictions other than those which were considered by the President to have a charging effect, in which case the written consent of the Governor was required. The principle about charging derives from the constitutional convention in the UK whereby the Crown (or Executive) requests money while the House of Commons grants it. Nevertheless, it should be noted that under the Letters Patent, it was the Governor who had the power to make laws, by and with the consent of the Legislative Council. Article X of the Letters Patent (1991) provided that "When a Bill passed by the Legislative Council is presented to the Governor for his assent, he shall, according to his discretion, but subject to any Instructions addressed to him under Our Sign Manual and Signet or through one of Our Principal Secretaries of State, declare that he assents thereto, or refuses his assent to the same, or that he reserves the same for the signification of Our pleasure". In other words, despite the absence of restrictions in the matters contained in the bills introduced by individual Members, the final discretion of whether such bills, if passed by the Legislative Council, should be promulgated rested with the Governor; albeit that the discretion to refuse assent was very rarely exercised.

11.43 Article 74 of the Basic Law provides that Members of the Legislative Council may introduce bills which do not relate to public expenditure or political structure or the operation of the government. Bills relating to government policies require the written consent of the Chief Executive. Due to the lack of precedents in this area, it had taken some years for the executive authorities and the legislature to come to an understanding of how the Article should apply. It was at one time considered by the then Solicitor-General that it should be the Chief Executive who would decide whether certain proposed motions or bills and related proposed amendments were subject to Article 48(10) and Article 74 of the Basic Law. The matter was studied by the House Committee and, after deliberation, it was of the view that since Article 75 provided the Legislative Council with the power to make its

59 Article 48(10) provides that the Chief Executive of the HKSAR shall have the power and function to approve the introduction of motions regarding revenues or expenditure to the Legislative Council.
60 See Chapter 10, para. 10.32.
own rules of procedure, it was for the Council to draw up its own procedures which on the one hand satisfied the requirements under the Basic Law, and on the other, facilitated the conduct of business of the Council in the most effective manner. Having regard to the functions of the executive authorities and the legislature and the various articles to enable the two bodies to regulate and monitor the activities of each other under the Basic Law, the House Committee considered that the President, who was empowered to decide whether bills, motions and amendments to bills might be put on the Agenda of the Council, should be the one to decide whether any bills introduced by Members were related to the specific areas specified under Article 74.\(^{62}\) The report of the House Committee was noted by the Government.

**Purpose of Article 74 of the Basic Law**

11.44 The restrictions under Article 74 of the Basic Law were new not only to Members of the Legislature, but also to the Government. Different interpretations of the terms in the Article were put forward by both the Government and individual Members proposing bills to the Council when the President invited them to give views on the bills as well as each other's responses. It has taken some years for certain general principles to be developed on how Article 74 should apply to Members' bills which are set out in various rulings made by the President. It is common practice that a Member who intends to present a bill would first seek a private ruling from the President before giving notice of his intention to present the bill. The President will give his opinion having regard to Rule 51(3) and (4) of the Rules of Procedure which reflect the requirements under Article 74 of the Basic Law.

11.45 The principles adopted by the President for considering whether a bill is caught by Rule 51(3) and (4) of the Rules of Procedure are first seen in two rulings made by President Rita FAN in July 1999 in response to the requests for private rulings on two bills proposed by Mr Andrew CHENG Kar-foo\(^ {63}\) and Mr LEE Cheuk-yan\(^ {64}\). In these rulings, Mrs FAN referred to various articles in the Basic Law concerning the power and function of the executive authorities to introduce bills and the budget, and examined the way checks and balances were provided between the executive and the legislature under

---

\(^{62}\) See Appendix 10-B, para. 16 – 22.

\(^{63}\) Employment (Amendment) Bill 1999 proposed by Mr Andrew CHENG Kar-foo.

\(^{64}\) Labour Relations (Rights to Representation, Consultation and Collective Bargaining) Bill proposed by Mr LEE Cheuk-yan.
11. Legislative process

the Basic Law. She noted that in respect of the introduction of bills, Article 62 of the Basic Law provides that the executive authorities have the powers and functions to draft and introduce bills, motions and subordinate legislation. On the other hand, while Article 74 provides that Members of the Legislative Council may introduce bills, it also states that they may do so in accordance with the provisions of the Basic Law and subject to the restrictions imposed by this article. Mrs FAN's conclusion was that Article 74 is an enabling article which enables Members of the Legislative Council to introduce bills but at the same time imposes conditions and restrictions on such introduction. In the UK Parliament, private Members in both Houses may introduce Bills (with limited time for progress in the Commons) but any charging provision in them must be supported by an enabling Government motion in the Commons known as a 'Money Resolution'. Without such a Motion on the Order Paper, the charging provisions cannot be moved and they can only be agreed to once the Resolution has been made.65

Interpretation of specific terms in Article 74

11.46 When the President makes a private ruling, he first invites the Government to give views on the proposed bill. He then invites the Member proposing the bill to comment on the views of the Government. Where needed, the President may further invites the Government to clarify certain points which may not have been made clear in its first response, e.g. the estimated public expenditure which may be incurred from the implementation of the statutory requirement proposed in the bill. The President at the same time invites the Counsel to the Legislature to advise on any legal and constitutional issues as well as any fundamental principles that may apply in other common law jurisdictions and are relevant, for his consideration. With the advice of the Clerk to the Legislative Council on precedent cases (if any), the President then forms his own opinion on whether the bill is caught by Rule 51(3) and (4) of the Rules of Procedure.

11.47 In the course of consulting the Government and Members proposing the two bills in 1999 (referred to in paragraph 11.45 above), President Rita FAN noted the arguments between the Government and the two Members over the interpretation of the specific terms used in Rule 51(3) and (4), which included "relate to", "public expenditure", "the operation of the government" and "government policies". She took the opportunity to examine

11. Legislative process

these terms and, in her ruling on 16 July 1999, she gave her views on how she had interpreted these terms when forming her opinions on the two Bills. Mrs FAN came to the view that no matter what her views might be on these terms, they should only be taken as guidelines and should be applied on a case by case basis and on their own merits.66 This interpretation of the terms in Rule 51(3) and (4) has been referred to in subsequent Presidents' rulings and is explained in detail below together with other examples.

"Relate to"

11.48 Whether a bill is caught by Rule 51(3) and (4) of the Rules of Procedure depends largely on how restrictive or how broad the term "relate to" is interpreted. This term is adopted directly from Article 74 of the Basic Law. The Government's opinion at the time when its view was sought in 1999 was that the term "relate to" should be interpreted as having "a direct, indirect, consequential or incidental bearing on the matter". This view was disputed by the two Members seeking to introduce their respective bills. After considering the viewpoints of both sides, Mrs FAN came to the view that in order for a bill not to be caught by Rule 51(3) and (4), the implementation of the bill must not have substantive effect on one or more than one of the areas prescribed in the Rule.

"Public expenditure"

11.49 The term "public expenditure" in the context of Rule 51(3) of the Rules of Procedure was held by President Mrs FAN to be wider in scope than "to dispose of or charge any part of the revenue or other public moneys of Hong Kong", i.e. the principle of "charging effect" enshrined in Rules 31 and 57(6) of the Rules of Procedure. According to the President, the "charging effect" provisions in Rules 31 and 57(6) were self-imposed restrictions which have no relation to Article 74. A bill will relate to public expenditure under Rule 51(3) if the implementation of the bill has the effect of either increasing or reducing public expenditure, and the amount so increased or reduced is substantial and is such that the President must not ignore.67

66 Mrs FAN made reference to Lord Bridge's remark made in the case of Re Smalley [1985] AC 622 on the determination of whether a certain matter was related to a trial on indictment in the context of section 29(3) of the UK Supreme Court Act 1981: "If the statutory language is, as here, imprecise, it may well be impossible to prescribe in the abstract a precise test to determine on which side of the line any case should fall, and therefore, necessary, to proceed on a case by case basis."

67 President's ruling on Employment (Amendment) (No. 2) Bill 1998 proposed by Hon LEE Cheuk-yan on 19 July 1999, para. 21.
11.50 The above interpretation was adopted when President Rita FAN considered Mr LEE Cheuk-yan's proposed Labour Relations (Rights to Representation, Consultation and Collective Bargaining) Bill. The President noted the Government's estimated additional staff cost of $23.3 million per annum, and she considered that this amount alone was substantial and was such that she must not ignore. She considered that Mr LEE's Bill related to public expenditure and so could not be introduced. The President's ruling dated 19 July 1999 is at Appendix 11-B.

11.51 Questions were then raised on whether an empowering provision which did not impose a duty or obligation on the Government to take action should be regarded as one related to public expenditure. A ruling in February 2001 explained that even if an empowering provision provides the Government with the discretion to exercise the power or not, as in the case of the bringing of potentially costly civil actions against certain businesses was not the same as exercising the power to pardon or commute prison sentences which did not incur substantial public expenditure. If the discretion, once exercised, would give rise to a cost which is so substantial that it cannot be ignored, the bill will be regarded as relating to public expenditure.

11.52 As to the extent to which the amount of additional public expenditure may be regarded as substantial and must not be ignored, President Jasper TSANG's ruling on 25 June 2010 may illustrate this point. In 2010, the President was requested to make a private ruling on the Medical Registration (Amendment) Bill 2010 proposed by Dr LEUNG Ka-lau. The proposed Bill aimed to include provisions to regulate companies carrying on the business of medical practices by requiring a majority of the directors of those companies to be registered medical practitioners. These proposed provisions were modeled on similar provisions in the Dentists Registration Ordinance (Cap. 156). In examining the financial impact on public expenditure, the President studied the assumptions made by the Government in coming up with its estimated cost and referred to the actual experience after the implementation of the similar provisions in Cap. 156. He considered the Government's assumption difficult to accept and adopted Dr LEUNG's relevant assumption instead. According to Dr LEUNG's assumption, it was estimated that the additional recurrent cost would be in the region of $21,600 per annum, which could not be regarded as significant when compared with

---

68 See President's ruling on Fair Competition Bill proposed by Mr Fred LI and Mr SIN Ching-kai on 12 February 2001 paras. 15(b) and 21 at http://www.legco.gov.hk/yr00-01/english/pre_rul/e010212.pdf.
11. Legislative process

the estimated expenditure of $4.5 billion of the Department of Health for the 2010-2011 financial year.69

"Operation of the Government"

11.53 Although the Government has argued that the word "government" in the context of Rule 51(3) should include all three branches of the government, i.e. the executive authorities, the legislature and the judiciary, President Rita FAN stated in her ruling on 19 July 1999 70 that it was clear that "government" in this context does not include the legislature and the judiciary. She would form the opinion that a bill relates to the operation of the government if she was satisfied that the implementation of a proposed bill would have obvious effect on the structure and procedure of the executive authorities, and that the effect would not be of a temporary nature.

11.54 In January 2007, President Rita FAN ruled that Ms CHOY So-yuk's proposed Forest and Countryside (Amendment) Bill 2006 related to the operation of the Government. In her ruling, Mrs FAN stated that she took Counsel's advice that when assessing the effect of the Bill on the operation of the Government, the key question she should consider was whether the proposed new statutory requirements would result in changes in the organization structure of the Government, which should include the distribution of responsibilities among government departments and their procedure or working process, in implementing the new requirements contained in the Bill. As the Bill proposed to introduce a new statutory requirement of obtaining a special permit from the Director of Agriculture, Fisheries and Conservation to carry out excavation and building works in tree protection zones, the President considered that it was an additional statutory requirement. The proposal clearly would change the present procedure for carrying out excavation or building works on Government land and the effect was not a temporary one because the additional statutory requirement, once enacted, would remain in force until it was amended or repealed.71

69 See President's ruling on 25 June 2010, paras. 12 – 16 at http://www.legco.gov.hk/yr09-10/english/pre_rul/pre0625-ref-e.pdf. The President ruled that the proposed Medical Registration (Amendment) Bill 2010 did not relate to public expenditure or the operation of the Government. However, at paras. 29 – 32 he ruled that the bill related to Government policies within the meaning of Rule 51(4) of the Rules of Procedure, and it could only be introduced if there was written consent of the Chief Executive.

70 See Appendix 11-B. (para. 24).

71 President's ruling on 18 January 2007 (paras. 35 & 36, 44 – 47) is at http://www.legco.gov.hk/yr06-07/english/pre_rul/pre0118-ref-e.pdf.
11.55 In May 2009, in considering Mr CHAN Wai-yip's proposed Smoking (Public Health) (Amendment) Bill 2009, President Jasper TSANG adopted the same principle established in the rulings of his predecessor. Mr CHAN's proposed Bill sought to defer the implementation date of the smoking ban on certain establishments (listed in Part 2 of Schedule 6 to the Ordinance) from the original implementation date of 1 July 2009 by two years to 1 July 2011. The Government argued that the extension would have an obvious or substantive impact on the procedure of the Government as it could not enforce the smoking ban during the extension period. In view of the absence of information to substantiate how any procedure of the Government would be affected, the President did not find the proposed Bill related to the operation of the Government. However, as the proposed Bill was ruled by the President to relate to Government policies, the written consent of the Chief Executive was required.72

11.56 A similar ruling was made by President Jasper TSANG on the Medical Registration (Amendment) Bill 2010 proposed by Dr LEUNG Ka-lau referred to in paragraph 11.51 above. Although the Government argued that certain working procedures might need to be revised to assist in enforcing the proposed Bill, the President could not find any information from the Government which might indicate an obvious effect on either the structure or procedure of the executive authorities for that purpose.73

"Government policies"

11.57 President Rita FAN gave an interpretation of the term "government policies" in the context of Rule 51(4) of the Rules of Procedure in her ruling on Mr Andrew CHENG Kar-far's proposed Employment (Amendment) Bill 1999. The Rule, which reflects the second part of Article 74 of the Basic Law, stipulates that the notice of presentation of any bill which, in the opinion of the President, relates to government policies must be accompanied by the written consent of the Chief Executive in respect of the bill. According to the President's ruling, government policies referred to in Article 74 are those that have been decided by the Chief Executive or Chief Executive in Council under Articles 48(4) and 56 of the Basic Law. These also include the policies decided by former Governor or Governors in Council prior to the implementation of the Basic Law which are still in force. She also considered

73 President's ruling on 25 June 2010 is at http://www.legco.gov.hk/yr09-10/english/pre_rul/pre0625-ref-e.pdf.
that government policies may need to be implemented through legislation and hence policies reflected in legislation are also government policies for the purpose of Rule 51(4). In this context, policies decided by public officers under delegated authority from the Chief Executive and policies promulgated in the Legislative Council or its committees by designated public officers are also regarded as government policies, but these do not include policies which are being formulated.

11.58 In the case of Mr Andrew CHENG Kar-foo's proposed Employment (Amendment) Bill 1999, the President noted that the Government had taken action to achieve the objective of encouraging negotiation between employers and employees instead of, as proposed by Mr CHENG, regulating such negotiation through legislation. As the matter had been promulgated at a meeting of the Legislative Council before Mr CHENG's submission of his proposed Bill, she considered that the Bill related to government policies and would require the written consent of the Chief Executive. The President's ruling is at Appendix 11-C.

11.59 Since 2001, for the purpose of enhancing the competitiveness of the Hong Kong banking market, a number of bank merger bills have been proposed by individual Members for introduction to the Council. Although it was Government's policy to encourage mergers and acquisitions to consolidate the banking sector in Hong Kong 74, the bills proposed by these Members still fell within the purview of Rule 51(3) and (4) and a private ruling by the President was sought on each of these cases. The first of this series were two Bills, namely Bank of China (Hong Kong) Limited (Merger) Bill proposed by Dr David LI Kwok-po and The Bank of East Asia, Limited Bill proposed by Mr NG Leung-sing, in May 2001. The Government considered that both Bills related to its policies on bank merger, issue of legal tender notes, taxation and control of tenancies. Having considered the advice of the Counsel to the Legislature, President Rita FAN was of the opinion that both Bills related to Government's policy on the regulation of banks, the set-off of losses against profits of corporations and the control of tenancies, as reflected in the relevant legislation. She ruled that written consent from the Chief Executive was required. Both Dr LI and Mr NG subsequently obtained the written consent of the Chief Executive and introduced their Bills

---

74 Refer to Briefing by the Chief Executive of the Hong Kong Monetary Authority to the Panel on Financial Affairs on 3 January 2000 at http://www.legco.gov.hk/yr99-00/english/panels/fa/minutes/fa030100.pdf.
11. Legislative process

respectively to the Council on 13 June 2001. Both Bills were passed on 12 July 2001.75

11.60 As regards whether a bill which seeks to amend an existing ordinance may be related to Government policies, President Rita FAN provided further explanation in her ruling on Mr Eric LI Ka-cheung's Professional Accountants (Amendment) Bill 2004 on 4 March 2004. The proposed Bill sought to enhance regulation of the accounting profession by altering the name and membership structure of the Hong Kong Society of Accountants ("the Society") and providing for the professional development of professional accountants. In her ruling, Mrs FAN referred to the view of the Counsel to the Legislature that the test of whether a bill should be classified as one having a substantive effect on a Government policy or policies is neither as high as requiring that the bill must have an important effect nor so low that it need merely have some tenuous link with a Government policy articulated by the Administration; and that a bill does not relate to Government policies simply because it seeks to amend an ordinance in order to address an issue which is merely incidental to a Government policy. As it was Government's policy to regulate the accounting profession and Mr LI's proposed Bill sought to add lay members to be appointed by the Chief Executive to the Society's Council and its Investigation Panel, Mrs FAN ruled that the proposed Bill related to Government policies.76 Mr LI subsequently obtained the written consent of the Chief Executive and introduced the Bill to the Council on 24 March 2004. The Bill was passed on 9 July 2004.77

11.61 In President Jasper TSANG's ruling on 22 February 2013 on Mr Kenneth LEUNG's proposed Professional Accountants (Amendment) Bill 2013, the President reiterated the view he had expressed in his ruling on an almost identical Bill proposed by Mr Paul CHAN Mo-po, the proceedings of which could not be completed before the Council stood prorogued in July 2012. The President recorded that the Professional Accountants Ordinance was introduced as a Government Bill and enacted in 1972 to

76 President's ruling at http://www.legco.gov.hk/yr03-04/english/pre_rul/pre0304cb3-ref-e.pdf.
77 Examples of other Members' Bills which were also considered by the President to relate to Government policies on appointments of the institutions' Council members are City University of Hong Kong (Amendment) Bill 2006, The Hong Kong University of Science and Technology (Amendment) Bill 2008 and The Hong Kong Polytechnic University (Amendment) Bill 2010. See President's rulings at http://www.legco.gov.hk/yr05-06/english/pre_rul/pre0502eb3-ref-e.pdf, http://www.legco.gov.hk/yr07-08/english/pre_rul/pre0529-ref-e.pdf and http://www.legco.gov.hk/yr10-11/english/pre_rul/pre1215-ref-e.pdf respectively. These Bills were all passed by the Council.
regulate the accountancy profession. He further noted that the provisions sought to be amended by the proposed Bill were previously amended by the Government. It was clear to him that the whole Ordinance represented Government policies; and that what he needed to consider was whether the proposed amendments would have a substantive effect on Government policies. After examining the details of the proposed amendments in the proposed Bill, the President ruled that the Bill related to Government policies. Mr LEUNG subsequently obtained the written consent of the Chief Executive and introduced the Bill on 26 April 2013. The Bill was passed on 30 October 2013.

"Political structure"

11.62 In November 1997, President Rita FAN gave a ruling on the matter of whether Mr Eric LI Ka-cheung could introduce a bill that sought to alter the composition of the Social Welfare Functional Constituency in the Legislative Council Ordinance (Cap. 542) so that only registered social workers might vote in the said Constituency. In her ruling, she opined that the proposal in the bill related to political structure. Her explanation was that whilst the amended composition of the Social Welfare Functional Constituency as proposed in the Bill was not in conflict with the decision of the Preparatory Committee for the HKSAR regarding the formation of the First Legislative Council, the proposal related to the specific method for the formation of the First Legislative Council. In her view, for a bill to be caught by the provision that it might "relate to political structure" in the Rules of Procedure, it is not necessary that the proposed bill be in conflict with Article 68 and Annex II of the Basic Law and/or the decision of the Preparatory Committee; it is sufficient that the bill relates to them and thus relates to the political structure 78.

Legislative procedures

11.63 As regards the manner or method of enacting, amending and repealing laws, the Legislative Council is required to exercise these powers and functions in accordance with the provisions of the Basic Law and legal procedures. 79 The Basic Law empowers the Legislative Council to makes its

79 Article 73(1) of the Basic Law.
11. Legislative process

own rules of procedure which, according to judicial judgment 80, are recognized as "legal procedures" governing the manner in which the Legislative Council enacts, amends or repeals laws. On 2 July 1998, the First Legislative Council of the HKSAR adopted its Rules of Procedure which have been used by the successive terms of the HKSAR Legislature. The Rules of Procedure provide for a legislative process, which is adopted from that in the pre-1997 Standing Orders and is similar to the legislative procedures commonly used by legislatures of common law jurisdictions. While modifications have been made to some of the relevant provisions to ensure compliance with the Basic Law and to cater for new developments towards greater transparency and accountability, the principles behind the various steps in the legislative process remain largely the same.

Gazettal and presentation of bills

11.64 Notice may at any time be given by a Member or a designated public officer of his intention to present a bill. A standard notice form is at Appendix 11-D. The notice is to be sent to the office of the Clerk with a copy of the bill and an explanatory memorandum (which states the contents and objects of the bill in non-technical language) attached to the bill as required under Rule 50(7) of the Rules of Procedure.81 The bill should be presented in both the Chinese and English languages but in case only one official language is used, a certificate stating the direction of the Chief Executive in Council for the bill to be so presented should be attached to the notice.82 Such a direction will only be considered in cases of urgency where publication in both official languages would cause unreasonable delay.83

Government bills

11.65 Notice for the presentation of a Government bill is usually received after the Chief Executive in Council has approved the bill for introduction to the Legislative Council. Where a bill is of an important and urgent nature and has not been discussed by a Panel beforehand, arrangement will usually be made for the relevant Panel to be briefed on the bill as soon as practicable after the relevant meeting of the Executive Council. It is common practice for

---

80 See, for example, the High Court's judgment in LEUNG Kwok-hung v The President of the Legislative Council of the Hong Kong Special Administrative Region [2007] 1 HKLRD 387, para. 7.
81 Rule 51(1) of the Rules of Procedure.
82 Rule 51(5) of the Rules of Procedure.
83 Section 4(3) of Official Languages Ordinance (Cap. 5).
the Government to issue a Legislative Council Brief with the full text of the bill when notice is given to the Clerk for the presentation of the bill. The Legislative Council Brief is issued to all Members as soon as it is received, usually on the day of receipt of the notice of presentation of the bill.

11.66 After receipt of a bill for presentation to the Council, the Clerk must arrange for the bill and its explanatory memorandum to be published in the Gazette unless the President directs that it shall not be published before it has been read the first time. Such a direction is exceptional. The bill is usually published in the Gazette on the nearest Friday after receipt of the notice.

**Members' bills**

11.67 As regards a Members' bill, the Member presenting the bill would also have sought a private ruling from the President prior to giving notice of his intention to present it, and have consulted the relevant Panel on the details of the legislative proposal. It is not uncommon that approach to the President for a private ruling and consultation with the Panel take place at about the same time. Such approach and consultation, however, are not a pre-condition for presenting a bill. Any Member may at any time give notice to the Clerk of his intention to present a bill but if the bill, in the opinion of the President, contravenes Rule 51(3) or (4), it will not be included on the Agenda of the Council. If the bill, in the opinion of the President, relates to Government policies, the written consent of the Chief Executive in respect of the bill should be attached to the notice. For all Members' bills, the notice should also be accompanied by a certificate signed by the Law Draftsman to confirm conformity to the requirements of Rule 50 and the general form of Hong Kong legislation.

11.68 If the bill is a "private bill" as defined in the Private Bills Ordinance (Cap. 69), the Member is required to attach 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 the other being an English language newspaper.

84 Rule 52(1) of the Rules of Procedure.
85 Rule 51(4) of the Rules of Procedure.
86 Rule 51(1) and (2) of the Rules of Procedure.
87 "Private bill" is one which provides primarily for the particular interest or benefit of any individual association or body corporate rather than the interest or benefit of the public; and is not a government bill (section 2 Private Bills Ordinance Cap.69).
11. Legislative process

newspaper.\textsuperscript{88} If this has been done, there is no need for the Clerk to arrange for it to be published in the Gazette.\textsuperscript{89} Pursuant to section 3(1) of Cap. 69, a Member presenting a "private bill" is required to pay to the Director of Accounting Services a fee specified in the Schedule to the Ordinance. Under section 3(2) of Cap. 69, the Chief Secretary for Administration may, upon an application made by the promoter of a bill, waive the fee if he is satisfied that the bill is for a charitable purpose within the meaning of section 2 of the Registered Trustees Incorporation Ordinance (Cap. 306) or facilitates a Government measure.

\textit{Member or public officer in charge of a bill}

11.69 The Member (or public officer) presenting a bill is known as the Member (or public officer) in charge of the bill. If a bill is introduced jointly by more than one Member, those Members who have jointly signed the notice of presentation should designate one of them as the Member in charge of the bill and this should be stated in the notice for presentation.\textsuperscript{90} All references to a Member in charge of a bill in the Rules of Procedure shall also apply to a public officer in charge of a bill.\textsuperscript{91}

\textit{Bills with substantially the same provisions}

11.70 Similar to motions, a bill which contains substantially the same provisions as another bill may be allowed by the President to be placed on the Agenda of the Council subject to all requirements in respect of the presentation of a bill being complied with. However, where a decision has been made by the Council on a bill at second reading, another bill with substantially the same provisions shall not be further proceeded with in the same session and shall be withdrawn.\textsuperscript{92} If a bill which has passed second reading is subsequently withdrawn, another bill with substantially the same provisions may be presented in the same session.\textsuperscript{93}

11.71 Nevertheless, for implementation of certain provisions in the Basic Law, relevant provisions have been included in Rule 51 (Notice of Presentation of Bills) and Rule 66 of the Rules of Procedure to provide for a

\textsuperscript{88} Rule 51(6) of the Rules of Procedure.
\textsuperscript{89} Rule 52(1)(b) of the Rules of Procedure.
\textsuperscript{90} Rule 51(8) of the Rules of Procedure.
\textsuperscript{91} Rule 51(9) of the Rules of Procedure.
\textsuperscript{92} Rule 51(7)(a) of the Rules of Procedure.
\textsuperscript{93} Rule 51(7)(b) of the Rules of Procedure.
11. Legislative process

bill passed by the Council to be returned to the Council for reconsideration (Article 49 of the Basic Law) and for a budget or any other important bill that the Council refused to pass (Article 50 of the Basic Law) to be considered again within the same session. When the matter was reviewed by the Committee on Rules of Procedure of the First Legislative Council in 1999-2000, it was decided that there should be a mechanism to cater for the return of a bill for reconsideration and the re-submission of an Appropriation Bill on which a decision had already been made in the same session. On 22 June 2000, the Council approved amendments to Rule 51 of the Rules of Procedure to facilitate the re-introduction of the relevant bills within the same session.94

Three-reading process

11.72 The term "three-reading process" refers to the stages through which a bill is considered by the Legislative Council. This process is adopted from the principal stages in the discussion of bills in the House of Commons in the U.K.95, and primarily comprises the following:

- First Reading (A formal stage with no substantive proceedings)
- Second Reading
- Committee Stage
- Report Stage & Third Reading (often taken together)

11.73 In the HKSAR Legislature, the "three-reading process" generally refers to the proceedings which takes place in the Council and in the committee of the whole Council. In practice, the consideration of the proposals in a bill normally starts well before the formal introduction of the bill in the Council in Panels. After the bill is presented to the Council, it is considered by the House Committee and, if needed, by a Bills Committee, before the bill is resumed for second reading debate as illustrated in the legislative process in Appendix 11-E.

94 Rule 51(7)(a) and Rule 51(7A) of the Rules of Procedure. Also see Progress report of the Committee on Rules of Procedure for the period May 1999 to June 2000, para. 2.1 – 2.19.
95 In the 14th Century, it was already the usual practice of the House of Commons to read a Bill three times. "All bills be thrice, in three divers days, read and disputed upon, before they come to the question.." quoted from Sir Gilbert Campion (1950), An Introduction to the Procedure of the House of Commons, p. 22.
First Reading

11.74 When the Clerk has sent to each Member a copy of a bill for presentation to the Council, the bill shall be deemed to have been presented to the Council.96 The short title of the bill shall be placed on the Agenda of the Council for first reading at the meeting as specified by the Member or public officer in charge of the bill.97 The bill is deemed to have been read the first time upon the Clerk reading the short title. No debate is allowed upon the first reading of the bill.98

11.75 A bill is deemed to have been ordered by the Council to be set down for second reading after the bill has been read the first time. This arrangement, which was first provided for in the 1968 Standing Orders99, is set out in Rule 53(3) of the current Rules of Procedure. This means that the first reading and the moving of the motion for second reading of a bill take place at the same Council meeting. No separate notice is required to be given by the Member or public officer in charge of the bill for moving the motion for second reading.

Second Reading

11.76 After a bill has been read the first time, the Council proceeds to the second reading stage and the Member or public officer in charge of the bill is called to move the motion "That the bill be now read the second time". According to Rule 54(3) of the Rules of Procedure, the scope of debate is on the general merits and principles of the bill. In the case of a Members' bill which requires the signification of the written consent of the Chief Executive under Rule 51(4) of the Rules of Procedure, the President shall first invite the relevant public officer to confirm such signification before the Member in charge of the bill is allowed to move the motion for second reading.100 Such signification is recorded in the minutes of proceedings.101

11.77 No amendment can be made to the motion "That the bill be now read the second time". Under Rule 54(4) of the Rules of Procedure, the debate is adjourned after the Member or public officer in charge of the bill has spoken

---

96 Rule 52(2) of the Rules of Procedure.
97 Rule 53(1) of the Rules of Procedure.
98 Rule 53(2) of the Rules of Procedure.
99 Standing Order 41(3) of the Standing Orders of pre-1997 Legislature.
100 Rule 54(1) of the Rules of Procedure.
101 Rule 54(2) of the Rules of Procedure.
on the motion by explaining the purposes of the bill. The bill is then referred to the House Committee. However, any Member may move without notice that the debate shall not be adjourned. If the Council agrees to such a motion, the Council shall then proceed to debating the second reading of the bill.

11.78 Though not explicitly provided for in the Rules of Procedure, the motion "That the second reading debate shall not be adjourned" in Rule 54(4) is not subject to a motion to adjourn moved under Rule 40 of the Rules of Procedure. Prior to 1992, when the provision which contained the current Rule 54(4) was not yet made in the Standing Orders, it had been the practice for a Member to move to adjourn the debate after the Member in charge of a bill had spoken at second reading so as to enable the bill to be referred to the then LegCo In-house to decide whether an ad hoc group should be formed to study the bill. During a major review of the committee system in 1991-1992, it was decided that all former OMELCO committees including the LegCo In-house (which then became the House Committee) and ad hoc groups (which then became Bills Committees) should be committees of the Legislative Council. To dispense with the need for moving a motion to adjourn the second reading debate on each occasion, a new provision was made to deem that the debate was adjourned and the bill referred to the House Committee unless the Council ordered otherwise upon a motion moved without notice. This provision was adopted in the Rules of Procedure and became the current Rule 54(4). In other words, Rule 54(4) is in itself a deeming provision for the adjournment of a debate in accordance with Rule 40 of the Rules of Procedure.

11.79 The deeming provision for the second reading debate to be adjourned and the bill to be referred to the House Committee does not apply to Appropriation Bills. In the case of an Appropriation Bill, the Estimates containing details of the financial requirements for the services of the Government may be referred by the President to the Finance Committee for their examination before the consideration of the Appropriation Bill in committee of the whole Council. Details on the financial procedures of the Legislative Council are explained in Chapter 12.

Referral to House Committee

11.80 After a bill is referred to the House Committee, an item is placed on the agenda for the next meeting of the House Committee which is usually held
on the Friday following the Council meeting in the same week. To facilitate Members' discussion, the Legal Service Division of the Legislative Council Secretariat prepares a report on the bill which contains an introduction to the object, background, major provisions, legal effect and intended commencement of the bill together with a written account of the Government's consultation with the relevant Panel provided by the Panel Clerk. 103 At the meeting of the House Committee, the Legal Adviser also advises Members his/her views on the legal and drafting aspects of the bill or whether any legal or drafting issues require further examination. It is for the House Committee to indicate whether to support the resumption of the second reading debate on the bill or whether a Bills Committee should be formed to study the bill. It may also decide to defer the decision to the next meeting pending a further report of the Legal Service Division on the relevant legal and drafting issues of the bill. 104

**Forming of a Bills Committee**

11.81 The decision whether a Bills Committee is to be formed, the decision is made by the House Committee, although in most cases the Bills Committee is formed if no dissenting voice is heard. Where there is a dissenting voice, the chairman of the House Committee will invite Members to express views and put the question to a vote. When a Bills Committee is formed, the chairman of the House Committee will enquire which Members wish to join the Bills Committee by a show of hands and the Member who has the highest precedence among those Members will be responsible for calling the first meeting of the Bills Committee. A circular to invite membership is also issued to all Members except the President after the House Committee meeting. Any Member who wishes to join the Bills Committee may submit a return before the deadline notified by the clerk to the Bills Committee. 105

11.82 As a Bills Committee is required under Rule 76(3) of the Rules of Procedure to consist of not less than 3 members including the chairman, if the number of Members who signify membership after the deadline is less than three, the matter will be reported to the House Committee.

---

103 It has been a standing practice that all major legislative proposals should first be discussed by the relevant policy Panels before they are formally introduced to the Council.
104 See Rule 20(g) of the House Rules.
105 Rule 21(c) of the House Rules.
11. Legislative process

Queuing system for Bills Committees

11.83 The House Committee decides on the timing and order of allocation of bills to a Bills Committee. In making its decision, the House Committee may take into account the number and relative priority of other bills currently referred to it under Rule 54(4) of the Rules of Procedure, and may at any time vary any such decision.106

11.84 According to Rule 21 of the House Rules, the maximum number of Bills Committee is limited to 16 at any one time.107 When more than 16 Bills Committees have been formed, a queuing system will automatically be activated. Under normal circumstances, the order of Bills Committees on the waiting list is in the order of the introduction of the relevant bills into the Council. Where a request is made by the Government for priority activation of a Bills Committee on a Government bill, the House Committee will take into account the information provided by the Government, advice given by the Legal Adviser, the work progress of the Bills Committees in operation and the relative urgency of the bill against other bills on the waiting list, etc. and determine if priority should be given to the Bills Committee concerned.108 If the House Committee has acceded to such a request, the order of the Bills Committees on Members' bills in the queue would not be affected as a result. The same principle also applies to the priority activation of a Members' bill. The order of Government bills in the queue would not be affected.109

11.85 On occasions, in view of the sometimes long queue of Bills Committees waiting to be activated, there may be requests from Members for a bill to be studied by a Panel or a subcommittee of the House Committee instead on the grounds that the bill is relatively simple but urgent and the matters to be resolved appear to be quite straight-forward. Whilst the House Committee has the discretion to decide how a bill referred to it should be considered,110 a request of this nature has never been acceded to. The House Committee has adhered strictly to the division of responsibilities among the various types of committees as set out in the Rules of Procedure. The mechanism of how a bill is referred to a Bills Committee by the House Committee and how a Bills Committee reports to the House Committee on its

106 Rule 75(5) of the Rules of Procedure and Rule 20(g) of the House Rules.
107 The setting of a quota for the number of Bills Committee that may be operating at the same time was made by the House Committee in 1994.
108 Rule 21(f) and Rule 20(g) of the House Rules.
109 Rule 21(f) of the House Rules.
110 Rule 75(4) of the Rules of Procedure.
work is clearly laid down in the Rules of Procedure and supplemented by the House Rules. Any departure from the standing arrangement may give rise to confusion over the roles of different committees of the Council. The House Committee is nevertheless prepared to consider other alternatives, such as setting out the queries about the bill in writing and seeking information from the Government through the Legal Service Division, before deciding on whether a Bills Committee should be formed.111

11.86 Upon the completion of the work of a Bills Committee, the slot is vacated for the activation of the next Bills Committee on the waiting list. If any Bills Committee decides to hold in abeyance the consideration of the bill, it should notify the House Committee which will decide whether the next Bills Committee in the queue should be activated. A Bills Committee held in abeyance will not normally be reactivated until a vacant slot arises to accommodate its reactivation.112 113 Under Rule 75(6) of the Rules of Procedure, the House Committee, after consulting the relevant Bills Committee, may decide the date for completion of consideration of the bill by the Bills Committee. It may at any time vary any such decision after consulting the Bills Committee.114

Consideration of a bill by a Bills Committee

11.87 The procedure of a Bills Committee is provided in Rule 76 of the Rules of Procedure. The terms of reference of a Bills Committee are set out in Rule 76(7) which provides that a Bills Committee shall consider the general merits and principles, and the detailed provisions, of the bill allocated to it; and may also consider any amendments relevant to the bill. The House Committee may provide guidelines relating to the procedure of the Bills

---

111 In the case of the Banking (Amendment) Bill 2011, a Member raised concern after the House Committee had decided that it was not necessary to form a Bills Committee to study the Bill and raised no objection to the resumption of the second reading debate on the Bill. The Member concerned was asked to follow up his concerns with the Government through the Legal Service Division and express his concern during the second reading debate on the Bill. The House Committee subsequently noted that the Government had given its reply to the Legal Service Division regarding the Member's concern about the Bill.

112 Rule 21(g) of the House Rules.

113 On 2 March 2001, the House Committee agreed that the Bills Committee on Inland Revenue (Amendment) Bill 2000 would hold in abeyance the consideration of the Bill pending the Government's response to the issues identified by the Bills Committee, and that the slot would be allocated to another Bills Committee on the waiting list. On 24 October 2003, noting the Government's confirmation that it was ready to resume discussion with the Bills Committee, the House Committee agreed to allocate an available slot for the reactivation of the Bills Committee.

114 Rule 75(6) of the Rules of Procedure.
Committee, which are set out in the House Rules. In gist, a Bills Committee is required to act in the following manner:

(a) The scrutiny of a bill should be conducted quickly and, whenever possible, be completed within three months; the chairman should report to the House Committee should there be a need to work beyond 3 months;

(b) The chairman, who is elected at the first meeting, has the duty to monitor closely the progress of scrutiny and report to the House Committee if there is a need to hold the bill in abeyance;

(c) The meetings of a Bills Committee shall be held in public unless the chairman otherwise orders in accordance with a decision of the committee. All matters for the decision of a Bills Committee shall be decided by a majority of the members voting;

(d) In the course of deliberation, the Bills Committee may come to a view that amendments should be made to certain clauses of or schedules to the bill. Such proposed amendments, if adopted by the majority of members of the Bills Committee, will be moved in the name of the chairman or any member as determined by the Bills Committee, on behalf of the Bills Committee;

(e) As soon as a Bills Committee has completed consideration of the bill allocated to it, it notifies the House Committee and advises it in writing of the Bills Committee's deliberations and where appropriate, the majority and minority views, and whether or not the Bills Committee supports the bill. Where there is urgency to resume the second reading debate on a bill and a written report cannot be provided to the House Committee before the deadline for giving notice of resumption, the chairman may make a verbal report to the House Committee and provide a written report at the

115 Rule 75(8) of the Rules of Procedure.
116 Rule 21(h) of the House Rules.
117 Subrule (iv) of Rule 21(i) of the House Rules.
118 Rule 76(6) of the Rules of Procedure.
120 Rule 76(9) of the Rules of Procedure and Rule 21(j) of the House Rules.
earliest opportunity, e.g. at the following House Committee meeting.\(^{121}\)

(f) The deliberations of a Bills Committee may be discussed by the House Committee for the purpose of informing Members in preparation for resumption of the second reading debate on the bill in the Council. The deliberations of the Bills Committee, including any proposed amendments to the bill to be moved by its chairman or member on behalf of the Bills Committee, are not binding on any Member, whether in Council, or in a committee of the whole Council or in the House Committee.\(^{122}\)

(g) On occasions, some Members who are not members of the Bills Committee may raise questions about the Bill or inform the House Committee of their intention to move amendments to the bill concerned. If such amendments have not been considered by the Bills Committee and if time permits, the House Committee may suggest to the Bills Committee the holding of a further meeting to consider the proposed amendments before the second reading debate is resumed. However, Members are reminded that reopening of discussion on issues on which there has been full deliberation is not allowed.\(^{123}\) Members should have brought their proposed amendments to the Bills Committee for discussion at an early stage to facilitate due consideration of the Bill and any proposed amendments to it by the Bills Committee.

(h) After discussion at the House Committee on its deliberations, a Bills Committee shall submit a report to the Council and arrange for it to be presented at the same Council meeting at which the resumption of the second reading debate on the bill takes place.\(^{124}\) The chairman or any member of the Bills Committee may, with the permission of the President, address the Council on the report at the commencement of the resumption of the second reading debate on the bill and he will be the first Member to speak at the resumed debate.\(^{125}\) However, if the purpose of the

\(^{121}\) Para. 8.18 of the Handbook for Chairmen of Bills Committee.

\(^{122}\) Rule 76(10) of the Rules of Procedure.

\(^{123}\) Rule 21(i)(iii) of the House Rules.

\(^{124}\) Rule 76(9) of the Rules of Procedure and Rule 21(l) of the House Rules.

\(^{125}\) Rule 21(k), (m) and (o) of the House Rules.
resumption of the second reading debate on a bill is for making an announcement for the withdrawal of the bill, the chairman or any member of the Bills Committee concerned may, with the permission of the President, address the Council at the time when the report is laid on the Table of the Council. The address to the Council is not subject to the 15-minute restriction on speaking time;

(i) In the event that there is no indication that the second reading debate on a bill will resume within a reasonable time after completion of the Bills Committee's work, the Bills Committee may decide to table a written report in the Council. The chairman or any member of the Bills Committee may seek the President's permission to address the Council under Rule 21(3) of the Rules of Procedure (Presentation of Papers); and

(j) The Bills Committee will be dissolved as soon as the bill considered by it has passed through the Council or when it is so decided by the House Committee.

Notice for resumption of the second reading debate on a bill

11.88 The discussion at the House Committee upon the completion of the work of a Bills Committee is on whether the bill is ready for resumption of further proceedings in the Council. The decision of the House Committee is therefore not on whether the bill is to be supported, but rather on whether there is support for the second reading debate on the bill to be resumed at a Council meeting as requested by the Member or public officer in charge of the bill. Rule 54(5) of the Rules of Procedure has provided a mechanism and timeframe to facilitate the seeking of the support of the House Committee before the notice for the resumption of the second reading debate may be given. Nevertheless, in terms of formal procedure, the Member or public officer in charge of the bill may at any time give notice to the Clerk for the resumption of the second reading debate by giving not less than 12 clear days'
notice before the day on which the debate is to be resumed, or less than 12 clear days if the President in his discretion dispenses with such notice.\footnote{Rule 54(5)(d) of the Rules of Procedure.}

11.89 Under Rule 54(5) of the Rules of Procedure, the resumption of second reading debate may not take place earlier than 9 clear days after the meeting of the House Committee. This stipulation should be read against the background that the Council meets on Wednesdays and the House Committee meets on Friday to consider business to be dealt with at a Council meeting. When a Bills Committee has reported its deliberations to the House Committee on a Friday, the earliest date the second reading debate on the bill can be resumed is the second Wednesday after the meeting of the House Committee. Rule 54(5)(c) does provide the flexibility for the House Committee to recommend that the second reading debate on the bill be resumed at the next meeting of the Council, i.e. the Wednesday immediately after the House Committee, provided that permission is given by the President and notice is given no later than 2 clear days after the House Committee meeting.\footnote{Rule 54(5)(e) of the Rules of Procedure.}

11.90 If the decision of the House Committee is to recommend a period longer than 9 clear days for resumption of the second reading debate, Rule 54(5)(b) requires that resumption shall not take place earlier than 12 clear days after that House Committee meeting. In other words, the resumption may only take place, at the earliest, in the third week after the House Committee meeting.

11.91 There is also a requirement in Rule 54(5) of the Rules of Procedure that the Member or public officer in charge of a bill should consult the chairman of the House Committee before he gives notice to the Clerk for the resumption of the second reading debate. As it is an important step to confirm that the bill is ready for further proceedings in the Council, a new Rule 54(5A) was added in 2003 to enable the Member or public officer in charge of the bill to consult the deputy chairman of the House Committee in the event that the chairman of the House Committee is not available for consultation because of his absence from Hong Kong or for other reasons.
11. Legislative process

Resumption of the second reading debate on a bill

11.92 As provided in Rule 54(7) of the Rules of Procedure, the Member making a report of a Bills Committee (usually its chairman) is the first Member to be invited by the President to speak at the resumed debate, followed by other Members in the manner described in Chapter 8\textsuperscript{133}. The debate is on the general merits and principles of the bill. After all Members who wish to speak have spoken, the President will invite the Member or public officer in charge of the bill to give his reply. The President will then put the question "That the bill be read the second time" to vote. If the question is negatived, no further proceedings shall be taken on that bill.\textsuperscript{134} If the question on second reading is agreed to by the Council, the bill stands committed to a committee of the whole Council unless ordered otherwise by the Council or directed by the President under Rule 55 of the Rules of Procedure for the bill to be committed to a select committee.

11.93 If the resumption of the second reading debate on a bill is for the withdrawal or postponement of the bill, the Member or public officer in charge of the bill should state such as the purpose in the notice for the resumption and he will be invited by the President to speak at the beginning of the resumed debate to make such an announcement and any address he may wish to make in relation to the withdrawal or postponement.\textsuperscript{135} No debate may arise on such an address. No other Member will be invited to speak after the Member or public officer in charge of the bill has announced the withdrawal or postponement of the bill.\textsuperscript{136}

Committee Stage - committal of bills to a committee of the whole Council or to a select committee

11.94 It is a standing practice in the Hong Kong Legislature for a bill, after it has been read the second time, to be committed to a committee of the whole Council although there is provision in Rule 55 of the Rules of Procedure to enable the bill to be committed to a select committee. It has also been a practice since 1858 that the committee of the whole Council (which comprises

\textsuperscript{133} Chapter 8, para. 8.9 – 8.10 (on speaking order), 8.16 (on speaking time).
\textsuperscript{134} Rule 54(8) of the Rules of Procedure.
\textsuperscript{135} Rule 64 of the Rules of Procedure.
\textsuperscript{136} An example is the withdrawal of the Legislative Council (Amendment) Bill 2011 at the Council meeting of 22 February 2012 after it introduced the Legislative Council (Amendment) Bill 2012 on 8 February 2015 to address the concerns expressed by the community in respect of the proposals in the earlier Bill. Hansard, pp. 6118 – 6120.
the same membership of the Council) will meet immediately after a bill has been read the second time so that the committee stage of a bill takes place immediately after the second reading stage. The President, who is also the Chairman of the committee of the whole Council, will make an announcement that the Council resolves itself into a committee of whole Council or resumes as Council.

11.95 There are provisions in Rule 55 of the Rules of Procedure for the Council, upon a motion moved without notice by a Member, to commit a bill to a select committee, and for the President to direct a bill to be committed to a select committee if he is of the opinion that the bill would specially benefit or affect some particular person or association or corporate body. The provisions in Rule 55 have been adopted from previous Standing Orders which reflected the position when standing committees and select committees were the only forms of committees to undertake the detailed study of a bill. There was no longer any need for bills to be referred to a select committee after the OMELCO ad hoc groups came into existence in early 1970s and Bills Committees became formal committees of the Council in 1992. Nevertheless the flexibility to commit a bill to a select committee has been preserved to provide such an alternative in the event that the Council or the President considers it appropriate to do so.

11.96 Any committee of the whole Council or select committee to which a bill is committed shall not discuss the principles of the bill but only its detailed provisions, i.e. the clauses and schedules. Such committee has the power to make amendments to the clauses and schedules including adding new clauses and new schedules provided that they are relevant to the subject matter of the bill.

137 The last occasion when a bill was referred to a select committee was in the case of the Appropriation (1968-69) Bill which was reported to the Council on 27 March 1968. In 1985 the principles and issues raised by the Trial of Commercial Crimes Bill 1985 were referred to a select committee (under what is now Rule 78(1)). Whilst the Bill itself was deferred and subsequently withdrawn upon introduction of the Complex Commercial Crimes Bill 1988 which followed the select committee's recommendations. The original bill was not committed to the select committee for the important reason, also applicable to date under Rule 56(1) of the Rules of Procedure that only the details and no the principles of a committee bill may be discussed by a select committee.

11. Legislative process

Proceedings of a committee of the whole Council

11.97 In a committee of the whole Council, the Chairman shall propose an ancillary motion 139 "That the following clauses stand part of the bill" and shall direct the Clerk to call the numbers of the clauses. When the number of any clause (or the numbers of a group of clauses) is called, the question that that clause (or group of clauses) stand part of the bill shall be deemed to have been proposed. 140 Where an amendment is to be proposed to a clause, the mover of the amendment shall move the amendment after the motion to order that that clause to stand part of the bill has been proposed. The same also applies to amendments to schedules. Any Member, including the Member or public officer in charge of a bill, may move amendments to that bill provided that Rule 57 of the Rules of Procedure is complied with. Details on amendments to bills are further explained in paragraphs 11.112 to 11.133 below.

11.98 In committee of the whole Council, the order in the consideration of the text of a bill is basically as follows:

- Clauses
- New clauses
- Schedules
- New schedules
- Preamble (if any)
- Title of the bill (if any amendment is made necessary by an amendment to the bill)

11.99 Strictly speaking, each clause should be called by its number and be dealt with under a separate ancillary motion before moving to the next clause. However, the Chairman may group clauses and interdependent amendments under the ancillary motion "That the following clauses stand part of the bill" and allow a single discussion on these clauses and amendments to save time and to avoid repetition of arguments. 141 The Chairman may also change the order of consideration of new clauses and schedules if he considers it necessary or more logical to do so. It has been a practice for those clauses to which no amendment is proposed to be dealt with before other clauses. After

---

139 See ancillary motion in Chapter 10, paragraph 10.11 – 10.13. The ancillary motion "That the following clauses stand part of the bill" is dependent on a motion on the bill which is a substantive proposal.

140 Rule 58(1) of the Rules of Procedure.

141 Rule 58(2) of the Rules of Procedure.
the number(s) of the clause(s) has been called, i.e. the question is deemed to have been proposed, Members who have given notice to amend the clause(s) are invited to move the amendments in the order set out in the Agenda, as explained below. Members and designated public officers are allowed to speak more than once on the specific clause(s) and amendments provided that they do not persist in irrelevant or tedious repetition of their own or other Members' arguments in the discussion. When no other Member wishes to speak or, in the case of a prolonged discussion and for which a time order has been made by the Chairman over the duration of committee stage, at the ending time of the discussion the question on the ancillary motion is put to vote.

11.100 If no amendment to the clauses under the ancillary motion "That the following clauses stand part of the bill" is passed by the committee of the whole Council, the Chairman shall put the question to vote. In the event that a clause is amended, the Clerk is then directed to call the number of the clause again with the words "as amended" added after the clause number. The question "That the clause as amended stand part of the bill" is deemed to have been proposed. If the question, whether referring to the original clause or the clause as amended, is passed, the clause (or clause as amended) will become part of the bill. If negatived, the clause is taken out of the bill and will not form part of the bill.

11.101 New clauses are dealt with after all original clauses, whether amended or not, have been disposed of. Amendments may be moved to new clauses but such amendments may only be moved if the new clauses have been read a second time. In a committee of the whole Council, when the section heading of a new clause is read by the Clerk the clause is deemed to have been read a first time. The Chairman shall then propose the question "That the clause be read a second time". If this is agreed to, amendment may then be proposed to the new clause. A joint debate may be ordered by the Chairman to discuss both the new clause and the proposed amendments. The amendments, if any, are then put to vote. The final question is "That the clause (or the clause as

---

142 Rule 38(1)(a) of the Rules of Procedure.
143 Rule 45(1) of the Rules of Procedure.
144 See Chapter 8, para. 8.34 – 8.36.
145 Rule 58(1) of the Rules of Procedure.
147 Rule 58(5) of the Rules of Procedure.
11. Legislative process

amended) be added to the bill".  A proposed new clause may be withdrawn by the mover at any time before it is proposed or, if proposed, by leave of the committee with no dissenting voice from any Member before the question on it is put to vote.

11.102 Schedules are dealt with after all clauses and new clauses are disposed of unless a decision has been made by the Chairman to change the order of consideration under Rule 58(2) of the Rules of Procedure to facilitate a more efficient and effective discussion on interdependent clauses, schedules and amendments. The process for dealing with a schedule is the same as that for a clause, and the process for dealing with a new schedule is the same as that for a new clause.  A proposed new schedule may be withdrawn by the mover at any time before it is proposed or, if already proposed, by leave of the committee with no dissenting voice from any Member before the question on it is put to vote.

11.103 If there is a preamble to the bill, the consideration of the preamble will take place after all clauses and schedules and new clauses and new schedules have been dealt with. The question "That this be the preamble to the bill" will be proposed. Only an amendment which is necessitated by a previous amendment to the bill is allowed to be proposed to the preamble. After the amendment is disposed of, the question is then put to vote.  

11.104 Similar to the preamble, an amendment to the title of the bill is allowed only if it is made necessary by an amendment to the effective provisions of the bill. Such an amendment is made at the conclusion of the proceedings on the bill. There is no need to propose any question to make the title (as amended) stand part of the bill. No question is put upon the enacting formula. The Law Draftsman may make changes to reference to the year or to any number in the title by which the bill is to be cited when it becomes law.

149 Rule 58(7) of the Rules of Procedure.
150 Rule 58(8) of the Rules of Procedure.
151 Rule 58(9) of the Rules of Procedure.
152 Rule 58(10) of the Rules of Procedure.
11. Legislative process

Report of the bill to the Council

11.105 When all proceedings upon the bill have been concluded in the committee of the whole Council, the Council resumes. Rule 58(12) of the Rules of Procedure provides that a Member shall report the bill to the Council with or without amendment as the case may be. Where such a report has been made Rule 59 provides that the Council shall be deemed to have ordered the bill to be set down for third reading and the order is so recorded in the minutes of proceedings. No notice for third reading is required. The long-standing practice of the Council is that where a bill is committed to a committee of the whole Council, the Chairman will make the announcement that all proceedings upon the bill have been completed. No Member is called to report on the bill. The Council then resumes, and the President, who also presides as Chairman of the committee of the whole Council, announces that the Council now proceeds to the third reading stage of the bill.

11.106 In the event that a bill is committed to a select committee, the select committee should follow the procedure set out in Rule 79 of the Rules of Procedure and go through the bill in the same manner as a committee of the whole Council as provided in Rule 58 of the Rules of Procedure. Any amendment approved by the select committee should be reflected in the whole text of the bill as amended to be printed and attached to the report of the select committee. The report should be tabled in Council and a motion is to be moved by the chairman of the select committee that the report of the select committee on the bill be adopted. 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 is so recorded in the minutes of proceedings. No notice for third reading is required. However, any 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 part) to a committee of the whole Council. This motion, if agreed to by the Council, has the effect that the bill now stands recommitted to the committee of the whole Council, and the Council will immediately resolve itself into a committee of the whole Council to consider the bill.

153 Rule 60(1) of the Rules of Procedure.
154 Rule 60(2) of the Rules of Procedure.
155 Rule 60(3) of the Rules of Procedure.
156 Rule 61(1) of the Rules of Procedure.
157 Rule 61(2) of the Rules of Procedure.
158 Rule 61(3) and (4) of the Rules of Procedure.
11. Legislative process

Recommittal of a bill

11.107 If the whole of a bill is recommitted to a committee of the whole Council after reporting by a select committee, the committee of the whole Council shall go through the bill in accordance with Rule 58 of the Rules of Procedure, i.e. the procedure described in paragraphs 11.97 to 11.104 above. If the recommittal is only for part of the bill or any proposed new clauses or schedules, the committee of the whole Council shall consider only the matter so recommitted unless the President considers it necessary or desirable for the whole bill to be recommitted to the committee of the whole Council.159

11.108 When all proceedings on the recommitted bill in committee of the whole Council have been completed, the Council shall resume and the Member or public officer in charge of the bill reports the bill, as amended (or as not amended) on recommittal, to the Council.160 The Council shall then proceed to the third reading of the bill unless the Member or public officer in charge of the bill states that he wishes the third reading to be postponed.161

Third reading

11.109 At the start of the third reading stage, the Member or public officer in charge of the bill is called upon to move the motion "That the bill be read the third time and do pass". The President then proposes the question on the motion and a debate will follow except in the case of an Appropriation Bill where the motion for the third reading of the Bill is voted on without amendment or debate.

11.110 Whilst debate on the second reading of a bill is on the general merits and principles of the bill and debates at committee stage are on the details of the bill, debate on the motion for the third reading of a bill is confined to the contents of the bill as amended, if that is the case. No amendment may be moved to the motion.162 However, drafting amendments to the bill to correct errors or oversights may be permitted by the President if it is considered that such errors or oversights are not of a technical nature which can usually be rectified by the Law Draftsman after the bill is enacted.163 Such

---

159 Rule 62(1) and (2) of the Rules of Procedure.
162 Rule 63(1) of the Rules of Procedure.
163 Sections 11 to 14 (Part 4 of the Ordinance) and 17 of the Legislation Publication Ordinance (Cap. 614) provide for the editorial and revision powers of the Secretary for Justice over legislation of Hong Kong.
amendment \(^\text{164}\) should be made before the question for the third reading of the bill is put by the President. No amendments of a material character shall be proposed.\(^\text{165}\)

11.111 When a motion for the third reading of a bill has been agreed to, the Clerk will read the short title of the bill and write at the end of the bill the words "Passed by the Legislative Council of the Hong Kong Special Administrative Region this day" giving the date.\(^\text{166}\) If the motion is negatived no further proceedings are taken on that bill.\(^\text{167}\) A copy of every bill passed by the Council, certified as a true copy by the Clerk, is submitted to the Chief Executive for his signature.\(^\text{168}\)

Amendments to bills

Notice of amendments to bills

11.112 Notice is required for proposing amendments to bills. Notice of amendments to a bill should be given not less than 7 clear days before the day on which the bill is to be considered in committee. No amendment without such notice may be moved unless with the leave of the Chairman, i.e. the President.\(^\text{169}\) For new clauses and new schedules, as the notice requirement is also not less than 7 clear days before they are considered in committee, the President may allow shorter notice for amendments to new clauses and schedules.\(^\text{170}\)

Form of amendments to bills

11.113 The Hong Kong Legislature follows the general practice in parliaments of common law jurisdictions in making amendments to bills. In

---

\(^{164}\) According to Erskine May (2011)(24\textsuperscript{th} Edition), in the House of Commons only verbal amendments may be made to a bill on the third reading. p. 595.

\(^{165}\) Rule 63(2) of the Rules of Procedure.

\(^{166}\) Rule 63(3) of the Rules of Procedure.

\(^{167}\) Rule 63(4) of the Rules of Procedure.

\(^{168}\) Rule 65 of the Rules of Procedure.

\(^{169}\) Rule 57(2) of the Rules of Procedure.

\(^{170}\) In respect of the Appropriation Bill 2014, the President ruled the 909 sequential amendments proposed by Ms LEUNG Kwok-hung out of order but gave leave to waive the notice of 232 amendments selected by Mr LEUNG out of the 909 rejected amendments. In another case, the President waived the required notice for the public officer in charge of the Stamp Duty (Amendment) Bill 2013 to move consequential amendments to the Bill following the passage of the amendments proposed by a Member in committee of the whole Council.
the notices of amendments, the proposed amendments are set out in an order that follows the order of the clauses of the bill that are proposed to be amended. Similar to making amendments to a motion 171, a Member may delete one or more words, insert one or more words in a clause or schedule, or both.172 Moreover, a Member may add new clauses and schedules to the bill.173 As a general rule, an amendment to leave out words in order to insert other words takes precedence over an amendment merely to leave out words; and an amendment to leave out words take precedence over an amendment to insert other words or to add new clauses or schedules.174 If two or more amendments are proposed to the same clause, the principle in Rule 34(5) of the Rules of Procedure is followed, i.e. in the order in which the amendments relate to the text of the clause, or in case of doubt in the order decided by the Chairman. The Chairman will also give regard to Rule 30(4) of the Rules of Procedure for determining the order of amendments which are substantially the same, i.e. the Member who gave the earliest notice which has not been withdrawn shall move the amendment, except that precedence is given to the amendment proposed by the Member or public officer in charge of the bill. Although it is the practice in some parliaments, such as UK and Canada, not to allow a proposal to delete an entire clause as the same effect can be achieved by voting against the inclusion of the clause in the bill, the practice in the Hong Kong Legislature is that such a proposed amendment is allowed.175 The deleting of an entire clause without substitution is given precedence over other proposed amendments that target the text of the clause.

Restrictions

11.114 Any Member may move amendments to a bill. The difference of opinion between the Legislature and the Executive Authorities over the applicability of Article 74 of the Basic Law to amendments to bills has been discussed in paragraphs 10.31 - 10.35 of Chapter 10. In gist, the position held by the Legislature is that it is inappropriate to extend the coverage of Article 74 to Members' amendments to government bills. The legislative

171 Chapter 10, para. 10.63.
172 Rule 34(2) of the Rules of Procedure.
175 Examples of permission being given by the President for the Secretary for Security to delete an entire clause from a bill can be found in the Marriage (Introduction of Civil Celebrants of Marriages and General Amendments) Bill passed by the Council at its meeting of 16 November 2005 (clause 7, Hansard, p.1981) and the Electronic Health Record Sharing System Bill passed by the Council at its meeting of 8 July 2015 (clause 16, Hansard, pp. 14579 – 14585).
process set out in the Rules of Procedure allows the public office in charge of a bill to withdraw the bill at the beginning of the third reading stage if he finds it difficult to accept the bill in its amended form. The procedure provides a means for the Government to decide the final form of the proposed legislation introduced by it. Nevertheless, the Legislature has adopted the restrictions which applied to amendments to bills in the pre-1977 Legislature in its Rules of Procedure. These restrictions, which include the upholding of the principle that the financial initiative should rest with the Government, are self-imposed restrictions and they are set out in Rule 57 of the Rules of Procedure. The President, who is also the Chairman of the committee of the whole Council, relies on this Rule as well as the principles established or evolved over the years in relation to this Rule to determine the admissibility of any proposed amendments.

Relevance to the bill and to the clause

11.115 As mentioned in paragraph 11.96 above, a committee of the whole Council has the power to make amendments to a bill provided that the amendments, including new clauses and new schedules are relevant to the subject matter of the bill. Rule 57(4)(a) provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. The "subject matter" determines the scope. An amendment is out of order if it falls beyond or is outside the scope of the bill. If an amendment is within the scope of the bill but is not relevant to the clause under consideration, it may be moved as a new clause.

11.116 The approach adopted by the Presidents of the HKSAR Legislature in determining the subject matter of a bill is to ascertain the purposes of the bill, by information available from relevant materials such as the long title and the explanatory memorandum of the bill, the Legislative Council Brief on the bill as well as any submissions of the Government on proposed amendments and comments on those submissions given by the Members proposing the amendments. In her ruling on the Provision of Municipal Services (Reorganization) Bill dated 29 November 1999, President Rita FAN took into account the factors which are taken into consideration by the President to consider the relevance of a proposed amendment are explained. See http://www.legco.gov.hk/yr05-06/english/bc/bc03/papers/bc03ls-71-e.pdf, para. 9 – 12.
account the long title of the Bill concerned and the legal effect of the relevant clauses in the Bill to decide whether the proposed amendments went to the fundamental principles of the Bill rather than its details.

11.117 Another example is the approach President Rita FAN adopted in forming her view on the admissibility of the amendments proposed by three Members, namely Mr CHENG Kai-nam, Mr Albert HO and Mr LEE Wing-tat, to the Building Management (Amendment) Bill 2000. The President referred to the purpose of the Bill, which was "to amend the Building Management Ordinance to facilitate better management of buildings" as the subject matter of the Bill. In making her ruling, she took into account the views submitted by the Secretary for Home Affairs and the three Members. Her concern was a purely procedural one, i.e. if an issue raised by a proposed amendment was a substantially new issue which was not related to the purpose of the Bill, she would regard it as not relevant to the subject matter of the Bill within the meaning of Rule 57(4)(a) of the Rules of Procedure. She would not consider the merits of the proposed amendment when determining its admissibility. Her ruling is attached at Appendix 11-F.

11.118 In July 2013, Ms Cyd HO sought to amend the Hong Kong Arts Development Council (Amendment) Bill 2013 by providing a meaning of the term "individual" in the proposed new section of the Bill for the purpose of prescribing certain eligibility criteria for the individuals to be specified by the Chief Executive to take part in the nomination of representatives of the respective arts interests. The relevance of the Member's proposed amendment to the bill was challenged by the Government. In his ruling made on 8 July 2013, President Jasper TSANG explained that in determining whether an amendment is relevant to the subject matter of the bill, he should consider whether the amendment would have the effect of altering the subject matter (or the fundamental principles) of the bill or merely amending its details. He considered that an amendment which seeks to impose a condition through the provision of a definition or an interpretation in the bill could not be regarded as not relevant to the subject matter of the bill. The effect of the amendment would be a matter of merits which he should not consider. As Ms HO's proposed amendment sought to provide the details on the implementation of the proposal in the Bill and would not take away or fundamentally alter the Chief Executive's power to specify the individuals under the Ordinance, the President ruled the amendment admissible.

11.119 There are also a few principles which the Presidents have established for considering whether a proposed amendment is relevant to the subject matter of a bill:
(a) While the long title and explanatory memorandum of a bill provide useful reference for the President to consider the subject matter of the bill, they are not determinative. Where necessary, other relevant factors may be referred to, but the extent to which such information, such as that contained in a Legislative Council Brief, is relevant or useful would depend on the facts of each case;\(^\text{180} \text{181}\)

(b) The heading of a clause does not determine the subject matter of the bill; it is the substance of the clause that should be looked at;\(^\text{182}\) and

(c) In considering the relevance of an amendment to the subject matter of a bill, the purported goal of the proposer of the amendment is not considered\(^\text{183}\).

Consistency with the clause agreed to and previous decision of the committee

11.120 An amendment must not be inconsistent with any clause already agreed to or with any previous decision of the committee upon the bill.\(^\text{184}\) Whilst a proposed amendment may have been put on the Agenda together with other proposed amendments to the same clause, the Chairman will not allow it to be moved if another amendment has been agreed to by the committee and this amendment, if passed, will create inconsistency or become contrary to the amended clause.\(^\text{185}\) An amendment which is governed by or dependent upon another amendment which has already been negatived by the committee also cannot be moved.\(^\text{186}\)

\(^{180}\) In the case of the Mass Transit Railway Bill ("MTR Bill"), the President took into account the summary of the principal headings of the operating agreement between Government and the Mass Transit Railway Corporation which was annexed to the Legislative Council Brief on the MTR Bill. That summary was information available outside of the MTR Bill, but was considered relevant by the President.

\(^{181}\) President's ruling on 10 July 2006 at http://www.legco.gov.hk/yr05-06/english/pre_rul/pre0710cb3-ref-e.pdf.

\(^{182}\) President's ruling on 10 July 2006 at http://www.legco.gov.hk/yr05-06/english/pre_rul/pre0710cb3-ref-e.pdf.

\(^{183}\) President's ruling on 20 April 2015 in relation to the Appropriation Bill 2015.

\(^{184}\) Rule 57(4)(b) of the Rules of Procedure.

\(^{185}\) An example is in relation to the amendments proposed to the Personal Data (Privacy)(Amendment) Bill 2011 which was dealt with at the Council meeting of 27 June 2012. Both Secretary for Constitutional and Mainland Affairs who was in charge of the Bill and Mr James TO gave notice to move amendments to clause 21 of the Bill. After the committee of the whole Council passed the Secretary's amendment, Mr James TO was not allowed to move his amendments. Hansard, pp. 16583 – 16654.

\(^{186}\) An example is in relation to Ms Cyd HO's amendments to the Hong Kong Arts Development Council (Amendment) Bill 2013 which was dealt with at the Council meeting of 10 July 2013. Ms HO's proposal was to add a new clause 4 to the Bill and amend clauses 2 and 3 which were dependent on the passage of the new clause 4. After the proposal to add clause 4 was negatived, Ms HO was not allowed to move amendment to clauses 2 and 3. Hansard, p. 241.
11. Legislative process

Amendment making a clause unintelligible

11.121 An amendment must not be worded in such a way that will make the clause which it proposes to amend unintelligible or ungrammatical.\(^{187}\) An example can be found in the proposed amendments to the Housing (Amendment) Bill 2007. Four Members had given notice to amend the Bill, the proposed amendments of two of them were found to be out of order under Rule 57(4)(c) of the Rules of Procedure. One was due to inconsistencies that would be created between the Chinese and English texts of the Bill; while the other was due to the adding of the proposed amendments to the wrong subsection, hence making the subsection, if amended, incomprehensible. President Rita FAN, in her ruling, noted that the inconsistencies in the former amendment were rectified by the Member in accordance with the normal practice for processing committee stage amendments by the Secretariat and so ruled the amendment admissible. As for the latter proposed amendment, the President noted that the intended effect of the proposed amendment was clear from the terms of the proposed provisions, and the problem identified was purely technical. She therefore directed the Secretariat to inform the Member and allowed him to submit a revised version, containing only textual modifications to address the problem identified, with the requisite notice waived.\(^{188}\)

Amendment considered by the Chairman frivolous or meaningless

11.122 An amendment which is in the opinion of the Chairman frivolous or meaningless may not be moved.\(^{189}\) This restriction is set out in Rule 57(4)(d) of the Rules of Procedure. The application of this Rule has been evolving since May 2012 when President Jasper TSANG was required for the first time to consider the admissibility of some 720 amendments which were drafted in a sequentially varying manner.\(^{190}\) The President noted that it was not clear in the Rules of Procedure whether Rule 57(4)(d) also applied to "a series of amendments" which when taken together could be regarded as frivolous. He noted, however, in an example of other legislatures that where a certain rule was to apply also to "a series of motions", the words "a motion" and "a series of motions" were both stated in the Standing Order. In the absence of clear

\(^{187}\) Rule 57(4)(c) of the Rules of Procedure.

\(^{188}\) See President's ruling at http://www.legco.gov.hk/yr06-07/english/pre_rul/pre0611-ref-e.pdf.

\(^{189}\) Rule 57(4)(d) of the Rules of Procedure.

\(^{190}\) The proposed amendments sought to disqualify a person who had resigned as a Member of the Legislative Council from standing for a by-election. Each of the amendments specified a factor for the disqualification and the factor was presented in a sequentially varying degree in a series of amendments.
indication that he could apply Rule 57(4)(d) to "a series of amendments", he ruled the 720 amendments admissible. He also did not consider it right for him to invoke the power given to him under Rule 92 of the Rules of Procedure to extend the application of the Rule.

The matter was subsequently referred to the Committee on Rules of Procedure. In addition to studying the matter so referred to, the Committee on Rules of Procedure of the Fourth and Fifth Legislative Council also studied whether the President should be conferred with the power to select amendments for debate and voting at the committee stage on a bill. Members were asked to consult their respective parties and political groups on these matters. Up to this date, no consensus has been reached among members of the Committee on any proposals relating to these issues. The Committee concluded that there was no need to study the subject matter any further at this stage. Under the circumstances, how Rule 57(4)(d) of the Rules of Procedure is to be applied continues to be a matter for the President to decide in accordance with the existing rules and guided by principles established by the President's previous rulings.

In June 2012, in relation to 167 amendments to be proposed to a government resolution to effect a proposed reorganization of the Government Secretariat, President Jasper TSANG noted that 59 of them were sequential amendments. He expressed the view that even if each of these 59 amendments taken individually might serve a particular purpose, it was obvious that when the 59 amendments were taken together they could be regarded as frivolous and might have the effect of prolonging Council proceedings more than was necessary for providing a fair choice for Members. Nevertheless he ruled the 59 amendments admissible as it was not clear whether the restriction against a frivolous or meaningless amendments under Rule 57(4)(d) of the Rules of Procedure could also be applied to a series of amendments to motions.

In April 2013, in considering the 740 proposed amendments to the Appropriation Bill 2013, President Jasper TSANG noted that a substantial number of amendments proposed by three Members fell into a series in which

---

191 Rule 92 of the Rules of Procedure provides that in any matter not provided for in the Rules of Procedure, the practice and procedure to be followed in the Council shall be such as may be decided by the President who may, if he thinks fit, be guided by the practice and procedure of other legislatures.
192 See President Jasper TSANG’s ruling at Appendix 8-A.
11. Legislative process

each sought to reduce the appropriation to a particular Head of Expenditure by a sequentially varying amount. On this occasion, the government submitted that the meaning of "an amendment" in Rule 57(4)(d) of the Rules of Procedure should include "a series of amendments" and those amendments should be ruled out as frivolous or meaningless. In his ruling made on 22 April 2013, the President explained that in determining whether amendments proposed in such a manner fall within the meaning of "frivolous" and "meaningless" under Rule 57(4)(d), he needed to consider:

(a) whether the passage of any one such amendment in a series would serve any substantive purpose; and

(b) whether the passage of one such amendment vis-à-vis another in the same series would make any material difference.

11.126 As it appeared to the President that the passage of any one of the amendments in question would achieve a substantive result and an effect materially different from that of another in the same series, he could not consider them frivolous or meaningless either taken individually or collectively. As to whether the admission of these sequential amendments would have the demonstrated effect of prolonging the legislative process to the extent of preventing the Council from properly exercising and discharging its powers and functions under the Basic Law, the President was not satisfied that the admission of these sequential amendments would have such demonstrable effect. See President's ruling at Appendix 11-G.

11.127 In 2014, again in the context of the Appropriation Bill, the President noted that among the 1,507 amendments proposed by Mr LEUNG Kwok-hung, 909 were grouped into 116 sequence each of which comprised 3 or more amendments seeking to reduce the appropriation to a Head of Expenditure for specific purpose by sequentially varying amounts. He also noted the experience of the Council in debating the sequential amendments to the 2013 Appropriation Bill, for which 31 hours of the Council's time were used. The President considered that there was hardly any explanation on the difference between the successive proposals in each group of sequential amendments or any exchange of views among Members on the sequential amendments. He was therefore convinced that sequential amendments did not serve the purpose of providing fair and genuine choices for Members, but would have the demonstrable effect of prolonging the legislative process to the extent of preventing the Council from properly exercising and discharging its powers and functions under the Basic Law.
11. Legislative process

11.128 In his ruling dated 17 April 2014, the President stated that sequential amendments infringed Rule 57(4)(d) of the Rules of Procedure for being frivolous or meaningless when each of them was considered in the context of the other amendments also being proposed by the same Member in respect of the same head or subhead of expenditure. He therefore ruled the 909 amendments in 116 sequences proposed by Mr LEUNG Kwok-hung inadmissible. However, he noted the material difference in the proposed amounts to be reduced in 26 pairs of amendments proposed by Mr LEUNG and opined that these amendments might plausibly be considered as providing fair and genuine choices for Members and so allowed these amendments to be moved. The President also agreed to allow no more than two out of each of the 116 sequences to be moved in committee. See President's ruling at Appendix 11-H.

11.129 In 2015, the number of amendments to the Appropriation Bill 2015 rose to 3904 with 3280 coming in 1640 pairs also proposed by Mr LEUNG Kwok-hung seeking to reduce the appropriation to a Head of Expenditure by a certain amount (as represented by using the number of months as the multiplier). In his ruling on 20 April 2015, President Jasper TSANG pointed out that Mr LEUNG had evidently taken advantage of his admission of the amendments in pair to the 2014 Appropriation Bill and proposed voluminous amendments of the same form to the 2015 Appropriation Bill with the avowed intent to filibuster. Mr TSANG reiterated that as President, one of his constitutional powers and functions was to exercise and discharge under Article 72 of the Basic Law to preside over meetings to ensure the orderly, efficient and fair disposition of the Council's business. From the experience of the Council in 2014 and his assessment of the considerable time to complete the proceedings of the 3280 amendments, he had to strike a proper balance between respecting the right of individual Members to propose amendments and ensuring efficient conduct of the Council as a law-making institution. He therefore ruled that the 3280 proposed amendments failed to comply with Rule 57(4)(d) for being frivolous and meaningless, and could not be moved. See President's ruling at Appendix 11-I.

Language of amendments

11.130 Where an amendment is proposed to be moved to a bill presented in both official languages the amendment shall be made to the text in each language unless it is an amendment that clearly affects the text in one
11. Legislative process

language only. But an amendment which creates a conflict or discrepancy between the text in one language and the text in the other may not be moved.\textsuperscript{194}

Amendment dependent on another amendment

11.131 If an amendment refers to, or is not intelligible without, a subsequent amendment or schedule, it is not allowed to be moved unless the notice of the subsequent amendment or schedule has been given. It is only when the notices of both the first and subsequent amendments or schedule are given that the series of amendments are intelligible as a whole.\textsuperscript{195} One example is the amendments proposed by Mr Ambrose CHEUNG to the Provision of Municipal Services (Reorganization) Bill. Mr CHEUNG's amendments aimed to put in place a one-Council-one-Department arrangement and they included provisions relating to the composition, functions and powers of the Council as well as the operation of the certain institutions which, in the opinion of Mr CHEUNG, could separately be dealt with even if the one-Council-one-Department was ruled to be outside the scope of the Bill. In her ruling on 29 November 1999, the President noted that some of the proposed amendments were considered by the Government as unintelligible or meaningless due to the lack of definitions. She also noted the Member's explanation that these gaps in the Bill could be dealt with by the Chief Executive in Council making consequential, transitional and saving provisions under the Bill. The President did not accept this explanation and therefore ruled some of the amendment unintelligible under Rule 57(4)(c).\textsuperscript{196}

Amendment with charging effect

11.132 The restriction in Rule 57(6) of the Rules of Procedure is the same as that governs the moving of motions or amendments in Rule 31(1), i.e. for motions and amendments with charging effect. Rule 57(6) reads as follows:

"An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the

\textsuperscript{194} In a ruling made by President Jasper TSANG on 10 July 2008, Mr James TO's proposed amendment was found out of order because of a discrepancy between the Chinese and English texts of the term "Commissioner of the Independent Commission Against Corruption". See http://www.legco.gov.hk/yr07-08/english/pre_rul/pre0710-ref-e.pdf.

\textsuperscript{195} Rule 57(5) of the Rules of Procedure.

\textsuperscript{196} President's ruling at http://www.legco.gov.hk/yr99-00/english/pre_rul/991129.pdf.
Legislative process

11. 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.”

11.133 As explained in Chapter 10, the retention of this rule in the Rules of Procedure is to uphold the constitutional principle that any proposal with charging effect should only be introduced on the initiative or with the authorization of the Government. The principles which apply to Rule 31(1) of the Rules of Procedure in determining whether there is a charging effect have in fact been developed through the application of Rule 57(6). The guiding factors to which the President often referred include: whether the proposed amendment will impose a new and distinct statutory function which is not provided for in the existing law; whether the proposal will require the spending of an amount of public money that is not nominal or negligible; and whether the proposal will have the effect of forgoing revenue which may be collected under statutory authority. Detailed explanations on these guiding factors and examples to illustrate the application of the principles are given in Chapter 10.

Withdrawal or postponement of bills

11.134 The Member or public officer in charge of a bill may withdraw or postpone the bill at any time before the bill is presented to the Council. It should be noted that when the copy of the bill with its explanatory memorandum is issued by the Clerk to every Member, the bill is deemed to have been presented to the Council. After a bill has been presented to the Council, the Member or public officer in charge of the bill may withdraw or postpone the bill by an announcement made in the Council at the beginning of the proceedings for its second or third reading.

197 Chapter 10, para. 10.45.
198 Chapter 10, para. 10.45 – 10.56.
199 Rule 52(2) of the Rules of Procedure.
200 Rule 64(1) of the Rules of Procedure.
11. Legislative process

11.135 In the event that the decision to withdraw the bill is made after the motion for the second reading of the bill has been moved and the debate on it has been adjourned, the Member or public officer in charge of the bill may give notice to the Clerk stating that the purpose of resumption of the second reading debate is for making such an announcement. He may address the Council on matters relevant to the withdrawal when he makes the announcement.\(^{201}\)

11.136 Another occasion when the Member or public officer in charge of the bill may withdraw or postpone the bill is at the beginning of the proceedings for third reading. When the committee of the whole Council has completed its proceedings on the bill, the Council resumes and proceeds to third reading stage. In the event that the Member or public officer in charge of the bill decides to withdraw or postpone the bill, the announcement should be made when he is called to speak. As no notice for third reading is needed, the Member or public officer should inform the President in advance of such an intention.\(^{202}\)

11.137 One example of the withdrawal of a bill at third reading is the Employment (Amendment) Bill 1994 withdrawn by the Secretary for Education and Manpower at the Council sitting on 14 December 1994, following the passage of an amendment moved by Mr LAU Chin-shek during the committee stage of the Bill.\(^{203}\) Another example of withdrawal at third reading is the Legal Practitioners (Amendment) Bill 1996 considered at the Council sitting on 25 June 1997. Ms Margaret NG gave notice to move amendments to clause 3 of the Bill to stipulate mandatory membership for all notaries public in the Hong Kong Society of Notaries in order to enable the Society to continue to monitor the professional standards of notaries public and for its position to be in line with those of the Bar and the Law Society in Hong Kong, and the Scriveners Company in England. The Attorney General, who was the public officer in charge of the Bill, objected to Ms NG's amendments as the Government considered them unjustified and unnecessary since the Society had no regulatory role under the Bill and the requirement would be vulnerable to legal challenge as restricting the freedom of association protected by the International Covenant on Civil and Political Rights. At Committee Stage, Ms NG's amendments were passed and became

---

\(^{201}\) Rule 64(2) and (3) of the Rules of Procedure: see, for example, withdrawal of the Legislative Council (Amendment) Bill 2011 at the Council meeting of 22 February 2012, Hansard, pp. 6118 – 6120.

\(^{202}\) Rule 64(1) of the Rules of Procedure.

\(^{203}\) Mr LAU Chin-shek resigned from the office of a Legislative Council Member in protest of the withdrawal of the Employment (Amendment) Bill 1994 at third reading stage. The explanation given by the Secretary for Education and Manpower for the withdrawal of the Bill is provided in the Hansard of the sitting at http://www.legco.gov.hk/yr94-95/english/le_sitg/hansard/b4941214.pdf.
part of the Bill. When the Council resumed after committee stage, the Attorney General announced that the Government could not accept the amendments on membership requirement and therefore considered that it had no option but to withdraw the Bill. The President announced that no further proceedings on the Bill would be taken following Government's withdrawal of it.\(^{204}\)

**Signing of the bill by the Chief Executive and Promulgation**

11.138 When a bill has been passed by the Council, the Clerk will arrange for a certified true copy of the bill to be forwarded to the Chief Executive for his signature. Under Article 48(3) of the Basic Law, the Chief Executive shall exercise the power and function to sign the bills passed by the Legislative Council and promulgate laws. Under Article 64 of the Basic Law, the Government of the HKSAR must implement the laws passed by the Council and already in force. Under Article 49 of the Basic Law if the Chief Executive considers that a bill passed by the Council is not compatible with the overall interests of the Region, he may return it to the Council within three months for reconsideration. Details of the procedure for the reconsideration of bills are provided in Chapter 5.\(^{205}\)

**Subsidiary legislation**

**Nature of subsidiary legislation**

11.139 The supporting technical details of a piece of legislation are often set out in subsidiary legislation in the form of proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instruments. Subsidiary legislation is made under or by virtue of an ordinance and is generally subject to the scrutiny of the Council. The procedures governing the making of subsidiary legislation are set out in Part V of the Interpretation and General Clauses Ordinance (Cap. 1). For subsidiary legislation made under section 34 of Cap.1, the authority which has been given the power to make such subsidiary legislation under an Ordinance is required to publish the subsidiary legislation in the Gazette and table it at a meeting of the Council. If the subsidiary legislation is not amended (which by definition provided by section 3 of Cap. 1 includes repealed) by the Legislative Council within the

---


\(^{205}\) Chapter 5, para. 5.75 – 5.78.
11. Legislative process

scrutiny period specified in section 34(2) of Cap. 1, the subsidiary legislation will continue to operate in accordance with its content as published in the Gazette. This is generally known as the negative vetting procedure. For subsidiary legislation made under section 35 of Cap. 1, which requires the Council’s approval in the form of a proposed resolution, the Council may amend the whole or any part of the subsidiary legislation. This is generally known as the positive vetting procedure. Details on how subsidiary legislation is handled in Council have been explained in previous chapters.

Consultation with Panels

11.140 Subsidiary legislation may contain details which are controversial, e.g. fees and charges which are usually set out in the schedule to an ordinance and which may be amended in the form of subsidiary legislation. Where it is considered that an item of proposed subsidiary legislation may attract public interest, it is common practice that the legislative proposal is first brought to the relevant Panel for an initial discussion. Public hearings may be conducted on it. The Panel, having considered public views, will put forward its views to the Government or relevant authorities including whether the proposed subsidiary legislation is ready for presentation to the Council.

11.141 If the Panel considers that the details of the proposed subsidiary legislation are complex in nature or the subject matter is highly controversial, it may make a report to the House Committee and recommend that a subcommittee of the House Committee should be formed to study the proposed subsidiary legislation before it is published in the Gazette or debated under a motion to approve in the Council. Under Rule 75(10)(c) of the Rules of Procedure, the House Committee shall decide the manner of consideration of any draft of subsidiary legislation or instrument. If the recommendation is accepted by the House Committee and a subcommittee is formed, any Member (except the President) may join the subcommittee. As a matter of convention, the Government will not present any proposed subsidiary legislation for consideration by the Council until the subcommittee

---

206 Under section 34(2) of Cap. 1, amendments to the subsidiary legislation may be made by resolution in the Council not later than 28 days after the tabling of the subsidiary legislation in the Council. This 28-day scrutiny period may be extended by resolution in the Council before the expiry of the scrutiny period to the first sitting of the Council held not earlier than the 21st day after the 28-day period.

207 Chapter 6, para. 6.24 – 6.27; Chapter 7, para 7.81 – 7.87; Chapter 10, para 10.23 – 10.26.

208 At its meeting on 16 February 2015, the Panel on Administration of Justice and Legal Services was consulted on the draft Rules to be adopted by the Competition Panel following the enactment of the Competition Ordinance. Given the volume of the draft Rules, which were subsidiary legislation subject to the negative vetting procedure, the Panel proposed to the House Committee at its meeting on 27 February 2015 for the appointment of a subcommittee under the House Committee to study the proposed subsidiary legislation before it was gazetted and tabled in the Council. The House Committee agreed to the proposal.
11. Legislative process

has completed its work and has reported back to the House Committee. The deliberations of the subcommittee are discussed by the House Committee which may follow up with the Government on any recommendation the subcommittee has made in its report.

Consideration by the House Committee

11.142 Rule 75(10) of the Rules of Procedure provides the House Committee with the function to decide how subsidiary legislation or an instrument is to be considered. Where a detailed study of an item of subsidiary legislation is required, a subcommittee under the House Committee is usually formed. This arrangement applies to subsidiary legislation subject to the positive or negative vetting procedure. On occasions, a subcommittee may be considered necessary to study an item of subsidiary legislation before it is published in the Gazette or presented to the Council. The proposal to set up a subcommittee may be made by a Panel, a Bills Committee 209 or an individual Member 210, in response to the Government's request 211.

11.143 For subsidiary legislation made under section 35 of Cap. 1 and subject to the positive vetting procedure, the House Committee may request the Government to withdraw the notice of the proposed resolution on the relevant subsidiary legislation to allow more time for the detailed study of the resolution. 212 For subsidiary legislation made under section 34 of Cap. 1 and subject to the negative vetting procedure, the subcommittee concerned needs to work within the scrutiny period but may seek extension of the period if more time is required for the study. 213 There is no limit on the number of subcommittees that may be formed by the House Committee at any one time to study subsidiary legislation. 214

209 The Bills Committee on Civil Justice (Miscellaneous Amendments) Bill 2007, when reporting on its work at the House Committee meeting on 18 January 2008, proposed the setting up of a subcommittee to scrutinize the large number of complex proposed amendments to three sets of subsidiary legislation relating to civil proceedings. See http://www.legco.gov.hk/yr07-08/english hc/papers/HC0118CB2-834-e.pdf.

210 On 18 May 2007, the House Committee decided to form a subcommittee to study the legislative amendments relating to the proposed re-organization of policy bureaux of the Government Secretariat. See minutes of House Committee meeting at http://www.legco.gov.hk/yr06-07/english/hc/minutes/HC070518.pdf.

211 Another example is the draft subsidiary legislation relating to rail merger. See minutes of House Committee meeting on 25 May 2007 at http://www.legco.gov.hk/yr06-07/english/hc/minutes/HC070525.pdf.

212 An exception was in the case of the proposed resolution under the Mandatory Provident Fund Scheme Ordinance. Members agreed at the House Committee meeting on 17 June 2011 not to request the Government to withdraw its notice for moving the proposed resolution even though a subcommittee was formed to study the proposed resolution.

213 Rule 29(3) of the Rules of Procedure. Also see Chapter 10, para. 10.25.

214 At the House Committee meeting on 6 October 2006, it was decided that Rule 21(a) of the House Rules should be amended to make it clear that the quota system that applied to Bills Committee did not apply to subcommittees on subsidiary legislation, as work on most items of subsidiary legislation was required to be completed within a statutory time limit.
11. Legislative process

11.144 The subcommittees appointed by the House Committee to study subsidiary legislation are subcommittees of the House Committee. Any member of the House Committee may join the subcommittee and take part in the scrutiny of the subsidiary legislation. In addition to examining the merits of the subsidiary legislation, matters studied by the subcommittees include the propriety of the authorities making the subsidiary legislation and the proper scope of the exercise of the law-making power. The subcommittees also study the extent of power of the Legislative Council to amend the subsidiary legislation which is subject to section 34 of Cap. 1.

11.145 After the subcommittee has completed the consideration of the subsidiary legislation assigned to it, it may present a report to the House Committee. As the notice period for amendments to subsidiary legislation is not later than 5 clear days before the day on which it is to be considered by the Council, it has become necessary for subcommittees on subsidiary legislation to report back to the House Committee on the second Friday before the relevant Council meetings. This will allow time for individual Members to consider whether they wish to amend the relevant subsidiary legislation before the notice period is due. Sometimes, a subcommittee may make a verbal report at the House Committee, followed by a written report.

Proceedings in the Council for consideration of subsidiary legislation

11.146 Where notice is given by a public officer for a proposed resolution on subsidiary legislation to be considered by the Council under section 35 of Cap. 1, the proposed resolution will be placed on the Agenda after "Government bills" and "Government motions" in accordance with Rule 18 of the Rules of Procedure. If there is more than one such proposed resolution, their order should follow the seniority of the relevant public officers unless

---

215 There have been cases where the appropriateness of the authorities making the subsidiary legislation came under question. An example is the Solicitors (General) Costs (Amendment) Rules 2013. A fresh set of amendment rules was subsequently published by the Costs Committee of the Law Society of Hong Kong in the Gazette known as Solicitors (General) Costs (Amendment) Rules 2014.

216 Where a question is raised on the admissibility of a motion to amend a piece of subsidiary legislation on grounds of ultra vires, it is the practice of the President to refer to the power given to the authorities which make the subsidiary legislation under the relevant provisions in Cap. 1 and the relevant ordinance. See Chapter 10, para. 10.36 – 10.44. On 21 January 2011, the House Committee appointed a subcommittee to study the power of the Legislative Council to amend subsidiary legislation. The report of the Subcommittee, which contains the views of the two legal professional bodies and legal academics from three universities, is at http://www.legco.gov.hk/yr11-12/english/hc/papers/hc0210cb2-975-appi-e.pdf.

217 Rule 75(10A) of the Rules of Procedure.

218 Rule 29(2) of the Rules of Procedure. Also see Chapter 10, para. 10.24. Under this rule, the President may in his discretion dispense with such notice.
advised otherwise by the Government and with the consent of the President.\footnote{See Chapter 7, para. 7.86 – 7.87.}

If more than one amendment is to be moved to the same proposed resolution, these amendments will be dealt with in the order in which the respective amendments relate to the text of the proposed resolution. A joint debate is usually ordered to enable Members to speak on both the proposed resolution and the amendments thereto. After all Members who wish to speak have spoken, the amendments are first disposed of before the Council decides on the proposed resolution.

11.147 Any amendment to subsidiary legislation made under section 34 of Cap. 1 must be moved in the form of a proposed resolution within the scrutiny period. If there is more than one proposed resolution to amend the same subsidiary legislation, they will be dealt with in the order in which the respective resolutions relate to the text of the subsidiary legislation. A joint debate is usually ordered to enable Members to speak on both the subsidiary legislation and the proposed resolutions to amend it. Under normal circumstances, the chairman of the subcommittee formed to study the subsidiary legislation is the first person called on by the President to speak in the debate after the mover(s) of the proposed resolution(s) has spoken, if he is not the mover himself. His speech is limited to the usual speaking time of 15 minutes even though part of his speech is to report on the work of the subcommittee.

Withdrawal of subsidiary legislation

11.148 The steps to withdraw subsidiary legislation made under section 34 and section 35 of Cap. 1 are different. For the withdrawal of a proposed resolution under 35 of Cap. 1, the notice is usually withdrawn when the House Committee decides to set up a subcommittee to study the subsidiary legislation in detail.\footnote{The notice of a proposed resolution to be moved under section 5(4) of the Motor Vehicles (First Registration Tax) Ordinance at the Council meeting of 4 March 2014 was withdrawn upon the request of the House Committee after a decision was made on 28 February 2014 to form a subcommittee to study the proposed resolution. The Secretary for the Environment wrote to the Clerk to the Council on 4 March 2014 to withdraw the notice so that the subcommittee would have sufficient time to examine the proposed resolution. The proposed resolution was subsequently passed at the Council meeting of 26 March 2014. See report of the relevant subcommittee at http://www.legco.gov.hk/yr13-14/english/hc/papers/hc0314cb1-1078-e.pdf.} If it is subsequently decided by the Government that the subsidiary legislation should not be proceeded with for the time being, no further procedure on the part of the Government is required as the notice has already been withdrawn. The subcommittee however needs to submit a report to the House Committee in the same manner as other subcommittees which
have completed their work. There is nevertheless one occasion where a resolution was to be moved under section 54A of Cap. 1 in 2009 for the transfer of statutory functions from one official office to another. During the scrutiny of the proposed resolution, the Government's attention was drawn to the certain functions in the resolution which did not exist in the Ordinance concerned. The Government subsequently withdrew the original resolution and put forward a revised resolution which was passed by the Council on 9 July 2009.

11.149 As regards subsidiary legislation made and published in the Gazette under an ordinance followed by the procedure of tabling before the Legislative Council pursuant to section 34 of Cap. 1, there is no procedure for its withdrawal from the Agenda of the Legislative Council. Should there be a reason that an item of subsidiary legislation so made and tabled in the Council should not commence operation either on the date of its publication in the Gazette or at a later date pursuant to a commencement mechanism provided in the subsidiary legislation, the Legislative Council may by resolution repeal it.

**Matters to be recorded in the minutes of proceedings**

11.150 It is stipulated in the Rules of Procedure that the following procedure relating to the legislative process should be recorded in the minutes of proceedings:

(a) the order of the Council for a bill after first reading to be set down for second reading (Rule 53(3));

(b) the signification of the Chief Executive's written consent by a designated public officer for the presentation of a Members' bill which relates to Government policies (Rule 54(1) and (2));

(c) the order of the Council for a bill after reporting from a committee of the whole Council to be set down for third reading (Rule 59);

(d) the order of the Council for a bill after reporting from a select committee to be set down for third reading (Rule 61(2)); and

(e) the order of the Council for a bill returned by the Chief Executive for reconsideration 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 (Rule 66(5)).
Chapter 12

Financial Procedure

12.1 In common with legislative bodies in other jurisdictions, one of the primary functions of the Hong Kong Legislature is control of public expenditure. "Control" includes the process of examination, approval and monitoring. The powers and functions of the HKSAR Legislature in this respect are set out in Article 73(2) and (3) of the Basic Law, which cover the examination and approval of the budgets introduced by the government as well as approval of taxation and public expenditure. To understand how this primary function of the Legislature is carried out in a coherent manner within the structure of the Council and its committees, it is useful first to examine the conventions in the management of public finance which have been practised in Hong Kong in the last century and how these conventions have shaped the mechanism currently adopted in the management of public finance in the HKSAR, as reflected in the Basic Law, relevant legislation of Hong Kong and in the Rules of Procedure of the Legislature.

12.2 This Chapter provides an overview of the philosophy and principles underlying the current financial system in the HKSAR, the financial procedure to provide checks and balances on the power of the government to spend public money and the role played by the legislature in scrutinizing, approving and monitoring the use of public funds. Details of the budget cycle and the role of the Finance Committee in approving changes to the approved Estimates of Expenditure are also explained.

12.3 In this Chapter, there is also a general overview of the various stages in the implementation of capital works projects, with particular reference to the planning and approval mechanism involving the Legislative Council and the part played by committees of the Council to ensure the projects are planned according to the needs of the community and implemented according to the Council's approval, including any relevant conditions. In this respect, the different roles played by the Finance Committee, Public Accounts Committee, Panels and select committees undertaking inquiries on issues relating to the use of public funds are also explained. The detailed operation, practice and procedure of these committees will be further elaborated in Chapter 13.
12. Financial Procedure

The financial procedure

The respective roles of the government and the legislature under the Basic Law

12.4 The financial procedure of the HKSAR follows the pre-1997 principle that proposals to incur public expenditure, to raise taxation and to impose charges upon people may only be initiated by the Government and approved by the legislature. This relationship between the government and the legislature is laid down in the Basic Law as follows:

(a) The government of the HKSAR shall exercise the power and function to draw up and introduce budgets and final accounts (Article 62(4)); and it shall obtain approval from the Legislative Council for taxation and public expenditure (Article 64);

(b) The Chief Executive of the HKSAR shall have the power and function to approve the introduction of motions regarding revenues or expenditure to the Legislative Council (Article 48(10));

(c) The Legislative Council shall exercise the power and functions to examine and approve budgets introduced by the government (Article 73(2)) and to approve taxation and public expenditure (Article 73(3));

(d) If the Legislative Council refuses to pass a budget introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council (Article 50);

(e) If the Legislative Council refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations; and if such appropriation cannot be approved due to dissolution of the Legislative Council, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year (Article 51); and

(f) When, after the Legislative Council is dissolved because it refuses to pass a budget, the new Legislative Council still refuses to pass the original budget, the Chief Executive must resign (Article 52(3)).
The budget

12.5 The financial procedure used in Hong Kong has existed for over 170 years since 1843 and has remained unchanged after the establishment of the HKSAR in 1997 under the "one country, two systems" principle. The financial procedure is set out primarily in the Public Finance Ordinance (Cap. 2), in the Legislative Council's Rules of Procedure and the Government's internal working mechanism in the management of public finance. This procedure, which shares many similarities with British public and parliamentary financial procedure, has undergone significant changes in past decades to enable the legislature to examine the detailed requirements presented by the government and to authorize the relevant expenditure set out in the estimates of expenditure through the passage of an Appropriation Bill, as well as approving the raising of taxation and imposition of charges upon the people through separate legislative proposals. It has been the convention that at the meeting where the Appropriation Bill is introduced into the Council, the Financial Secretary presents the "budget" which includes both the estimates of expenditure and revenue as well as new revenue proposals for the next financial year (from 1 April to 31 March in the following year).

Appropriations and supplementary appropriations

12.6 Any bill containing the estimated financial requirements for expenditure on all the services of the Government of HKSAR for the current or succeeding financial year is known as an Appropriation Bill. As explained in Chapter 6, the Appropriation Bill seeks the Legislative Council's authorization of an appropriation from the general revenue account up to a specified amount for the services of the government in the upcoming financial year. The Bill is introduced into the Council for its approval before or as soon as practicable after the commencement of the financial year to which it relates. According to Erskine May, appropriation was originally "a system of attributing sums advanced to particular services of the Government (i.e. showing what sums were appropriated to what services) for the purpose of establishing whether the estimates presented to Parliament were reflected in

---

1 Chapter 2, para.2.10 – 2.11.
2 Public Finance Ordinance (Cap. 2) is one of the ordinances adopted by the Standing Committee of the NPC on 23 February 1997 to continue to be in force after the establishment of the HKSAR on 1 July 1997.
4 Rule 67(1) of the Rules of Procedure.
5 Chapter 6, para. 6.30.
6 Sections 5(1) and 6(1) of the Public Finance Ordinance (Cap. 2).
12. **Financial Procedure**

the eventual pattern of expenditure". Hong Kong still maintains this system and has followed the same precepts of financial practice under this system, i.e. the amount appropriated for a particular service is a maximum amount and it cannot be used for another service unless with the authorization of the legislature or authorities with delegated powers.

12.7 The Public Finance Ordinance (Cap. 2) requires that the estimates of expenditure are to classify expenditure under heads and subheads with the ambit of each head described. In respect of each head, the estimated total expenditure for all the programme areas listed under the head should be shown with provision sought in respect of each subhead, the establishment of posts and the limit to any non-recurrent commitments.

12.8 Where certain expenditure cannot be anticipated at the time when the Appropriation Bill for a financial year was approved by the Legislative Council, the financial system provides that the Finance Committee of the Legislative Council may, upon a proposal of the Financial Secretary, make changes to the approved estimates of expenditure during the financial year. These changes include the approval of supplementary provision in approved or new subheads, variation in the establishments of posts and increase in the limit to the commitments in capital items. The Finance Committee may delegate to the Financial Secretary its power to approve changes subject to such conditions, exceptions and limitation as are specified in the delegation. This delegated power may be further delegated to any public officer. The power of the Finance Committee and the delegation of its power are set out in section 8 of the Public Finance Ordinance (Cap. 2).

12.9 The expenditure resulting from the changes approved by the Finance Committee is charged to the general revenue account under the respective heads of expenditure. If at the close of account for any financial year, the

---

9 Section 5 of the Public Finance Ordinance (Cap. 2).
10 Section 5 of the Public Finance Ordinance (Cap. 2).
11 Section 8(1) of the Public Finance Ordinance (Cap. 2); Hong Kong Fact Sheet (December 2014).
12 According to the Introduction in the annual Estimates of Expenditure, the "establishment" mechanism in the Government has been used since 1980. Under this mechanism, controlling officers are authorized to create or delete posts in existing non-directorate ranks provided that the net additional notional annual mid-point salary value of the posts created does not exceed the departmental establishment ceiling shown in the estimates. Any changes to the departmental establishment ceiling during the year will require the approval of the Finance Committee.
13 Section 8(2) of the Public Finance Ordinance (Cap. 2).
14 Section 8(3) of the Public Finance Ordinance (Cap. 2).
15 Section 8(4) of the Public Finance Ordinance (Cap. 2).
expenditure charged to any head is in excess of the sum originally appropriated for that head by an Appropriation Ordinance, a Supplementary Appropriation Bill must be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates.\textsuperscript{16}

Revenue proposals

12.10 The revenue of Hong Kong comes from various sources. Generally speaking, about 80% of the Government's revenue is operating revenue which comprises profits tax, stamp duty, salaries tax, rates, fees and charges, as well as excise duties collected on some commodity items. Profits tax alone brings about 28% of Government's total revenue. The remaining 20% is capital revenue such as land premium, loan repayment from funds, and recovery of land costs from the Hong Kong Housing Authority for flats sold under its Home Ownerships Schemes. The actual revenue collected in the 2014-2015 financial year was $478.7 billion, with $393.9 billion from operating revenue (82.3%) and $84.7 billion from capital revenue (17.7%).\textsuperscript{17}

12.11 Under the Basic Law\textsuperscript{18}, the HKSAR shall follow the principle of keeping expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its Gross Domestic Product. Following this principle, it has been the government's policy to develop the estimates of expenditure against the background of a medium-range forecast\textsuperscript{19} to ensure that full regard is given to the longer-term trends in the economy.\textsuperscript{20}

12.12 Where it is anticipated that additional revenue needs to be raised having regard to the medium-range forecast, such revenue proposals are announced in the budget speech delivered by the Financial Secretary when he moves the motion for the second reading of the Appropriation Bill. Taxation proposals are put to the Legislative Council through enactment of laws. Where a revenue proposal is considered necessary to take immediate effect by the Government, it will be so brought into effect by way of an order made by the Chief Executive under section 2 of the Public Revenue Protection

\textsuperscript{16} Section 9 of the Public Finance Ordinance (Cap. 2).
\textsuperscript{17} Major Sources of Government Revenue published by Research Office, Legislative Council Secretariat. (updated 7 September 2015).
\textsuperscript{18} Article 107 of the Basic Law.
\textsuperscript{19} According to Hong Kong Fact Sheet (December 2014), a medium-range forecast is a five-year forecast of expenditure and revenue which focuses on the consolidated financial position of the Government.
\textsuperscript{20} Hong Kong Fact Sheet (December 2014).
12. Financial Procedure

Ordinance (Cap. 120). As any revenue collection is subject to the Legislature's approval through enactment of a piece of relevant legislation, an order made under Cap. 120 will expire or cease to be in force under section 5(2) of the Ordinance upon rejection by the Legislative Council or withdrawal by the Government or expiry of 4 months from the day on which the order came into force, whichever of the above events first happens. Should such an event happen, any excess payment made under the order shall be repaid to the person who paid the same; or if the order has the effect of lowering any item of revenue and the order ceases to be in force and is not replaced, such item which was payable immediately before the relevant order came into force shall again become payable in full. 21

Charges upon public revenue or upon public funds

12.13 "Charges upon the revenue" or "upon public moneys" impose an obligation to make a payment out of public funds to cover an item of expenditure. 22 There may be proposals to the Council to impose such charges in the course of considering a new policy or a legislative proposal. To recognize that the financial initiative should rest with the government, there is a requirement in the Rules of Procedure (based on the pre-1997 Standing Orders) that any motion or amendment to a motion or to a bill, the object of which may, in the opinion of the President or Chairman of the committee of the whole Council, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by the Chief Executive, a designated public officer, or a Member provided that the Chief Executive consents in writing to the proposal. 23

Control of finances

12.14 Under the Public Finance Ordinance (Cap. 2) the Financial Secretary is responsible for the management of the finances of the Government and the supervision, control and direction of all matters relating to the financial affairs of the Government. 24 Cap. 2 also provides that any moneys raised or received for the purposes of the Government form part of the general revenue except where otherwise provided by any ordinance or enactment. 25 Any refund to be made by the Government comes from the general revenue. 26

---

21 Sections 6 and 7 of Public Revenue Protection Ordinance, Cap. 120.
23 Rules 31(1) and 57(6) of the Rules of Procedure.
24 Section 10 of the Public Finance Ordinance (Cap. 2).
25 Section 3(1) of the Public Finance Ordinance (Cap. 2).
26 Section 3(2) of the Public Finance Ordinance (Cap. 2).
Cap. 2 also stipulates that the Director of Accounting Services is responsible for the compilation and supervision of the Government's accounts and for ensuring that all regulations, directions or instructions made or given under Cap. 2 are complied with.  

Controlling Officers

12.15 In the estimates of expenditure presented to the Legislative Council, there are a number of Heads of Expenditure. Each Head of Expenditure usually corresponds to a government bureau, a branch of a bureau or a department, and is supported with a report by the respective controlling officer. The controlling officer designated for a Head of Expenditure is responsible and accountable for all expenditure from any subheads under the respective Head, and for all public moneys and Government property in respect of the department or service for which he is responsible. Every controlling officer is required to obey all regulations made and directions or instructions given by the Financial Secretary under section 11 of the Public Finance Ordinance (Cap. 2) and, if so required, account to the Financial Secretary for the performance of his duties as controlling officer. In the controlling officers' reports in the Estimates, the effectiveness or cost-effectiveness of the results from the resources proposed to be spent on a specific programme area is measured where possible in terms of unit costs or productivity indicators.

12.16 The provision of each Head of Expenditure is typically broken down into various expenditure components and standard subheads, such as Subhead 000 Operational expenses which covers all expenditure of a recurrent nature of a department, unless otherwise shown in separate subheads. Since April 1999, the financial provision under this subhead has been operated as a one-line vote, such that the controlling officer is given autonomy and flexibility in deploying the funds among various conventional subheads within this Subhead 000.

---

27 Section 16 of the Public Finance Ordinance (Cap. 2).
28 The number of Heads of Expenditure in the 2015-2016 Estimates was 83.
30 Section 12(1) and (2) of the Public Finance Ordinance (Cap. 2).
31 Section 13 of the Public Finance Ordinance (Cap. 2).
33 Conventional subheads under Subhead 000 Operational expenses include Personal Emoluments (staff salaries and allowances); Personnel Related Expenses (Mandatory Provident Fund Contribution, etc.); Departmental Expenses (day-to-day operation costs); Other Charges; and Recurrent Subventions (payments to external or subvented bodies).
12. Financial Procedure

**General Revenue Account**

12.17 The Government controls its finances through the General Revenue Account, which is the main account for the day-to-day departmental expenditure and revenue collection, and acts as the central funding device with resources transferred as appropriate to and from the 9 purpose-specific funds established under section 29 of the Public Finance Ordinance (Cap. 2) with the approval of the Legislative Council. Upon the coming into operation of an Appropriation Ordinance or the making by the Legislative Council of a resolution under section 7 of Cap. 2 to authorize expenditure in advance of an Appropriation Ordinance, the Financial Secretary authorizes the Director of Accounting Services by general warrant or vote on account warrant respectively under his hand to pay from the General Revenue Account such sums as may be required to meet expenditure in accordance with the Ordinance or resolution. Where the Finance Committee has made a change to the approved estimates of expenditure for a particular Head in accordance with section 8 of Cap. 2, the Financial Secretary shall authorize the Director of Accounting Services by supplementary warrant to pay from the general revenue such sum as is in excess of the sum appropriated for that Head by the Appropriation Ordinance for meeting the requirement arising from the change. 

12.18 The Financial Secretary may in his discretion authorize the investment of any deposit in such manner as he may determine, and any interest or dividend received in respect of any deposit so invested shall form part of the general revenue.

**Funds**

12.19 The Legislative Council may by resolution establish funds for specific purposes. Moneys appropriated for such funds or moneys received for such moneys.

---

36 Section 19 of the Public Finance Ordinance (Cap. 2).
37 Section 19 of the Public Finance Ordinance (Cap. 2).
38 Section 31 of the Public Finance Ordinance (Cap. 2).
39 Section 23(2) of the Public Finance Ordinance (Cap.2) provides that any moneys deposited under subsection (2) shall not form part of the general revenue, but if the deposit is unclaimed for 5 years, it may be treated as moneys received for the purposes of the Government under subsection (4) and shall then form part of the general revenue.
purposes as may be specified in the resolution may be credited into the relevant funds. The Financial Secretary may issue a funds warrant to incur expenditure for the purposes for which the funds were established subject to such conditions, exceptions and limitations as may be specified in the resolution. The purpose-specific funds established are:

(a) the **Capital Works Reserve Fund** for financing the Government's public works programme and consequential equipment, development, purchase and installation of major systems and equipment, capital subventions, acquisition of land, etc.;

(b) the **Capital Investment Fund** for financing loans, advances and investments (including investments by way of waived land premium, donated works or other benefits (other than cash)) to or in such persons as may be approved by the Finance Committee;

(c) the **Civil Service Pension Reserve Fund** for meeting the liabilities for payment of pensions, gratuities or other allowances for civil servants and judges under the various relevant pension ordinances if the Financial Secretary believes that having taken into account all anticipated receipts and payments, the balance in the General Revenue Account will be in deficit at the end of that financial year;

(d) the **Disaster Relief Fund** for providing aid in relief of disasters that occur outside Hong Kong;

(e) the **Innovation and Technology Fund** for financing projects that contribute to the upgrading (including innovation and

---

40 Section 29(1) of the Public Finance Ordinance (Cap. 2).
41 Cap. 2A is a Resolution passed by the Legislative Council on 20 January 1982 under section 29(1) of the Public Finance Ordinance (Cap. 2) to establish the Capital Works Reserve Fund for the purpose of financing the Public Works Programme and the acquisition of land. The Resolution took effect from 1 April 1982. It was amended from time to time to incorporate changes such as the transfer of the financing of capital subventions and major systems and equipment from the General Revenue Account to the Fund with effect from 1 April 1988.
42 Cap. 2B.
43 Cap. 2E.
44 Cap. 2L.
technology upgrading) and development in the manufacturing and service industries; 45

(f) the Land Fund for receiving and holding all of the assets upon the establishment of the HKSAR Government transferred from the HKSAR Land Fund established by a Declaration of Trust of the HKSAR Government Land Fund Trust made on 13 August 1986 to the HKSAR Government; 46

(g) the Loan Fund for assuming the liabilities of the Student Loan Fund, Development Loan Fund and other schemes under Part II of the Schedule to Cap. 2C;

(h) the Lotteries Fund administered by the Financial Secretary and invested in such securities as may be approved by him; 47 and

(i) the Bond Fund for repaying or, if appropriate, paying the principal of, interest on, and expenses incurred in relation to, any sums that have been borrowed under section 3 of the Loans Ordinance (Cap. 61) for the purposes of the Fund. 48

12.20 The total revenue and expenditure of the General Revenue Account and 8 of the above Funds (excluding the Bond Fund) represent government revenue and government expenditure, and the total balance makes up the Government's fiscal reserves. 49

Fiscal reserves

12.21 As it is required under Article 107 of the Basic Law that HKSAR's expenditure should be kept within the limits of revenues in the budget striving to achieve a fiscal balance, the level of fiscal reserves that the Government should maintain has been a subject of discussion in the Council. It has often been viewed by Members that the level of fiscal reserves that needs to be maintained has great bearing on the level of government expenditure proposed in the budget, hence affecting the extent of services that may be provided for the community in particular those in need of Government's support.

45 Cap. 2Q.  
46 Cap. 2O.  
47 Cap. 2D.  
48 Cap. 2S.  
49 Hong Kong Fact Sheet (December 2014).
12.22 Fiscal reserves are the total amount of resources that the Government may use to meet its day-to-day operational expenses and public works expenditure. It is the Government's cash balance. Since 1976, the bulk of the Government's fiscal reserves has been placed with the Exchange Fund managed by the Hong Kong Monetary Authority to generate investment income. Since the establishment of the HKSAR, there have been changes in the policy of the Government over the level of fiscal reserves that should be maintained.

12.23 The purposes of the fiscal reserves were explained in detail in the Budget Speech made by the then Financial Secretary, Mr Donald TSANG, when he presented the Appropriation Bill in the Provisional Legislative Council on 18 February 1998. Mr TSANG stated that, in the light of the 1997-1998 Asian financial crisis, it would be necessary for the Government to hold substantial public funds in reserves for the following three purposes:

(a) the operating requirement to meet the cash flow requirement of the operation of the Government;

(b) the contingency requirement to reserve funds for the Government's unexpected and urgent uses; and

(c) the monetary requirement to maintain the stability in the exchange rate of the Hong Kong dollar.

12.24 On the basis of the Government's assessment of the amounts of cash that needed to be maintained for each of the above purposes, the Financial Secretary stated that the level of fiscal reserves should stay between 15 months of government expenditure plus 125% of Hong Kong dollar supply under the M1 definition (i.e. the upper limit) and 9 months of government expenditure plus 75% of Hong Kong dollar money supply under the M1 definition (i.e. the lower limit).

50 The Exchange Fund (EF) was established in 1935 by the Currency Ordinance (later renamed the Exchange Fund Ordinance (Cap. 66) to back the issue of banknotes in Hong Kong. The primary statutory function of the Exchange Fund, as defined in Section 3(1) of Cap. 66, is to affect, either directly or indirectly, the exchange value of the currency of Hong Kong. In 1992, its statutory function was extended through inclusion of section 3(1A) in Cap. 66 to enable it to assume a secondary and subsidiary role of maintaining the stability and the integrity of the monetary and financial systems, with a view to maintaining Hong Kong as an international financial centre.


52 Fact Sheet on "Management of the Exchange Fund and fiscal reserves" published by the Research and Library Services of the Legislative Council Secretariat on 18 March 2010 (updated on 19 March 2010), para. 6.5.
12.5 In his Budget Speech on 6 March 2002, the then Financial Secretary Mr Antony LEUNG announced that in view of the accumulated surplus of the Exchange Fund at $300 billion, there was no further need to link the level of fiscal reserves to money supply. He considered that it should be sufficient to keep fiscal reserves at around 12 months of government expenditure to meet operation and contingency requirements.\(^{53}\) Statistics show that the fiscal reserves dropped from 24 months of government expenditure in 1998-1999 to 16 months in 2002-2003.

12.26 The target level of fiscal reserves was further adjusted in the Budget Speech on 5 March 2003. In the light of deficits and economic uncertainties, Mr Antony LEUNG, the then Financial Secretary, announced that in the next 5 years (from 2003-2004 to 2007-2008), HKSAR's fiscal reserves would be maintained at a level equivalent to 9 to 11 months of government expenditure.\(^{54}\) The actual levels of fiscal reserves kept in these 5 years rose from 16 months in 2003-2004 to 25 months in 2007-2008.

12.27 In the 2007 Budget Speech, the then Financial Secretary, Mr Henry TANG who took up office on 2 August 2003, stressed that there was no need for the reserves to keep expanding. The fiscal reserves should be maintained at an appropriate level with a view to providing adequate resources to meet the needs of the community. In view of the divided views on the target level, the Government would listen to the views of the community before making a decision.\(^{55}\) Mr TANG's successor, Mr John TSANG who became Financial Secretary on 1 July 2007, emphasized the need for the budget to be drawn up based on the Medium Range Forecast and for adequate fiscal reserves to be maintained in the long run. The same criterion was used in the subsequent budgets for the years 2009-2010 and 2010-2011. At the briefing for Members at the meeting of the Finance Committee on 25 February 2010, the Financial Secretary stated that there was no need to prescribe a target level of fiscal reserves. His forecast of fiscal reserves for the next 5 years (i.e. up to 2014-2015) was a gradual decrease from 20 months of government expenditure to 18 months.\(^{56}\)

12.28 In his reply to a written question at the Council meeting of 4 December 2013, the Secretary for Financial Services and the Treasury advised that "in view of the multiple functions of fiscal reserves and

\(^{53}\) Council meeting of 6 March 2002, see *Hansard*, p. 4155.
\(^{54}\) Council meeting of 5 March 2003, see *Hansard*, p. 4338.
\(^{55}\) Council meeting of 28 February 2007, see *Hansard*, pp. 4763 – 4765.
uncertainties in the external economy, it serves little purpose to determine an 'appropriate level' of fiscal reserves".  

The Budget Cycle and related financial procedures

12.29 As the Appropriation Bill containing the financial requirement for all services of the Government needs to be passed before or as soon as practicable after the commencement of the financial year to which it relates, an annual planning cycle has been adopted by the Government for drawing up the estimates of expenditure and revenue which will keep the Government's expenditure in line with Hong Kong's economic performance based on a Medium Range Forecast. This planning cycle has also undergone changes over the years but the fundamental steps in the process remain largely the same. The major changes in recent years include the adoption of the "envelope" approach in 2002 and the allocation of additional resources mainly to designated initiatives in the Policy Address starting from 2014.

Resource Allocation Exercise

12.30 The budget cycle starts shortly after the passage of an Appropriation Bill, with an internal circular issued by the Financial Services and the Treasury Bureau to all policy bureaux and departments setting out the internal resource allocation procedures for the preparation of the estimates of expenditure for the coming financial year. The exercise covers both recurrent and capital expenditure. In the meantime, Controlling Officers are required to conduct a review of their baseline expenditure as allocated under the approved Estimates of Expenditure and where possible, identify savings and state how such savings are to be redeployed. All bids for recurrent, capital works and non-works capital expenditure are considered by the 'Star Chamber' which makes reference to the projected expenditure ceiling.

58 Sections 5(1) and 6(1) of the Public Finance Ordinance (Cap. 2).
59 The Government announced in August 2002 that for recurrent expenditure in the Resource Allocation Exercise that year, an "envelope" approach would be used. Under this approach, each Director of Bureau was tentatively allocated an envelope of operating expenditure and given the flexibility to deploy resources among his/her various policy areas when preparing the Estimates of Expenditure. Bids for capital expenditure were processed in the usual manner.
62 For the 2015 Resource Allocation Exercise, bureaux were requested to deliver 1% savings on their respective operating expenditure in 2016-2017 and 2017-2018.
63 The Star Chamber is chaired by the Chief Secretary for Administration, and comprises the Financial Secretary, Secretary for Financial Services and the Treasury and the Secretary for the Civil Service.
derived from the Medium Range Forecast announced in the Financial Secretary's Budget Speech made that year. The Resource Allocation Exercise for a financial year is usually completed between October and December.

Consultation on the budget

12.31 Prior to 1999, there was a standing arrangement (since 1995) for the Financial Secretary to consult Legislative Council Members in the course of drawing up the budget. The consultation on expenditure proposals took place in June before the Star Chamber met to decide on new spending. Consultation on revenue proposals took place towards the last quarter of the year, by which time bureaux and Controlling Officers were about to submit the revenue estimates under their respective purview. This consultation timeframe had enabled the Financial Secretary to examine all relevant proposals at the appropriate junctures in the course of drawing up the budget for the next financial year.

12.32 In 1999, in the wake of the Asia financial crises and its impact on public finances, the Financial Secretary decided to adopt a more integrated approach by seeking Members' views on both expenditure and revenue proposals in the same consultation exercise in October. This practice has continued up to the present. In parallel with the consultation with Members, the Government has consulted academics, experts, representatives of the business sector and local districts, and subsequently the general public, on the budget since 2003. In October 2015, consultation with the public on the budget was carried out together with the consultation on the Policy Address. According to the Government, it was to enable more comprehensive discussion with the community.

Introduction of an Appropriation Bill to the Legislative Council

Contents of an Appropriation Bill

12.33 An Appropriation Bill seeks to authorize the appropriation of a sum from the general revenue for the services of the Government in a financial year in a manner as set out in the schedule to the Bill. The Bill itself normally

---

comprises only 2 clauses and a schedule. In the schedule, the amounts of appropriation for all heads of expenditure are individually set out. Details of the appropriation for each head are provided in the Estimates of Expenditure which is published at the same time as the Appropriation Bill but is not part of the Bill.

Approval for presentation to the Legislative Council

12.34 By January/February of each year, the Financial Secretary should have finalized the Estimates of Expenditure and revenue proposals for the coming financial year. Under Article 48(10) of the Basic Law, the introduction of motions regarding revenues or expenditure to the Legislative Council requires the approval of the Chief Executive. The Chief Executive, on the other hand, also needs to consult the Executive Council under Article 56 before introducing bills including the Appropriation Bill to the Legislative Council. It is a long-standing convention that a meeting of the Executive Council is held to endorse the introduction of the Appropriation Bill in the same morning shortly before the Financial Secretary presents the Bill to the Legislative Council and delivers his budget speech.

12.35 By convention, the Appropriation Bill is presented to the Council in February and is expected to be enacted before or shortly after the commencement of the next financial year on 1 April. While there is little change in the timing for the introduction of the Appropriation Bill, completion of the proceedings on the Bill is becoming less likely to be before the commencement of the next financial year. This is explained in the latter part of this Chapter.

Historical background on the tabling of the Estimates of Expenditure

12.36 Under Rule 67(1) of the Rules of Procedure, estimates containing the details of the financial requirements for expenditure on all the services of the Government for the current or succeeding financial year shall be presented to the Council not later than the commencement of the meeting at which the Appropriation Bill is placed on the Agenda of the Council for first reading. The current practice which started in 2002 is to provide the estimates of expenditure for Members of the Council at the start of the meeting at which the Appropriation Bill is presented and immediately before the Financial Secretary rises to deliver the budget speech.

12.37 To understand why certain procedural arrangements exist in the legislative process of the Appropriation Bill but not in other bills it is necessary briefly to examine the historical development of the method of presentation of Appropriation Bills to the Legislative Council for approval. The financial procedure in Part L of the Rules of Procedure of the HKSAR Legislative Council first appeared in the 1968 Standing Orders of the pre-1997 Legislature. Before 1969, the Appropriation Bill was introduced to the Legislative Council through various means depending on what the then Government considered suitable at the time. For many decades before 1956, the budget exercise commenced with an address in Council by the Governor in early March on the global economic development, Hong Kong's economic performance and financial needs, followed by the introduction of an Appropriation Bill by the Financial Secretary, giving an account of his revenue and expenditure proposals according to the heads in the Draft Estimates of Revenue and Expenditure which were tabled at the same Council sitting. The Draft Estimates were referred to a select committee which was chaired by the Colonial Secretary and composed of the Financial Secretary and all Unofficial Members. At the next sitting (which took place about 2 weeks later), the select committee tabled its report. The Financial Secretary moved the motion for the second reading of the Bill and a debate took place, during which reference was made to the report of the select committee in which proposals to amend the Bill might have been recommended. There then followed committee stage and third reading.

12.38 In 1956, a new procedure was adopted. Following an address made by the Governor, a resolution was moved to refer the Draft Estimates of Revenue and Expenditure to a select committee. At the next Council sitting which was held about 2 to 3 weeks later, usually shortly before the end of March, the report of the select committee was tabled and a resolution was proposed to adopt the report. A debate then took place on the motion. The debate could cover all aspects of the Governor's address and the revenue and expenditure proposals in the Draft Estimates. The debate could last for 2 to 4 sitting days and upon approval of the resolution the Appropriation Bill was read for the first time with all remaining proceedings of the 3-reading process completed at the same sitting. This procedure was followed for over a decade.

12.39 In February 1969, following a major review of the Standing Orders in 1968, the Council followed the financial procedure set out in those Standing Orders. The Governor, for the last time, addressed the Council on the budget

---

67 There was no Policy Address at the commencement of a new session before 1948. See Chapter 5, para. 5.15 – 5.18.
and notified Members that his Address in future would take place at the start of a new session in October. The Financial Secretary, who moved the motion for the second reading of the Appropriation Bill at the same sitting, said in his speech 68.

"Under our previous budget procedure, I would be moving today that the Estimates of Revenue and Expenditure be referred to a Select Committee, the budget debate would then be held on the report of the Select Committee and the Appropriation Bill would be rapidly passed through all its stages on the last day of the session. Our new Standing Orders introduce a rather more parliamentary procedure. We begin today with the Appropriation Bill, my motion today relates to its second reading and the main debate will be on this motion and, by virtue of Standing Order 54(2), should strictly speaking be "confined to the financial and economic state of the Colony and the general principles of Government policy and administration as indicated by the bill and Estimates". At the same time the Estimates having been already referred by Your Excellency to Finance Committee, Finance Committee's report will be tabled prior to the committee stage of the bill, and at the committee stage the various heads of expenditure will be taken separately, as for clauses of a bill, and there will be opportunity for further debate in detail on these separate heads as they are taken. One of the incidental effects of the new procedure is that it is necessary to publish the Appropriation Bill, with its details of proposed expenditure under each head, the week before. This is normal procedure elsewhere and does not infringe the secrecy of the Budget which relates to tax proposals, and not to the expenditure estimates."

12.40 According to this financial procedure 69, the Appropriation Bill and the Estimates of Expenditure were presented to the Council at the same time, though in practice the Bill and Estimates were published in the gazette on the Friday before the sitting at which the Financial Secretary moved the motion for the second reading of the Bill in Council. After the Financial Secretary's Budget Speech, the second reading debate on the Bill was adjourned, and the Estimates were referred by the President to the Finance Committee for examination. The completion date of all proceedings on the Appropriation Bill was targeted for the end of March. In 1990-1991, this arrangement was

---

69 Standing Order 54(1) of the 1968 Standing Orders.
12. Financial Procedure

formalized and the relevant Standing Order was amended accordingly. The revised financial procedure was adopted by the Provisional Legislative Council and the First Legislative Council in their Rules of Procedure. It had also been a practice for the then Secretary for the Treasury to brief the Finance Committee on the expenditure part of the Budget on the day when the Estimates were gazetted, i.e. on the Friday before the first reading of the Appropriation Bill. This procedure was reflected in the Finance Committee Procedure determined by the Finance Committee in 1994 and adopted by the Finance Committee of the First Legislative Council.70

12.41 In 2002, the Government noted Members' comments that the practice mentioned above was less than ideal and responded by deciding to test out a new arrangement. In order that Members and the public could consider the Estimates of Expenditure alongside other essential information which was only available in the Budget, the Government considered it more helpful to gazette the Appropriation Bill on the day the Financial Secretary announced his Budget. Copies of the Estimates and other Budget-related documents would also be distributed to Members on the same day. The briefing for the Finance Committee on the Budget and the Estimates would be conducted by the Financial Secretary and the Secretary for Financial Services and the Treasury on the following day, followed by a series of special meetings a few weeks later to examine the details of the Estimates before the Council resumed to deal with the remaining proceedings on the Bill.71

Schedule of Budget meetings

12.42 The schedule of Budget meetings in the Council is determined before the start of a new session. By convention72, there are three Budget meetings to deal with an Appropriation Bill:

(a) 1st Budget meeting for the Financial Secretary to present the Appropriation Bill and to deliver his Budget Speech when moving the motion for the second reading of the Bill;

70 Paragraph 49 of the Finance Committee Procedure.
71 In response to a Member's question on whether this would depart from the arrangement set out in the Finance Committee Procedure, the Clerk to the Finance Committee explained in her letter dated 22 February 2002 that having regard to the historical background of Paragraphs 49 to 55 of the Finance Committee Procedure, Paragraph 49 could only be regarded as a description of the then practice. It did not impose a procedural obligation on the Financial Secretary. (http://www.legco.gov.hk/yr01-02/english/hc/papers/hc0222let-cfc.pdf)
72 The convention of scheduling 3 separate meetings to deal with the various stage of the Appropriation Bill can be dated back to 1969 (although from 1973 to 1990, the "3rd meeting" was usually held at two sittings) and the same arrangement was adopted by the First Legislative Council of the HKSAR.
12. Financial Procedure

(b) **2\textsuperscript{nd} Budget meeting** for Members to speak at the resumption of the second reading debate on the Appropriation Bill; and

(c) **3\textsuperscript{rd} Budget meeting** for completing the remaining stages on the Bill, including public officers to respond to the speeches made by Members, the Financial Secretary to make his reply and for the Council to vote on the second reading of the Bill, for the committee of the whole Council to deal with all proposed amendments to the Bill and vote on clauses and schedule(s) standing part of the Bill, and for the Council to vote on the third reading of the Bill.

12.43 Prior to 1996, it was the convention to complete all proceedings of the Appropriation Bill before the commencement of the financial year to which the Bill related. In 1996, the 3\textsuperscript{rd} Budget meeting was scheduled for the first time to be held in April. Since then, the three Budget meetings were scheduled in such a way that they spanned over a period of 5 to 7 weeks, usually from end of February or early March up to but not later than end of April.

12.44 By 2007-2008, to facilitate Members to have more time to raise written questions on the Estimates and Controlling Officers to forward their written replies before the special meetings of the Finance Committee, a longer time gap was provided between the 1\textsuperscript{st} and 2\textsuperscript{nd} Budget meeting. As a result, from 2007 onwards, the 3\textsuperscript{rd} Budget meeting has been scheduled to be held about 2 months after the 1\textsuperscript{st} Budget meeting.

12.45 In 2013, to dispose of 710 Committee stage amendments admitted to the Appropriation Bill 2013, the proceedings on the second reading debate, Committee stage and third reading of the Bill lasted for a total of 121 hours with the Bill finally being passed on 21 May 2013 \(^{73}\) after President Jasper TSANG ordered the setting of a timeframe to complete the remaining proceedings of the Bill before the meeting of 22 May 2013. See **Appendix 8-B**. For the Appropriation Bill 2014, the number of proposed amendments to the Bill was increased to 1,917 of which 1,192 were subsequently admitted by the President for consideration under 5 joint debates. \(^{74}\) The 1\textsuperscript{st} joint debate alone continued for 45 hours until the President

---

\(^{73}\) The Appropriation Bill 2013 was passed at the Council meeting of 15 May 2013 which were held on 4 days on 15, 16, 20 and 21 May 2013.

\(^{74}\) After the passage of the second reading of the Appropriation Bill 2014, the President adjourned the Council to enable him to have more time to consider the large number of Committee stage amendments.
12. Financial Procedure

finally ordered on 21 May 2014 that the remaining proceedings were to be completed on the first day of the meeting of 4 June 2014. See Appendix 8-C. It took a total of 148 hours to complete all the proceedings on the Bill before it was read for the third time on 4 June 2014.

12.46 In 2015, the number of proposed amendments to the Appropriation Bill 2015 surged to 3,904, of which 618 were ruled admissible. The second reading debate on the Bill was resumed on 15 April 2015 and lasted for 19 hours. It took another 101 hours to complete the committee stage of the Bill. The Bill received its third reading on 28 May 2015.

Examination of the Estimates by the Finance Committee

12.47 The Estimates (comprising Volumes I and II) contain the details of the financial requirements for expenditure on all the services of the Government sought under an Appropriation Bill. Volume I provides an analysis of the General Revenue Account including the controlling officers' reports, details of expenditure by subheads and commitments under each head of Expenditure. Volume II provides the statutory background, purposes and details of the 9 purpose-specific funds. In accordance with Rule 71(11) of the Rules of Procedure, the Estimates may be referred by the President to the Finance Committee for their examination before the Bill is considered in committee of the whole Council. The purpose of the examination is to ensure that the provision sought is no more than is necessary for the execution of approved policies.75 It has been a practice that the President's referral will be made and a special meeting of the Finance Committee is held on the day immediately after the delivery of the Budget Speech. Both the Financial Secretary and the Secretary for Financial Services and the Treasury are invited to the special meeting to brief members on the general aspects of economic forecast, policy on fiscal reserves and to respond to general questions on the revenue and expenditure proposals in the Budget. The detailed examination of the Estimates of Expenditure takes place at a series of special meetings of the Finance Committee which are usually held about 3 to 4 weeks after the introduction of the Bill.

Written questions prior to special meetings

12.48 Prior to the special meetings, Members are invited to submit written questions on the Estimates before a deadline set by the chairman of the

75 Paragraph 49 of the Finance Committee Procedure.
Financial Procedure

Finance Committee. Controlling Officers are expected to provide written replies to those questions to the Finance Committee before the special meetings held by the Committee for the examination of the estimates. All written questions should be directly related to the Estimates and raised for the purpose of examining the appropriateness of the provision under each head or subhead in the Estimates. Members may raise questions on the amount of the provision requested, justification for such a provision, key performance targets, etc. The questions are vetted by the chairman of the Finance Committee according to the guidelines set out in Appendix 12-A, and forwarded to the Government for written replies. Questions which are not directly related to the draft Estimates may still be referred to the Administration for reply by letter outside the context of the draft Estimates exercise.  

12.49 The submission of written questions on the Estimates was formalized in the consideration of the Appropriation Bill 2001. At that time, the Government for the first time agreed that it would handle with priority 1 200 written questions on a first-come-first-served basis, which in its view was the optimum level manageable for providing written replies in both the Chinese and English languages before the deadline for written replies (one day before the relevant sessions of the special meetings to be held in a week's time). With the extension of the period for the asking and answering of written questions to about 3 weeks in 2015, the quota for written questions with priority was raised to 3 300.  

Questions received after the deadline will not be forwarded to the Government for replies, but Members may forward such questions to the Clerk to the Finance Committee as supplementary questions during the special meetings for the Government to provide written replies before the 3rd Budget meeting.

Schedule of special meetings

12.50 The Finance Committee holds 8 half-day special meetings to examine the Estimates of Expenditure normally over 5 days (with 3 full days and 2 half days). Each meeting is made up of a number of sessions respectively scheduled for dedicated policy areas. Although the number of special meetings has remained constant over the years, the number of sessions has

---

76 Paragraph 50 of the Finance Committee Procedure.
77 The quota of 3 300 questions was determined after a review conducted in 2011 when the number of questions raised by Members had exceeded 4,000. Since the 2012 exercise, the Government has undertaken to provide written replies to the first 3,300 questions before the relevant sessions of the special meetings of the Finance Committee.
78 Paragraph 50 of the Finance Committee Procedure.
increased from 18 in 2001 to 20 since 2007 and 21 in 2015 with the creation of the Innovation and Technology Bureau, and the duration of each session has also been lengthened to provide more time for discussion. These meetings are open to the public. Directors of Bureaux and Controlling Officers without a Director of Bureaux are invited to attend sessions dedicated to their policy portfolios. Each Director of Bureau or Controlling Officer may bring along any public officers who are in the best position to assist in responding to questions on the Estimates in relation to the heads and subheads under his or her portfolio.

12.51 At the start of each session, the Director of Bureaux responsible for the relevant policy area may make a short introductory speech to highlight the Bureau's priorities for the year ahead and the provisions being sought. Members may ask questions on points made in that speech, the written replies to members' initial questions and the Estimates of Expenditure. The presence of a quorum is required at the start of each meeting, i.e. the chairman and 8 other members, within 15 minutes after the time appointed for the meeting. Members are only summoned if the attention of the chairman is drawn to the lack of a quorum. If after 15 minutes have expired and a quorum is still not present, the chairman must adjourn the meeting.

12.52 A report of the special meetings containing minutes of the proceedings and key points of the questions and answers raised at the meetings will be printed in both the Chinese and English languages for tabling at the Legislative Council after the special meetings.

Debate on the second reading of the Appropriation Bill

12.53 According to Rule 67(2) of the Rules of Procedure, the second reading debate on the Appropriation Bill is confined to the financial and economic state of Hong Kong and the general principles of Government policy and administration as indicated by the Bill and Estimates. As the Financial Secretary announces the revenue proposals in his speech for moving the motion for the second reading of the Bill, the President normally allows Members to speak on matters which are related to these proposals. Each Member may only speak once in the debate.

80 Paragraphs 14 – 15 of the Finance Committee Procedure.
81 Paragraph 53 of the Finance Committee Procedure.
12. Financial Procedure

Procedure in the committee of the whole Council

12.54 In the Appropriation Bill, the estimate for each Head of Expenditure and the amount to be transferred to each fund are set out in the Schedule. During committee stage, consideration of the clauses of the Bill is postponed until after the Schedule has been considered. The Chairman of the committee of the whole Council shall propose "That the sums for the following heads stand part of the schedule" and direct the Clerk to call the numbers of the Heads. When the number or numbers of any Head or group of Heads are called, the question that the sums in that Head or group of Heads stand part of the schedule is deemed to have been moved. A debate will then take place unless an amendment is allowed to be moved by the Chairman under Rule 69 of the Rules of Procedure. After the amendment or amendments to a head or group of heads are moved, the committee of the whole Council will debate each of the amendments or hold a joint debate on the original estimate and the amendments.

Amendment to heads of expenditure in the Estimates

12.55 Following the principle that financial initiative should rest with the Government, any amendment which, in the opinion of the Chairman, would increase the sum allotted to any head of expenditure shall only be moved by a designated public officer. Such an amendment, whether in respect of any item or subhead or in respect of the head itself, will take precedence over an amendment to reduce the head in the same respect. If the amendment to increase the sum allotted to a head is carried, no amendment to reduce the head or any item or subhead of the same head shall be moved. Any amendment to increase expenditure tabled by a Member not being a designated public officer, is out of order and inadmissible.

12.56 As regards amendments to reduce the sum allotted to a head of expenditure, a specified form is provided in Rule 69(3) of the Rules of Procedure for the motion, which is "That head ..... be reduced by $ ..... in respect of (or by leaving out) subhead ..... item .....". In proposing the amendments, the following rules shall apply:

---

82 Rule 68(1) of the Rules of Procedure.
83 Rule 68(3) of the Rules of Procedure.
84 Rule 69(1) of the Rules of Procedure.
85 Rule 69(2) of the Rules of Procedure.
12. Financial Procedure

(a) It is out of order to propose an amendment to leave out a head. 86

(b) Where a head is not divided into subheads, it is in order to propose an amendment to reduce a head without reference to a subhead; 87 and

(c) Where a subhead is not itemized, it is in order to propose an amendment to reduce a head in respect of the subhead or by leaving out the subhead. 88

12.57 The order of the amendments in respect of the items and subheads of a head on the Agenda of the Council will follow the order in which the items or subheads stand under that head in the Estimates. 89 If two or more amendments are to be proposed to reduce the same item, subhead or head, such amendments must be placed on the Agenda in the order of the magnitude of the reductions proposed, the amendment proposing the largest reduction being placed first in each case. 90

12.58 After an amendment to an item or subhead has been disposed of no amendment or debate on a previous item or subhead shall be permitted. 91

12.59 When all amendments in respect of any particular Head of Expenditure have been disposed of, the Chairman shall again propose the question "That the sum for head ..... stand part of the schedule", or if any amendment has been carried, propose the amended question "That the (increased or reduced) sum for head ..... stand part of the schedule". 92

12.60 When all the Heads in a schedule have been disposed of, the Chairman shall put forthwith, without amendment or debate, the question "That the schedule (as amended) stand part of the bill." 93 When every schedule has been disposed of, the Chairman shall propose "That the following clauses stand part of the bill" and direct the Clerk to call the numbers of the clauses. On the calling of the number of a clause, the question

86 Rule 69(6) of the Rules of Procedure.
87 Rule 69(5) of the Rules of Procedure.
88 Rule 69(4) of the Rules of Procedure.
89 Rule 69(7) of the Rules of Procedure.
90 Rule 69(8) of the Rules of Procedure.
91 Rule 69(9) of the Rules of Procedure.
92 Rule 69(10) of the Rules of Procedure.
93 Rule 68(4) of the Rules of Procedure.
that the clause stands part of the bill shall be deemed to have been proposed. The same procedure also applies to a clause being amended.\textsuperscript{94}

12.61 No clause of an Appropriation Bill may be amended except by a designated public officer consequent on an alteration in the total sum appropriated by any schedule. Such an amendment may be moved without notice, and the question thereon shall be put forthwith without amendment or debate. When the question on the last of any such amendments to a clause has been decided, the Chairman shall put the question "That the clause as amended stand part of the bill" and that question shall then be decided without amendment or debate.\textsuperscript{95} When every clause has been dealt with, the Council resumes and a Member shall report the Bill to the Council with or without amendment, as the case may be.\textsuperscript{96}

\textit{Contents of debates at Committee Stage}

12.62 As for contents of debate at Committee stage, the debates on the original question and the question after amendments have been disposed of are subject to the same limitations as specified in Rule 68(3) of the Rules of Procedure, i.e. any such debate shall be confined to the policy of the service for which the money is to be provided and shall not deal with the details of any item or subhead but may refer to the details of revenue or funds for which that service is responsible.\textsuperscript{97} Debate on every amendment shall be confined to the item, subhead, or head to which the amendment refers.\textsuperscript{98}

\textit{Third reading of the Appropriation Bill}

12.63 No debate shall be held on the motion for the third reading of the Appropriation Bill, which is also not subject to any amendment.\textsuperscript{99} In recent years, the President has adopted the practice of allowing Members to speak on whether they support the Bill in its entirety in the debate on clauses standing part of the Bill before the Council proceeds to the third reading of the Bill.

\textsuperscript{94} Rule 68(5) of the Rules of Procedure.
\textsuperscript{95} Rule 68(6) of the Rules of Procedure.
\textsuperscript{96} Rule 68(7) of the Rules of Procedure.
\textsuperscript{97} Also Rule 69(10) of the Rules of Procedure.
\textsuperscript{98} Rule 69(9) of the Rules of Procedure.
\textsuperscript{99} Rule 70 of the Rules of Procedure.
**12. Financial Procedure**

**Procedure relating to refusal to pass the budget**

12.64 It has been mentioned in Chapter 5 that Rule 51 of the Rules of Procedure was amended by the First Legislative Council in June 2000 to provide for an arrangement to implement Article 50 of the Basic Law. Article 50 states that if the Legislative Council refuses to pass a budget introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Council. In considering a procedure to enable consensus to be reached in the process of consultations after an Appropriation Bill has been rejected, the Committee on Rules of Procedure recommended that the Council should allow another Appropriation Bill to be introduced to the Council within the same session. This would provide another opportunity for the Government to consider presenting a bill which is more acceptable to the Legislature and for the Legislature to reconsider if the Appropriation Bill, whether revised or not, should be passed before the Chief Executive proceeds to dissolve the Council. This arrangement is now reflected in Rule 51(7A) of the Rules of Procedure.101

12.65 In the event that no Appropriation Bill is passed, Article 51 provides that the Chief Executive may apply to the Legislative Council for provisional appropriations. The procedure for the moving of a Vote on Account Resolution under section 7(1) of the Public Finance Ordinance (Cap. 2), as described below, may deal with this situation. It is only in the case when the Legislative Council has been dissolved that the Chief Executive would have to approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year. If the original Appropriation Bill is re-submitted to the new Legislative Council and the new Council still refuses to pass the Bill, the Chief Executive must resign.102

**Vote on Account Resolution**

12.66 To ensure that the Government is given the legal authority to incur expenditure during the period from the start of the financial year to the enactment of the Appropriation Ordinance, section 7(1) of the Public Finance Ordinance (Cap. 2) provides that a resolution may be made by the Council to make such authorization subject to such limitations and conditions as may be

---

100 Chapter 5, para. 5.79 – 5.80.
101 Rule 51(7A) of the Rules of Procedure provides 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.
102 Article 52(3) of the Basic Law.
specified in the resolution. As mentioned in Chapter 6, this Vote on Account Resolution is usually moved after the tabling of the Estimates of Expenditure and before the start of the financial year to which the Estimates relates. No maximum provision has been stipulated in the Public Finance Ordinance in respect of the expenditure to be charged on the general revenue provided that the expenditure is charged in accordance with heads and subheads shown in the Estimates as though they were the approved Estimates, subject to such conditions and limitations as may be specified in the resolution.

12.67 In February 2008, a subcommittee under the House Committee was formed to study a proposed Vote on Account Resolution to seek authorization for the Government to incur expenditure up to 20% of the recurrent expenditure account and not more than 100% of the capital account shown in the Estimates for 2008-2009. The Subcommittee noted that the arrangement adopted in Hong Kong were different from those in other jurisdictions as the amount sought was based on the "Draft" Estimates instead of the "Approved" estimates as in the case of other jurisdictions. Hence the proposed Vote on Account Resolution could only be moved after the Estimates for the next financial year were published and the notice period for the proposed Resolution had been reduced to 7 days, with limited time given to the Legislature for scrutiny. There was also the question concerning the need for seeking 100% of all capital expenditure shown in the Estimates. In its report, the Subcommittee put forward a series of recommendations to improve the arrangement.

12.68 In February 2009, another subcommittee was formed to study a proposed Vote on Account Resolution for the 2009-2010 financial year. The subcommittee noted that in the light of the recommendations made by the previous Subcommittee, some improvements had been made, including the giving of 14 days' notice instead of 7 days for the Resolution and the lowering of the amounts sought under capital expenditure.

12.69 Prior to 2009, there had been an understanding among Members that should a subcommittee be formed to study a Vote on Account Resolution, the House Committee would not require the notice to be withdrawn so that the

---

103 Chapter 6, para. 6.32 to 6.33.
104 Section 7(2) of the Public Finance Ordinance, Cap. 2.
Resolution would be able to be considered by the Council before the start of the next financial year. With the giving of a longer notice for the Vote on Account Resolution in 2009, the Government was requested to withdraw the notice when House Committee decided to form a subcommittee to study the proposed Resolution. As the Vote on Account Resolution is to seek authorization for the Government to incur expenditure in the next financial year prior to the passage of the Appropriation Bill, the Resolution has to be passed before the end of the current financial year.

**Procedure relating to changes to the approved estimates**

12.70 As mentioned in paragraph 12.8 above, under section 8(1) of the Public Finance Ordinance (Cap. 2), changes to the approved estimates of expenditure shall only be proposed by the Financial Secretary for the approval of the Finance Committee.

**Role of the Finance Committee**

12.71 The Finance Committee comprises all Members other than the President. Its functions are those conferred upon it under the Public Finance Ordinance (Cap. 2), any other law, the Rules of Procedure of the Legislative Council and those from time to time conferred on it by the Council. Apart from examining the Estimates of Expenditure referred to it by the President in accordance with Rule 71(11) of the Rules of Procedure, the Finance Committee also has the function to approve proposals to change the approved Estimates of Expenditure presented by the Financial Secretary in accordance with section 8(1) of Cap. 2. Such proposals include:

(a) the creation of new heads or subheads,

(b) supplementary provision in approved or new subheads.

---

107 Members agreed at the House Committee meeting on 22 February 2008 not to request the Government to withdraw the notice. However, at the House Committee meeting on 27 February 2009, Members requested the Government to withdraw the notice when they agreed that a subcommittee under the House Committee should be formed to study the proposed Vote on Account Resolution.


110 Paragraph 1 of the Finance Committee Procedure.

111 Examples are the creation of a new head "Government Secretariat: Innovation and Technology Bureau" in FCR(2014-15)37 considered by the Finance Committee in February 2015; and creation of a new non-recurrent subhead "Contribution to the Tenth Replenishment of the Asian Development Fund" under Head 106 Miscellaneous Services in FCR(2012-13)69 approved on 8 February 2013.
12. Financial Procedure

(c) variations in the establishments of posts ¹¹³; and

(d) increases in the limit to the commitments which may be entered into in respect of expenditure which is not annually recurrent ¹¹⁴.

12.72 In addition to the above, various resolutions made by the Council under the Public Finance Ordinance (Cap. 2) have also stipulated certain circumstances where approval of the Finance Committee is required. For example, in accordance with paragraph (e) of the resolution for the establishment of the Disaster Relief Fund (Cap. 2L), the Finance Committee may amend the limit in respect of which the Financial Secretary is required to obtain its consent. Pursuant to this provision, in its submission FCR(2013-14)3 to the Finance Committee on 24 April 2013, the Administration sought the Committee's approval to delegate to the Financial Secretary the authority to make grants each in excess of $8 million for the purpose of providing emergency relief to earthquake victims in Sichuan Province in the Mainland. The proposal was approved.

12.73 According to section (c) under paragraph 4 of the resolution passed by the Provisional Legislative Council in December 1997 on the administration of the Capital Works Reserve Fund (Cap. 2A), the Financial Secretary may expend moneys from the Fund for a number of purposes "in accordance with such conditions, exceptions and limitations as may be specified by the Finance Committee". Proposals to expend moneys from the Capital Works Reserve Fund are submitted from time to time to the Finance Committee for its approval. Such expenditure items are approved on a project-by-project basis. The resolution enables the Finance Committee to stipulate any conditions, exceptions and limitations it considers appropriate on any of the proposals. ¹¹⁵ On 9 March 1983, the Finance Committee approved the proposal to delegate powers to the Financial Secretary to approve Category D projects in the Public Works Programme with a project estimate not exceeding $1.5 million each. The financial ceiling has been revised by the Finance Committee on a number

¹¹² Examples are the proposals in FCR(2014-15)39 approved on 16 January 2015 which include the application for a supplementary provision in 2014-15 under Head 141 Labour and Welfare Bureau for implementation of the Low-income Working Family Allowance Scheme.

¹¹³ Examples are the proposals in FCR (2012-13)54 and 54A, approved on 7 December 2012, which include the proposal for an increase of 90 non-directorate civil service posts in the Social Welfare Department for implementing the Old Age Living Allowance scheme.

¹¹⁴ An example is the proposal in FCR (2013-14)16, approved on 14 June 2013, which involves an increase in commitment by $120 million for the one-off grant scheme to encourage owners of Euro II diesel commercial vehicles to replace their vehicles with new models that comply with the prevailing statutory emission standard.

of occasions and the latest was the approval to raise the ceiling to $30 million on 13 July 2012 to preserve the real value of delegated authority. 116

12.74 Paragraph 5 of the resolution for the establishment of the Capital Investment Fund (Cap. 2B) also provides that the Financial Secretary may expend moneys from the Fund for the purpose of –

(a) meeting the liabilities assumed under paragraph 4 (i.e. liabilities of the Mass Transit Fund, Development Loan Fund and the promissory notes issued to the Asian Development Bank for share subscription) under terms and conditions already approved by the Finance Committee as at 31 March 1990;

(b) financing loans, advances and investments to or in such persons as may be approved by the Finance Committee, in accordance with such terms and conditions as may be specified by the Finance Committee 117; or

(c) repaying or, where appropriate, paying the principal and interest of and expenses incurred in relation to sums borrowed under section 3 of the Loans Ordinance (Cap. 61) where the sums have been credited to the Fund.

12.75 Similar provisions have also been made in the resolutions for the establishment of the Loan Fund (Cap. 2C) and the Innovation and Technology Fund (Cap. 2Q) regarding the need for Finance Committee's approval by way of specifying terms and conditions in respect of proposals to expend moneys from the respective Funds.

Finance Committee Agenda Items

12.76 For proposals to be considered by the Finance Committee, a public

---

116 See LC Paper No. PWSC33/13-14(01).
117 An example is the Government's proposal in November 1999 for a commitment to inject funds as equity, to provide a loan from the Capital Investment Fund to Hongkong International Theme Parks Limited and to approve an investment in subordinated equity by the Capital Investment Fund representing land premium for the Phase I site to allow the company to proceed with the development and operation of Hong Kong Disneyland. To safeguard Government's interest in the project, the Government stated in the proposal that apart from the various project agreement entered into, the Government would have a majority on the Board of Directors which would have a supervisory role. Two non-executive independent Directors mutually agreed by both parties would also be appointed to the Board. The proposal and the terms attached to the project were approved by the Finance Committee on 26 November 1999.
officer designated by the Government under Rule 9(2) of the Rules of Procedure or any member may give notice to the Clerk for an item of business to be included in the agenda of the Committee. These designated public officers include the Financial Secretary, the Secretary for Financial Services and the Treasury, the Permanent Secretary for Financial Services and the Treasury (Treasury) or a Deputy Secretary for Financial Secretary and the Treasury (Treasury). The notice should be given at least 6 clear days before the meeting concerned. The discussion papers in relation to the agenda items should be dispatched to members at least 5 clear days before the meeting unless, on grounds of urgency, the chairman directs otherwise.

**Motions to impose conditions, exceptions or limitations**

12.77 The motions mentioned in Paragraph 21 of the Finance Committee Procedure may include motions to amend procedures of the Committee and/or its subcommittees, and motions to impose conditions, exceptions or limitations on the Financial Secretary's power delegated to him under section 8(3) of the Public Finance Ordinance (Cap. 2) or to specify terms and conditions in respect of expenditure proposals under the relevant resolutions that established the various funds under section 29 of Cap. 2. During a review of the Finance Committee Procedure in 2007-2008, it was considered that for those motions which were dependent on other agenda items of the same meeting, e.g. a motion to impose conditions in respect of a Capital Works Reserve Fund item on the agenda of a meeting of the Finance Committee, it would not be likely that a notice of 6 clear days for the motion could be given. The Finance Committee therefore amended Paragraph 21 of the Finance Committee Procedure at its meeting on 2 November 2007 to provide a shorter notice to cater for these circumstances, i.e. not less than 2 clear days before the meeting to consider the proposed conditions, exceptions or limitations.

12.78 As regards the proceedings in dealing with motions, Paragraph 37 of the Finance Committee Procedure provides that subject to the decisions of the Committee made from time to time, Rules 29 to 35 of the Rules of Procedure shall apply, with necessary modifications considered appropriate by the chairman. These Rules cover the manner in giving notice of motions and amendments, restrictions, motions on previous decisions, manner in debating motions and amendments and withdrawal of motions and amendments. Among the restrictions on motions and amendments is the requirement to

---

118 Paragraph 21 of the Finance Committee Procedure.
119 Paragraph 21 of the Finance Committee Procedure. Shorter notice may be given if the chairman so directs.
120 Paragraphs 21 and 22 of the Finance Committee Procedure.
obtain consent from the Chief Executive for motions or amendments which will give rise to a charging effect. \textsuperscript{121} Details about charging effect are given in Chapter 10. \textsuperscript{122}

**Role of subcommittees of the Finance Committee**

12.79 The Finance Committee may appoint subcommittees for the purpose of assisting the Committee in the performance of its functions. \textsuperscript{123} The practice and procedure of the subcommittees are determined by the Finance Committee, and are subject to the Rules of Procedure. There are two subcommittees appointed by the Finance Committee: the Establishment Subcommittee and the Public Works Subcommittee. These two Subcommittees existed in the pre-1997 Legislature. They assisted the Finance Committee in examining specific types of proposals and making recommendations to the Finance Committee for its approval. They had no independent functions or powers. \textsuperscript{124} The Finance Committee of the First Legislative Council adopted the same working mechanism as existed in the pre-1997 Legislature and appointed the same two Subcommittees. Any member of the Finance Committee may elect to join either or both of the subcommittees by submission of a return to the Legislative Council Secretariat before a specified deadline at the commencement of a session. \textsuperscript{125}

**Establishment Subcommittee**

12.80 The Establishment Subcommittee deals with requests for variations in the establishment of the civil service. An establishment ceiling is specified in the first paragraph of each Controlling Officer's Report in the Estimates. It is expressed in terms of a notional annual mid-point salary value, calculated on the basis of pay scales in force on 30 January of the year in which the Estimates are submitted. \textsuperscript{126} Any variations to the establishment ceiling require the approval of the Finance Committee. The role of the Establishment Subcommittee is to examine any such proposed variations and to put forward its recommendation to the Finance Committee on whether the proposals should be approved. These proposals also include changes to the

\textsuperscript{121} Rule 31(1) of the Rules of Procedure.
\textsuperscript{122} Chapter 10, para. 10.45 – 10.46.
\textsuperscript{123} Rule 71(5) of the Rules of Procedure.
\textsuperscript{124} Paragraph 1 of the Establishment Subcommittee Procedure and Paragraph 2 of the Public Works Subcommittee Procedure.
\textsuperscript{125} Paragraph 3 of the Establishment Subcommittee Procedure and Paragraph 4 of the Public Works Subcommittee Procedure.
\textsuperscript{126} See Footnote 11.
organizational structure of a department and changes to the civil service ranks and grades. Creation of supernumerary posts held against permanent posts in ranks with a lower notional annual mid-point salary value is also examined by the Establishment Subcommittee.

12.81 The current terms of reference of the Establishment Subcommittee also include the examination of submissions relating to permanent and supernumerary posts remunerated at the directorate pay scales. The establishment of directorate officers, including existing and new posts to be created under a head of expenditure, is specified in the Controlling Officer's Report in the Estimates. Any creation, redeployment and deletion of directorate posts as well as retention of supernumerary directorate posts are also considered by the Establishment Subcommittee before the proposals are submitted to the Finance Committee for approval. In July 1997 the scope of posts to be examined by the Subcommittee was extended to cover the creation of individual consultancy positions at directorate level lasting more than one year.127

Public Works Subcommittee

12.82 The Public Works Subcommittee examines public works expenditure proposals. Its terms of reference are to recommend to the Finance Committee the upgrading of projects to or downgrading from Category A of the Public Works Programme, approval of new commitments for capital subvention works projects under Head 708128 of the Capital Works Reserve Fund and changes to the scope and/or approved project estimates of these projects. Any proposals which have been approved to be upgraded to Category A of the Public Works Programme will be included as public works projects under the Capital Works Reserve Fund. Notwithstanding the amount of project estimate approved by the Finance Committee, the fund that is to be included in the Capital Works Reserve Fund for a project for the next financial year is determined in accordance with the projected cash flow and the actual progress of works completed. The total amounts of the funding for all the projects are included as part of Head 184 in the Schedule of the Appropriation Bill "Transfer to Funds" (which covers the total sum to be transferred from the General Revenue Account to the various funds).
Capital Works Reserve Fund

12.83 The Capital Works Reserve Fund (Cap. 2A) was established with effect from 1 April 1982 by resolution of the Legislative Council made on 20 January 1982 for the purpose of financing the Public Works Programme and the acquisition of land. Amendments have been made to the Resolution on various occasions, each replacing the previous one, in subsequent years. These amendments include that passed on 15 May 1985 to give effect to arrangements, i.e. the sharing of premium, for implementing paragraph 6 of Annex III to the Joint Declaration of the Government of the UK and the Government of the PRC signed in December 1984. These provisions became obsolete following the reunification on 1 July 1997 and the Resolution was amended on 17 December 1997 to take effect on 1 January 1998. In accordance with the terms of the Resolution, all revenue from land transactions has been paid into the Fund from this date onwards.

Capital Works Programme

12.84 Capital Works Programme comprises the Public Works Programme under Heads 702 to 707, Head 709 and Head 711 and capital subvention works projects under Head 708. Projects under Head 708 include school buildings for the aided sector and private schools, university teaching and research facilities, public hospitals, and other works projects of subvented organizations.

Public Works Programme

12.85 Public Works Programme is a list of all public works projects of a non-recurrent nature and they are arranged according to the following categories:

- **Category C**: projects which are accepted in principle to enable client departments to plan their requirements such as providing a conceptual design, a broad order of costs and advising on the technical feasibility of the projects;

- **Category B**: projects which are earmarked resources in the latest Resource Allocation Exercise for site investigation, detailed planning, detailed design, environmental impact

---

130 A client department is the department which will ultimately have control over the facility to be constructed.
assessment, traffic impact studies and for tender preparation to be carried out\textsuperscript{131};

Category A: projects which are in all aspects ready for the award of contract and for construction works to proceed;

Category D: projects estimated to cost up to the prevailing financial ceiling for Category D projects (which is currently set at $30 million) on which work may proceed and expenditure may be incurred, subject to the availability of funds in the block allocation provided for the purpose.

12.86 While a Category B project may be provided with a subhead in the Public Works Programme, no expenditure may be incurred unless the project is upgraded to Category A by the Finance Committee. For all Category A projects, the approved project estimate of each project was that approved by the Finance Committee or the Financial Secretary acting under delegated authority. The total commitment incurred for each project must not exceed the approved project estimate which may not be altered without the approval of the Finance Committee.

\textit{Block allocations}

12.87 If the expenditure for site investigation, feasibility study and detailed design for projects in Categories B and C is exceptionally required, this would be achieved either by upgrading part of the project to Category A with the approval of the Finance Committee or by charging the expenditure to the appropriate block allocation if available.

12.88 Block allocations under the Capital Works Reserve Fund refer to subheads approved by the Finance Committee for funding minor works projects and studies, land acquisition, capital subventions and computerization projects. Under these block allocations subheads (with the exception of the four subheads mentioned below), the Finance Committee has delegated to the Financial Secretary the power to approve minor works items or standalone studies funded at a cost not exceeding $30 million each. The four exceptions are:

\textsuperscript{131} In November 2001, the Administration introduced a number of measures to shorten the lead time from inception to commencement of construction of a typical engineering and building project from six years to less than four years. One of the measures was to allow Controlling Officers the option to initiate works-related tendering and consultant selection procedures before funding is secured. The award of any contract or bid must still be subject to funding approval.
- **Subhead 1004CA and Subhead 1100CA under Head 701 – Land Acquisition** and **Subhead 5001BX (landslip preventive measures)** under Head 705 – Civil Engineering in which the authority delegated by the Finance Committee does not impose a financial limit per project;

- **Subhead A007GX under Head 710 – Computerization** for funding computerization projects in which the Finance Committee has delegated to the Financial Secretary the power to approve items not exceed $10 million each.\(^{132}\)

12.89 For the block allocations subheads created to fund works-related items, the Finance Committee approves the funding for these block allocations on a lump-sum basis once every year.\(^{133}\) For this purpose, the Government submits to the Public Works Subcommittee the proposed annual funding requirement for the block allocations, including details of the funding to be sought and a full list of items to be included under each block allocation for the next financial year. These items include all Category D items as well as pre-construction work, such as technical feasibility studies, for major items under the Public Works Programme. During discussion of the funding for block allocations, questions are often raised on the extent of public consultation conducted in respect of these projects, land resumption process and related compensation, progress of road infrastructure and noise mitigation measures for existing roads, etc.

**Consultation on public works projects**

12.90 To facilitate the effective processing and scrutiny of a financial proposal relating to a public works project by the Legislative Council, there is a convention agreed between the Government and the Legislative Council for the proposal to be submitted to the relevant Panel for initial discussion on the policy aspects of the proposal. The policy bureau responsible for the project is required to notify the relevant Panel when a proposal is scheduled to be submitted to the Public Works Subcommittee for its recommendation and to the Finance Committee for its approval. For this purpose, it has been the practice for the Government to submit to the Public Works Subcommittee a list of potential capital works projects at the start of a new session. The list is

\(^{132}\) This ceiling was raised from $8 million to $10 million at the Finance Committee on 25 October 1996.

\(^{133}\) Prior to 1982, provisions for block allocation were sought in the context of the Estimates. After the Capital Works Reserve Fund Resolution came into force on 1 April 1982, it has been the practice that the Government seeks the Finance Committee's approval for provisions for the block allocation on an annual basis.
discussed by the Subcommittee and then circulated to Panels for an indication whether any of the projects on the list would require discussion by the Panels beforehand. On average, except for the very controversial projects for which strong objections from the community were received, the normal processing period from the time notice is given to the relevant Panel Clerk up to decision made by the Finance Committee is about 3 months. A notice of 7 weeks is expected to be given for the inclusion of any of these items on the agenda of a Panel meeting. Where needed, the relevant Panel may consult any parties or stakeholders that are likely to be affected by the project.

12.91 During the Panel meeting, deliberation on the project will normally focus on its merits (i.e. the need, purpose, and effectiveness of the proposal for achieving the stated purpose) and the policy aspects of the proposal. The Panel should, however, avoid detailed discussion on the technical aspects of the proposal, unless these have a bearing on the merits of the proposal. At the end of its deliberation, the Panel will indicate if the proposal is ready for submission to the Public Works Subcommittee. Where feasible, the record of the deliberations at the Panel meeting will be made available to members of the Public Works Subcommittee before considering the project. Since December 2010, on the advice of the then chairman of the Public Works Subcommittee, a written report on the gist of the Panel discussion prepared by the Panel clerk and agreed by the Panel chairman is tabled at the Subcommittee's meeting. This is to ensure that discussion on matters which have already been considered at Panel is not unnecessarily repeated at the Subcommittee's meeting. When a proposal is supported by the Public Works Subcommittee, a paper with the Subcommittee's recommendation is submitted to the Finance Committee usually at a meeting no sooner than one week after the meeting of the Subcommittee.\(^{134}\) The records of the deliberations of the Subcommittee are also available at the meeting of the Finance Committee.

12.92 Any project which has been submitted to the Public Works Subcommittee or to the Finance Committee is usually not subject to further public consultation. However, on some occasions, it may be considered necessary by members of the Public Works Subcommittee that the Finance Committee may need to take into account further views from the public or stakeholders on certain matters before deciding whether approval may be given to the project. In such cases, the relevant Panel may be requested to

\(^{134}\) The time gap between a meeting of the Public Works Subcommittee and the meeting of the Finance Committee at which its recommendations will be considered is usually 3 weeks, or 2 weeks for urgent items.
hold a special meeting before the Finance Committee meets to consider the proposal.

**Procedure for the re-submission of a rejected financial proposal**

12.93 There is nothing in the Rules of Procedure or in the Procedures of the Finance Committee or its Subcommittees to prevent proposals being submitted to the Finance Committee direct. After a proposal is rejected by a subcommittee, it may be re-submitted to the subcommittee for reconsideration or, if there is an urgent need to do so, re-submitted to the Finance Committee direct for its approval. Thus, it is entirely at the discretion of the Director of Bureau concerned to decide how to deal with a proposal after it has been rejected by a subcommittee of the Finance Committee. It is not uncommon that the Director of Bureau seeks to meet the relevant Panel again with a view to addressing any concerns raised. All members of the Finance Committee are invited to take part in the discussion. Any new arrangements agreed between members and the Government may be set out in a revised proposal or in a supplementary paper alongside the original proposal for submission to the Subcommittee for re-consideration or, where time is critical, to the Finance Committee for approval.

**Role of the Public Accounts Committee over the control of public funds**

12.94 The Public Accounts Committee was set up in 1978 as a standing committee to examine the Director of Audit's reports on the Government's annual accounts, accounts of statutory and other organizations which are required to be laid before the Legislative Council and on serious irregularities which may come to the notice of the Director. In performing his duties, the Director of Audit is required, among other things, to satisfy himself that all issues and payments of public moneys were made in accordance with proper authority, all payments were properly chargeable and are supported by sufficient vouchers or proof of payment or otherwise properly accounted for, the rules and procedures applied to the issue and payment of public moneys are sufficient to secure an effective control over expenditure and such

---

135 Examples of public works and establishment proposals submitted directly to the Finance Committee without being considered by the relevant subcommittees for consideration include FCR(94-95)51 and FCR(94-95)52 approved on 8.7.1994, FCR(95-96)84 approved on 1.12.1995 and FCR(97-98)115 approved on 27.3.1998.

136 Section 8(2)(b) of the Audit Ordinance (Cap. 122).

137 Section 8(2)(c) of the Audit Ordinance (Cap. 122).
rules and procedures have been duly observed by the public officers concerned\(^{138}\), and any public moneys appropriated by the Legislative Council for a specified purpose and expended by a public officer have been expended in the due application of that purpose and in accordance with the authority under which the appropriation was made.\(^{139}\)

**Annual accounts of the Government**

12.95 Under the Audit Ordinance (Cap. 122), the Director of Accounting Services is required to, within 5 months (or any longer period as determined by the Chief Executive) after the close of a financial year, transmit to the Director of Audit a statement of the assets and liabilities of the Government and each statutory fund (except the Lotteries Fund) and an annual statement of receipts and payments by the Government and each statutory fund (except the Lotteries Fund).\(^{140}\) The Director of Audit is then required to submit to the President of the Legislative Council a report of his examination and audit of the statements within 7 months (or any longer period as determined by the Chief Executive) after the close of the financial year.\(^{141}\) This report, since 1987, has been submitted to the President of the Legislative Council in October each year. The report also covers any other accounts required to be laid before the Legislative Council. Nevertheless, the Director may submit to the President at any time a special report on any matter incidental to the performance of his duties under the Ordinance.\(^{142}\)

12.96 Upon receipt of the Director of Audit's report, the President must table the report in the Council within one month (or such longer period as determined by the President)\(^{143}\) and require a report of the Public Accounts Committee to be tabled in the Council within 3 months (or any longer period as determined by the President) after the tabling of the Director of Audit's report in the Council.\(^{144}\) Outstanding subjects raised in previous reports are followed up annually in the next October report, if needed.

**Serious irregularities**

12.97 Section 13 of the Audit Ordinance (Cap. 122) provides that the

---

\(^{138}\) Section 8(2)(d) of the Audit Ordinance (Cap. 122).

\(^{139}\) Section 8(2)(e) of the Audit Ordinance (Cap. 122).

\(^{140}\) Section 11 of the Audit Ordinance (Cap. 122).

\(^{141}\) Section 12(1)(b) of the Audit Ordinance (Cap. 122).

\(^{142}\) Section 12(3) of the Audit Ordinance (Cap. 122).

\(^{143}\) Section 12(2) of the Audit Ordinance (Cap. 122).

\(^{144}\) Section 12(2A) of the Audit Ordinance (Cap. 122).


12. Financial Procedure

Director of Audit shall report to the President of the Legislative Council any matter which in his opinion constitutes a serious irregularity in the accounting for the receipt, expenditure or custody of public moneys in the accounts or funds, or the receipt, issue, custody, sale, transfer or delivery of any stamps, securities, stores or any other Government property, or anything which comes to his notice in the performance of his duties. The President will arrange to table the relevant report in the Council and require a report of the Public Accounts Committee to be tabled in the Council within the same timeframe as the report on the Government's accounts. 145

Value-for-money audits

12.98 Since 1987, the Director of Audit has been carrying out examinations into the economy, efficiency and effectiveness with which any Government or public body discharges its functions. The purpose of these examinations, which are known as value-for-money audits, is not to question the merits of the policy objectives or the methods by which such policy objectives have been sought, but to question the economy, efficiency and effectiveness of the means used to achieve them. As an administrative arrangement, the Director of Audit submits the value-for-money audit reports twice each year. Originally, the first value-for-money audit report was combined with the annual report on the accounts of the Government, while the second was submitted in April, both being subject to such longer period as might be determined by then Governor. In 1995, following a review of the practices adopted by national audit offices of other common law jurisdictions, the Director of Audit proposed and the Public Accounts Committee agreed that the report on the accounts should be separate from the value-for-money audit report. 146 From then onwards, two separate reports have been tabled in the Council in November each year. The Government will report in the Government Minutes the follow up actions taken on matters outstanding from these value-for-money audits.

145 Section 13(2) of the Audit Ordinance (Cap. 122).
146 Second Revised Codicil to the Paper "Scope of Government Audit in Hong Kong – 'Value for Money' Studies" tabled by the Chairman of the Public Accounts Committee at the sitting of the Council on 26 July 1995. The Paper was an Agreement which set out the scope of work and guidelines for the Director of Audit to carry out value-for-money audits and was tabled in the pre-1997 Legislative Council sitting on 19 November 1986. By a report of the Chairman of the Public Accounts Committee to the Provisional Legislative Council on 19 November 1997, the Council noted that the 1986 Agreement and its Codicil would continue to be adopted as the basis on which the Director of Audit submits his reports on value-for-money audits from 1 July 1997.
12.99 According to the Director of Audit \(^{147}\), for the purpose of value-for-money audits, "economy" is concerned with the acquisition of resources of appropriate quality and quantity at minimum cost; "efficiency" is concerned with the relationship between goods, services or other results (outputs) and the resources used to produce them; and "effectiveness" is concerned with the relationship between the intended goals and the outcome. Thus, value-for-money audit views a public organization in its entirety and tries to measure the extent to which it is meeting its objectives. This is where value-for-money audit differs from financial audit which focuses on the financial performance of the organization. The then Director of Audit considered that under this value-for-money concept, an organization is required to fully account for all its activities, not just its financial conduct, and that this greatly promotes and enhances public accountability.

**Procedures of the Public Accounts Committee**

**Pre-hearing arrangements**

12.100 As soon as the report of the Director of Audit has been tabled in the Council, the Public Accounts Committee will examine, at a closed meeting and with the assistance of the Director of Audit, all subjects in the Director's report and decide which subjects it wishes to consider in detail. A programme of the detailed examination in public hearings is then drawn up and the Controlling Officers concerned are notified of the schedule of hearings and the persons required to attend the hearings.

12.101 Summoning of witnesses is not normally required in the case of the Public Accounts Committee although it has the power to do so. It is normally up to the Controlling Officer or the respective Director of Bureau to decide who should be present at the hearings to answer questions from the Committee. On some occasions, the Committee may indicate, after studying the Director of Audit's report, the person(s) who should be in the best position to respond to the questions which the Committee would wish to ask. The Committee may also consider requiring attendance of a person by issuing a summons.\(^{148}\)

\(^{147}\) Meeting of the Panel on Constitutional Affairs on 16 February 1995 and meeting of the Public Accounts Committee on 19 May 1995.

\(^{148}\) Mr LEUNG Chin-man, former Director of Buildings, and Mr Timothy TONG, former Commissioner of the Independent Commission Against Corruption, were summoned to give evidence to the Public Accounts Committee. Mr LEUNG was summoned because the Committee found it necessary to compel his attendance at the hearing to answer questions. In the case of Mr Timothy TONG, the issue of a summons was to ensure that he enjoyed the privileges under sections 14 and 16 of Cap. 382.
12. **Financial Procedure**

12.102 The Director of Audit and the Secretary for Financial Services and the Treasury (or his representative) are in attendance at all hearings. They may also be invited to attend the internal deliberations of the Committee.

**Hearings**

12.103 Hearings of the Public Accounts Committee are normally held in public. The main aim of the hearings is to establish the circumstances surrounding the matters reported on by the Director of Audit and to recommend remedial measures. The primary concern of the Committee is not with the details but with the principles and systems. It is common practice that the Committee meets in private shortly before the public hearing to review any documents which have been produced to the Committee prior to the hearing and to agree on the line of questioning on such documents. During the hearing, the members who have been assigned responsibility to raise questions will first be invited to ask questions, followed by others. The meeting may be adjourned to enable the Committee to deliberate in private if there is a need to do so. Where necessary, the chairman may invite the Director of Audit or a representative from the Financial Services and the Treasury Bureau to give their comments, and invite the Controlling Officer or the Director of Bureau to respond to such comments if they wish to do so.

12.104 Members have always been reminded that the Public Accounts Committee is not a commission of enquiry. On 10 May 1978, when the Chief Secretary proposed amendment to the Standing Orders for the establishment of the Public Accounts Committee, he said, "the Committee would not take the form of a commission of enquiry to judge or discipline individual officers of the public service who were at fault, although it might wish to know what action including disciplinary measures had been taken to prevent a repetition of the faults involved."\(^{149}\) To give the Committee a suitable degree of flexibility in the conduct of its business, the Standing Orders allowed the Committee to regulate its own proceedings which were expected to be reasonably informal. These provisions have been retained to date.

12.105 After the meeting, the Committee may meet in private to deliberate on the evidence and to consider whether further hearings are required on the same subject.

---

The Committee's report

12.106 When all the hearings are completed, the Public Accounts Committee proceeds to internal deliberations and compile its report which is required to be tabled in the Council within 3 months after the tabling of the Director of Audit's report. It is then for the Government to consider the comments and recommendations in the report as the Committee has no power to order any particular action to be taken.

12.107 Where a Government Minute has been tabled in the Council, the Public Accounts Committee may re-convene its meetings and record its views at a meeting of the Council. Nevertheless, the common practice is that the Director of Audit is requested to conduct a follow-up review on the subject if necessary so that the Public Accounts Committee may give a further report to the Council if considered appropriate.

Government Minutes

12.108 It has been a standing practice that where the Government considers it appropriate to comment on the action Government proposes to take to rectify any irregularities which have been brought to notice by the Public Accounts Committee or by the Director of Audit and, if necessary, to explain why it does not intend to take action, a Government Minute will be tabled in the Council within 3 months after the laying of the report of the Committee to which it relates.\(^{150}\)

Progress reports on subjects not selected for detailed examination

12.109 On matters outstanding in previous Government Minutes, the Government submits to the Public Accounts Committee an annual progress report in September each year. The Committee will then give its views on the progress report in its report normally issued in the following February. On subjects not selected for detailed examination by the Committee, the Director of Audit will call for separate progress reports from bureaux and departments concerned on a half-yearly basis (ending June and December).

\(^{150}\) An example is the Government Minute in response to the Public Accounts Committee Reports No. 63A (tabled in the Council on 3 June 2015) and No. 64 (tabled in the Council on 8 July 2015) was tabled in the Council on 28 October 2015.
12. Financial Procedure

Relationship between the Public Accounts Committee and the Director of Audit

12.110 Although the Director of Audit is appointed by the Chief Executive, he is required under the Audit Ordinance (Cap. 122) to submit his reports, at least twice a year, to the President of the Legislative Council who in turn is required to table the reports in the Council and to have the Public Accounts Committee to table its reports on the Director of Audit's reports. Unlike select committees, the procedure to be followed by the Public Accounts Committee for conducting its examination of the Director of Audit's reports is not set out in the Rules of Procedure but the Committee has the power to determine its own procedure and practice. The current procedure adopted by the Committee is primarily based on long established conventions and these conventions have been developed having regard to the conventions adopted by the legislatures in other common-law jurisdictions where officers performing a function similar to that of the Directors of Audit are required to report to the legislature concerned. In other words, procedurally, the Public Accounts Committee of the HKSAR Legislature undertakes its examination of the Director of Audit's reports independently with the assistance from the Director of Audit, but it does not make its recommendations solely on the basis of the Director's presentation.

12.111 Extensive discussions have taken place both before and after 1997 between the Government and the Public Accounts Committee over the role of the Director of Audit to ensure that he remains an independent and impartial examiner holding the right of reporting directly to the President of the Legislative Council. Even outside the proceedings of the Committee, it has also been a practice for the Committee to hold informal meetings with the Director of Audit to enable the Committee to suggest areas for value-for-money audits for the Director's consideration. It is in this manner that the Committee and the Director of Audit can each work independently to perform their respective roles under the Basic Law and the Audit Ordinance for the proper and effective use of public funds.

151 In October 1994, having regard to the parliamentary practice in the UK, Standing Order 60A of the pre-1997 Standing Orders was amended to specify that all matters for the decision of the committee should be decided by a majority of the members voting and that the chairman or any member presiding should have no original vote but only a casting, vote which should be exercised in accordance with the Westminster convention of keeping the matter open or not altering the status quo.

152 Article 58 of the Basic Law provides. "A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive."
Hon LEE Cheuk-yan
2/F, 101-107 Portland Street
Yaumatei
Kowloon
[Fax number: 2332 3584]

Dear Mr LEE,

President's Ruling
on
(ii) The Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, laid on the table of the Legislative Council on 15 May 1996; and
(iii) The District Court Equal Opportunities Rules, laid on the table of the Legislative Council on 5 June 1996

The President has directed me to send you a copy of his ruling on your above proposed amendments.

You have confirmed that you will proceed with the amendments to the District Court Equal Opportunities Rules which were laid on the table of the Legislative Council on 5 June 1996.

Yours sincerely,

[Signed]

( Ray CHAN )
for Secretary General

Encl

cc:  Mr Paul TANG (D of Admin)  [Fax number: 2877 0802]
Mrs Stella HUNG (SHA)  [Fax number: 2834 6176]
Ms Sarah WU (Judiciary Admin)  [Fax number: 2869 0640]
ASG2 (LegCo Secretariat)
CPIO (LegCo Secretariat)
President's Ruling on Hon LEE Cheuk-yan's proposed motions to amend:

(ii) The Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, laid on the table of the Legislative Council on 15 May 1996; and
(iii) The District Court Equal Opportunities Rules, laid on the table of the Legislative Council on 5 June 1996

Hon LEE Cheuk-yan gave notice, on 18 June 1996, of his intention to move the above motions at the Legislative Council sitting to be held on 26 June 1996.

2. I have directed, under Standing Order (SO) No 22(2)(c), that the notices of the proposed motions, with the exception of Mr LEE's proposed amendments to the District Court Equal Opportunities Rules, be returned to Mr LEE as, in my opinion, they are out of order.

3. I shall give reasons for my direction later in this ruling; it is appropriate, however, that I first set out the context in which Mr LEE seeks to amend the Notices and Rules.

Government Notices and Rules

May 1996 as the day on which sections 63, 64, 67, 68 and 69 and Schedule 6 of the Ordinance shall come into operation. The Notice, made by the Secretary under section 1(2) of the Ordinance, was laid on the table of the Council on 15 May 1996.

5. On the same day, the Secretary for Health and Welfare also published on the Gazette, as Legal Notice 184 of 1996, the Disability Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, appointing 20 May 1996 as the day on which sections 62, 64 and 65 of the Ordinance shall come into operation. The Notice, made by the Secretary under section 1(2) of the Ordinance, was laid on the table of the Council on 15 May 1996.

6. According to the Administration, appointing the above date for the coming into operation of the particular specified provisions in the two Ordinances was for the sole purpose of enabling the Equal Opportunities Commission to start functioning under the Ordinances.

7. The rest of the provisions in the Sex and Disability Discrimination Ordinances, which were not brought into operation by the two Notices, form the body of substantive law relating to discrimination in matters of sex and disability. They create enforceable legal rights and obligations. It is the stated intention of the Administration to bring these provisions into operation when the Equal Opportunities Commission is fully operational, which should be in September this year. For the purposes of this ruling I am not concerned with the merits or otherwise of the Administration's proposed timetable for implementation of the Ordinance.
by stages. But, as will be seen later, what is directly relevant to this ruling is that the Administration, through the two specified Secretaries, is lawfully empowered under the two Ordinances to appoint different days for different provisions of the two Ordinances.

8. On 31 May 1996, the **District Court Equal Opportunities Rules**, made by the District Court Rules Committee under section 73B and 73C of the District Court Ordinance, were published in the Gazette as Legal Notice 236 of 1996. The same were laid on the table of the Council on 5 June 1996. These Rules are for the purpose of regulating the practice of the District Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance; they also provide, by sub-delegation, that the Rules shall come into operation on a day to be appointed by the Chief Justice by notice in the Gazette.

**Proposed amendments sought by Mr LEE Cheuk-yan**

9. In regard to the Sex Discrimination Ordinance (67 of 1995) (Commencement) Notice 1996, Mr LEE seeks, in addition to the provisions in the Notice, to appoint 2 September 1996 as the day on which **all** the remaining provisions of the Ordinance shall come into operation.

10. In regard to the Discrimination Ordinance (86 of 1995) (Commencement) Notice 1996, Mr LEE seeks, in addition to the provisions in the Notice, to appoint 2 September 1996 as the day on
which **all** the remaining provisions of the Ordinance shall come into operation.

11. Lastly, in regard to the District Court Equal Opportunities Rules, Mr LEE seeks:

   (i) to appoint 2 September 1996 as the day on which those Rules shall come into operation; and

   (ii) to add a new section 7 to the Rules, as follows:

   "7. **Application to proceedings by or against the Crown.**

   For the purposes of section 73C(7) of the (District Court) Ordinance, these rules shall also apply to all proceedings by or against the Crown."

**Relevant Legislative Provisions**

12. Section 1(2) of the Sex Discrimination Ordinance provides that:

   
   "(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette, and different days may be so appointed for different provisions."
13. Section 1(2) of the Disability Discrimination Ordinance provides that:

"(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette, and different day may be so appointed for different provisions."

14. Section 3 of the Interpretation and General Clauses Ordinance (Cap 1) provides that:

""subsidiary legislation" (附屬法例) and "regulations"(規例) mean any proclamation, rule, regulation, order, resolution, notice, rule of court, bylaw or other instrument made under or by virtue of any Ordinance and having legislative effect;"

15. Section 34(2) of the same Ordinance provides that:

"(2) Where subsidiary legislation has been laid on the table of the Legislative Council under subsection (1), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held not later than 28 days after the sitting at which it was so laid, provide that such subsidiary legislation shall be amended in any manner whatsoever consistent with the power to make such subsidiary legislation, and if any such resolution is so passed the subsidiary legislation shall, without prejudice to anything done thereunder, be deemed to be amended as from the date of
The Administration's views on Mr LEE's proposed amendments

16. The Administration has offered the view that commencement notices are not subsidiary legislation but rather are simply administrative acts which have legal effect but not legislative effect. Hence, it argues that it is not in order for Mr LEE to seek to amend the commencement notices.

Opinion

Are commencement notices subsidiary legislation?

17. On the question of whether or not Commencement Notices are subsidiary legislation, Counsel to the Legislature has drawn my attention to the fact that, on the initiative of the Administration, such notices have been included in the items of subsidiary legislation laid on the table of the Council and shown as such for the past 29 years but that, so far as he is aware, until now the Council has never sought to take any legislative action on a Commencement Notice. He has also advised that in a recent judgment of the House of Lords (R v. Secretary of State for the Home Department, ex parte Fire Brigade Union and others (1995 2 A11 ER 244)) the court held a Commencement Order, made under powers similar in all material respects to those under the Sex and Disability Discrimination Ordinances, to be part of the legislative process because such an order brings the legislation into effect, i.e. it is a delegated
legislative act which has legislative effect.

18. I am persuaded by the very careful analysis provided by the Counsel and am of the view that the Administration has not advanced compelling grounds to show that the long-standing practice of the Council treating commencement notices as subsidiary legislation (as defined in Cap 1) should be overturned.

19. I have taken account of the Administration's reference to The Legislation Handbook published by the Australian Public Service Board in 1975 which, in effect, offers the view that a Commencement Notice is executive rather than legislative in character. However, in my opinion, the view expressed in Erskine May (21st Ed p. 538) that "The commencement of a statute may more conveniently be provided for by delegated legislation" is to be preferred in the Hong Kong context. In addition it is also significant that Bennion (2nd Ed p. 171) classifies Commencement Orders (which are the equivalent of Hong Kong Commencement Notice) as delegated legislation.

*Whether Mr LEE Cheuk-yan's proposed amendments are in order under section 34(2) Cap 1*

20. Having decided on the question of whether commencement notices are subsidiary legislation, the question next follows whether Mr LEE's proposals are in order under section 34(2) of Cap 1. There are, in my view, two possible interpretations of section 34(2) as regards the scope of the Council's power of amendment of Commencement Notices:
(i) First Interpretation

This interpretation emphasises "in any manner whatsoever consistent with the power ... " and suggests that the Council's power of amendment is as extensive as the scope of the delegate's statutory power to make the commencement notice. Under this interpretation, since the scope of the delegate's power extends to appointing different days for different provisions of the Ordinance, so also does the Council's power of amendment. Hence the Council can properly amend a Commencement Notice by adding commencement days for other provisions of the Ordinance even though those provisions were specifically excluded from the Commencement Notice by the delegate. It can properly amend the Notice to include other provisions because it is within the original power of the delegate to include them, so the argument runs.

(ii) Second Interpretation

This interpretation emphasises that "consistent with the power to make such subsidiary legislation ..." must be interpreted in the context of the making of the subsidiary legislation. Hence if the delegate has not exercised the power to appoint a commencement day for certain provisions of the Ordinance. It is not in order under section 34(2) for the Council to "amend" the Commencement Notice by adding those provisions to the Notice. The basis of this interpretation is that, when passing section 34(2), the Council consciously gave itself no powers to interfere with a commencement day for a provision in an Ordinance until a Commencement Notice is issued in respect of that provision. Therefore, if a Commencement Notice is issued in respect of
only some provisions in the Ordinance the Council does not thereby acquire the power under section 34(2) to extend the Commencement Notice to other provisions.

21. The Commencement Notices in respect of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, confined as they are to those provisions which seek to enable the Equal Opportunities Commission to start to operate, are clear in scope. On the other hand, Mr LEE seeks to amend them in order to bring all the provisions in the Ordinances into operations. This raises up the question of whether or not, by so proposing, Mr LEE is going beyond the scope of the original Notices which relate only to the coming into operation of the Equal Opportunities Commission.

22. I am of the opinion that the second interpretation of section 34(2) (paragraph 20(ii)) above is the correct one and therefore it is out of order for Mr LEE to move amendments to the Notices in respect of provisions in the Ordinances for which a commencement date has not been appointed. My view is not altered by the fact that "amend" is defined in Cap 1 (section 3) to include "add to".

23. As regards the District Court Equal Opportunities Rules, applying the same reasoning, I rule that it is in order for Mr LEE to seek to move his proposed amendments to these Rules.

25 June 1996
Ruling by the President of the Legislative Council
on the Labour Relations (Right to Representation, Consultation and
Collective Bargaining) Bill
proposed by the Hon. LEE Cheuk-yan

I have been requested by the Hon. LEE Cheuk-yan to give a ruling in accordance with the Rules of Procedure on the Labour Relations (Right to Representation, Consultation and Collective Bargaining) Bill which he intended to present to the Council jointly with the Hon. LAU Chin-shek and the Hon. LEUNG Yiu-chung. In this connection, I have sought the views of the Administration on the bill from the point of view of Rule 51(3) and (4) and Mr. LEE's response to the Administration’s views. Both the Administration and Mr. LEE have further commented on each other’s responses, with the last comments on the issues being from Mr. LEE. The dates of their submissions are given in Annex I. I have given very careful consideration to the views from both the Administration and Mr LEE. This ruling will only refer to those views which I consider are of relevance.

Rule 51(3) and (4) of the Rules of Procedure

2. The Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (HKSAR) were made pursuant to Article 75 of the Basic Law (BL 75). Rule 51(3) and (4) read as follows-

"51(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."

"51(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."

As the President of the Legislative Council, I am required by BL 72(6) to apply the Rules of Procedure as they stand and as I understand them, taking into account all relevant considerations including views expressed by all parties concerned who have been given reasonable opportunities for doing so, and advice from the Counsel to the Legislature.

Basis on which I form an opinion under Rule 51(3) and (4)
3. Rule 51(3) and (4) are made for implementing BL 74 which states:

"香港特別行政區立法會議員根據本法規定並依照法定程序提出法律草案，凡不涉及公共開支或政治體制或政府運作者，可由立法會議員個別或聯名提出。凡涉及政府政策者，在提出前必須得到行政長官的書面同意。"

(English translation: Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.)

4. In making my ruling, I have to give effect to the meaning of BL 74 when forming an opinion under the two subrules in Rule 51. In ascertaining the meaning of BL 74, I have to bear in mind the purpose of the BL and this article and the ordinary and natural meaning of its provision in its context when read in conjunction with other relevant articles in the BL. To facilitate reference to the various articles mentioned in this ruling, I provide in Annex II the text of such articles.

**Purpose of Article 74 of the Basic Law**

*The Administration’s views*

5. The main theme of the Administration's submission is that BL 74 should be interpreted in the light that the intention of the BL is that the Hong Kong Special Administration Region (HKSAR) be led by the Chief Executive (CE) together with the executive authorities in order to maintain an "executive-led" government. The executive authorities of the HKSAR are vested with the functions of formulating and implementing policies and the introduction of bills and budgets (BL 62) and the CE is vested with the power to reject bills passed by the Legislative Council (BL 49). It is therefore clear that the power of the executive to introduce bills is an unqualified one. As for the Legislature, whilst the Legislative Council may question and debate government policies and other matters of public interest under BL 64 and 73(4), (5) and (6), this is not the same as formulating policies or introducing bills to implement policies. Besides, BL 73 does not mention that the Legislative
Council has the power and function of making policies.

6. The Administration nevertheless accepts that the HKSAR legislature is vested with its own legislative power, but such power is subject to the conditions or restrictions or procedures imposed by the BL. Whilst BL 74 is an empowering provision which empowers Members to introduce bills, this article at the same time imposes conditions and restrictions on this power.

Hon. LEE Cheuk-yan's views

7. In responding to the Administration's view on BL 74, Mr. LEE says that by employing dictionary meanings to interpret the terms of public expenditure, political structure, the operation of the government and government policies, the Administration has failed to consider the greater context of BL 74 which is to empower Members of the Legislative Council to introduce bills. The Legislative Council is separate from and independent of the executive authorities and its right to introduce bills should be generously construed and any limitations to such right should be narrowly construed. The Administration's interpretation of the BL amounts to a de facto nullification of the power of Members of the Legislative Council to introduce bills relating to public affairs. It is unjustifiable to suggest that the HKSAR legislature enjoys much less power than that under colonial rule. BL 74 is to preserve the procedure and practices that existed before the change of sovereignty in 1997.

8. Mr. LEE has put forward the "living tree" doctrine which, he suggests, dictates that Members of the Legislative Council should not be barred at the present time from introducing bills as this is against the development of executive/legislature relationship.

9. He considers that the Legislative Council is not inferior to the executive authorities which are required to be accountable to the legislature and therefore should enjoy the same power as the executive authorities in introducing bills to the Legislative Council.

My views

10. When trying to find out the meaning of BL 74, I note that BL 73 stipulates the powers and functions of the Legislative Council. Without BL 74, it may be concluded that Members of the Legislative Council may introduce bills without any constraints. However, BL 74 clearly says that "Bills which do not relate to public expenditure or political structure or the
operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced". Therefore whilst Members of the Council may introduce bills into the Council, their ability to do so is subject to the restrictions stipulated in BL 74.

11. I have also referred to the speech made by Mr. JI Peng-fei, Chairman of the Basic Law Drafting Committee, when he introduced the Draft BL to the third session of the 7th National People's Congress of the People's Republic of China on 28 March 1990. In the speech, when he spoke on the relationship between the executive authorities and the legislature, he said that "行政機關和立法機關之間的關係應該是既互相制衡又互相配合" (English translation: The executive authorities and the legislature should regulate each other as well as co-ordinate their activities.). Chapter IV of the BL provides for the political structure of the HKSAR. One of the main purposes of this Chapter is to allocate the respective powers and functions of the organs of government in such a way as to provide checks and balances between the executive and the legislature and to provide a framework to allow and facilitate these organs to co-ordinate their activities. In respect of the introduction of bills, BL 62 provides that the executive authorities have the powers and functions to draft and introduce bills, motion and subordinate legislation without qualification. On the other hand, whilst BL 74 says that Members of the Legislative Council may introduce bills, it also says that they may do so in accordance with the provisions of the BL and subject to the restrictions that have been imposed in this article.

12. I have therefore formed the opinion that BL 74 is an enabling article which enables Members of the Legislative Council to introduce bills, but it at the same time imposes conditions and restrictions on such introduction.

Opinions on specific terms in Rule 51(3) and (4)

13. The Administration considers that the Labour Relations (Right to Representation, Consultation and Collective Bargaining) Bill "relates to" "public expenditure", "the operation of the government", and "government policies". Before I give my opinions in this respect, I would like to set out at this juncture the general approach I will adopt for forming my views on these terms in the context of Rule 51(3) and (4).

14. As regards the general approach, I am of the view that I would be underestimating the difficulty of the task if I were to attempt to give precise
definitions to these terms. I have taken note of the judgement of a 1985 case in the House of Lords in the United Kingdom. In that case, the court was examining whether a certain matter was related to a trial on indictment. In the judgement Lord Bridge said, "If the statutory language is, as here, imprecise, it may well be impossible to prescribe in the abstract a precise test to determine on which side of the line any case should fall, and therefore, necessary to proceed, ............ on a case by case basis". The principle that follows from this approach is that my views on these terms should be taken as guidelines only. They are to be applied on a case by case basis and each case would be examined on its own merits.

"Relate to"

The Administration's views

15. When commenting on Mr. LEE's bill, the Administration says that a bill should be considered to be relating to a matter if it has a direct, indirect, consequential or incidental bearing on the matter.

Mr. LEE Cheuk-yan's views

16. Mr. LEE, however, considers that "relate to" should be interpreted "in the context of each restriction rather than given a broad meaning" and to mean "having a direct bearing on relevant aspects" only. For example, he considers that "only those bills having the direct and legal effect of changing the operation of executive authorities in terms of the organisational structure, the functions and duties as well as the division of labour between other government departments should be regarded as 'relating to the operation of the government'".

My views

17. In my view, in order for a bill not to be caught by Rule 51(3) and (4), the implementation of the bill must not have substantive effect on one or more than one of the areas prescribed in this Rule.

"Public expenditure"

The Administration's views

18. The Administration is of the view that under BL74, the "public
expenditure" test covers not only direct charges under the "charging effect" tests (tests which have been used in the Hong Kong legislature to assess whether a motion or an amendment to a bill may have the object or effect of disposing of or charging any part of the revenue or other public moneys of Hong Kong), but also incidental increases, unless the bill entails administrative work which is unlikely to impose more than a minimal continuing demand on public expenditure.

Mr. LEE Cheuk-yan's views

19. In response, Mr. LEE says that in assessing whether a bill relates to public expenditure, the practice of the legislature before 1997 should be preserved and only the "charging effect" tests should be conducted. And a bill would be regarded as relating to public expenditure if the expenditure involved is new and distinct: "public expenditure" in BL 74 should be construed as covering only direct charges and excluding incidental increases.

My views

20. One of my considerations is to decide whether the same "charging effect" tests should be used to determine whether a bill relates to public expenditure. I note that the concept of "charging effect" is enshrined in Rules 31 and 57(6) of the Rules of Procedure, the principle of which is based on similar provisions in the Standing Orders of the former Legislative Council. I also note in its Progress Report to the Council on 28 April 1999, the Committee on Rules of Procedure says, "As regards Rules 31, 57(6) and 69, the Committee maintains that these are self-imposed restrictions to govern motions and Committee Stage amendments with charging effect moved by Members. These rules are consistent with the financial procedure in other jurisdictions... Although no such requirements are stipulated in the Basic Law, they do not contravene the Basic Law. The Committee considers it reasonable to maintain such a procedure and therefore does not recommend any change to these Rules." Rules 31 and 57(6) therefore have no relation to BL74 and have no relevance to any ruling I make in respect of "public expenditure" under Rule 51(3).

21. In my opinion, the term "public expenditure" in Rule 51(3) is wider in scope than "the disposal of or charging any part of the revenue or other public moneys of Hong Kong". A bill will relate to public expenditure if the implementation of the bill has the effect of either increasing or reducing public expenditure and the amount so increased or reduced is substantial and is such
that I must not ignore.

Operation of the government

*The Administration's views*

22. The Administration is of the view that this term refers to the day-to-day administration and management of the government which includes all three branches of the government: the executive authorities, the legislature and the judiciary.

*Mr. LEE Cheuk-yan's view*

23. On the other hand, Mr. LEE considers that the term "government" in this context should refer only to the executive authorities headed by the CE and a bill can be considered to relate to the operation of the government if it entails major changes such as the restructuring of government departments. Therefore only bills whose main object or predominant effect is to alter the operation of the executive administration should be caught by BL 74.

*My views*

24. Under BL 59, the Government of the HKSAR shall be the executive authorities of the Region. It is therefore clear that "government" in this context and in the context of Rule 51(3) does not include the legislature and the judiciary and I do not accept the Administration's argument that the Government includes all three branches, i.e., the executive, the legislature and the judiciary. I am of the view that if I am satisfied that the implementation of a proposed bill would have obvious effect on the structure or procedure of the executive authorities, and that the effect would not be of a temporary nature, then I will form the opinion that the bill relates to the operation of the government.

Government policies

*The Administration's views*

25. The Administration has put forward the view that government policies refer not only to decisions or policies made by the CE under BL 48(4) and 56, but also policies being formulated and decisions of the government not to formulate any policy.
Mr. LEE Cheuk-yan's views

26. Mr. LEE, however, considers that policies should include only major and existing policies decided by the CE and those having great impact on the government and society; policies should not include minor policies and policies being formulated and the government's decision not to formulate policies. He considers that to determine whether a bill relates to public policies, the bill should be compared with existing law to see if the bill proposes policies which contravene or substantially deviate from the policies in existing law. Mr. LEE further suggests that as the Legislative Council is elected once every four years, "the restriction or the point of time 'relating to government policies' should only cover existing legislation that was enacted within the present term of LegCo".

27. Mr. LEE also considers that if a bill introduced by a Member seeks to implement policies made under the Basic Law, it should be allowed.

My views

28. I am of the opinion that government policies referred to in BL74 are those that have been decided by the CE or CE in Council under BL 48(4) and 56. Policies decided by former Governors or Governors in Council prior to the implementation of the BL which are still in force are also included.

29. Some of the government policies may need to be implemented through legislation. An Ordinance enacted for that purpose does not have the legal effect of forbidding the CE from deciding on a new government policy which is different from the one enshrined in legislation. What it would require the CE to do in order to implement that new policy is to introduce an amendment bill or a bill to repeal the relevant legislation. I think, therefore, policies reflected in legislation are government policies for the purpose of Rule 51(4).

30. Government policies for the purpose of Rule 51(4) should also include-

   (a) policies decided by public officers with delegated authority from the CE; and

   (b) policies promulgated in the Legislative Council or its committees by public officers designated by the CE.

31. For the purpose of Rule 51(4), I do not regard policies being formulated as government policies.
32. A Member is required to obtain a certificate from the Law Draftsman under Rule 51(2) before he may introduce a bill. I would regard a government policy as being in existence if it was decided on before the day on which the Member submits his bill to the Law Draftsman for the issue of the above-mentioned certificate.

**Labour Relations (Right to Representation, Consultation and Collective Bargaining) Bill**

33. Having set out my opinion on the terms that are of relevance to the bill, I now come to the bill itself.

34. The object of Mr. LEE's bill is to provide for the rights of employees to representation, consultation and collective bargaining and to provide remedies for breach of the rights to consultation and collective bargaining.

Does the bill relate to public expenditure?

*The Administration's views*

35. The Administration is of the view that Mr. LEE's bill relates to public expenditure because the Labour Department will require additional resources to provide pre-hearing conciliation service as required by the Labour Tribunal Ordinance (Cap. 25). To provide this service and to implement the other provisions in the bill, the Labour Department has to employ a total of 33 staff members at a cost of $23.3 million per annum.

36. The Administration also estimates that two to three courts in the Labour Tribunal will have to be established to handle the new cases under this bill and the Employment (Amendment) (No. 2) Bill 1998 (which Mr LEE also intends to introduce into the Legislative Council) at an extra cost of $12.9 million per annum. About half of this additional cost will be incurred for implementing this bill.

*Mr. LEE Cheuk-yan's views*

37. Mr. LEE refutes the Administration's claim that additional expenditure will be incurred to implement this bill. He is of the view that the authorisation under section 6(5) of the Labour Tribunal Ordinance (Cap. 25) is framed in sufficiently broad and open-ended terms to authorize the increase in expenditure claimed by the Administration. He also does not consider that the
The bill will impose new and distinct functions on the Administration; the increase of the caseload of the Labour Tribunal is only incidental consequence on the administration of justice. The services that the Administration claims will be provided are not required to be provided by the bill.

My opinion

38. I note that according to the Administration's estimate, the additional staff cost required to implement Mr. LEE's bill is $23.3 million. I consider that this amount alone is substantial and is such that I must not ignore.

39. Although the purpose of Mr. LEE's bill is not to incur public expenditure, I have no doubt that the implementation of the bill will have substantive effect on the area of "public expenditure". I am of the opinion that the bill relates to public expenditure.

Does the bill relate to the operation of the government?

The Administration's views

40. The Administration says that the bill will impact on the day to day administration and management of the government. As the term "relate to" should be construed as having both a direct and indirect bearing on "operation of the government", it does not agree that only bills having direct and legal effects should be regarded as being caught by the term "relate to the operation of the government". As Mr. LEE's bill has direct and legal effect of changing the operation of the executive authorities in terms of the organisational structures, the functions and duties as well as the division between government departments, the bill should be regarded as "relating to the operation of the government".

41. The Administration claims that the Labour Department will need a division to provide new conciliation and advisory service for the purpose of the bill and this division should be separate from the Labour Relations Service of the Labour Department. It further claims that the bill will extend and vary the functions of the Labour Tribunal, and such extension or variation of functions relates to the administration or management of justice, of which the Labour Tribunal is part.

Mr. LEE Cheuk-yan's views
42. Mr. LEE does not consider that his bill relates to the operation of the government on two grounds. Firstly, when a public officer performs the role of an authorised officer, he does so in the capacity of an officer of the judiciary rather than under the direction of the Labour Department. The performance of "pre-hearing conciliation" by authorised officers under the Labour Tribunal Ordinance should not be treated as operation of the "executive authorities" but of the "judiciary". Furthermore, neither the proposed bill nor the Labour Tribunal Ordinance contains a provision, explicitly or implicitly, requiring a new division in the Labour Department to be established.

My opinion

43. As I have formed the opinion that the Government of HKSAR, as defined under BL 59, is the executive authorities of the Region, the Labour Tribunal should not be regarded as part of the Government of the Region. Even if the implementation of Mr. LEE's bill will have obvious effect on the structure or procedure of the Labour Tribunal, I am of the opinion that the bill does not relate to the operation of the government.

44. As regards the advisory and conciliatory service that will be provided by the Labour Department following the enactment of the bill, I do not see adequate justifications for the need to have a separate division in the Labour Department independent of the Labour Relations Service to provide such service.

45. Since I do not consider that the implementation of the bill will have an obvious effect on the structure or procedure of the executive authorities, I am of the opinion that the bill does not relate to the operation of the government.

Does the bill relate to government policies?

The Administration's views

46. The Administration is of the view that the bill relates to government policies. It says that the Government made a policy decision which was endorsed by the CE in Council on 30 September 1997 to repeal the Employees' Right to Representation, Consultation and Collective Bargaining Ordinance. That ordinance was repealed through the enactment of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance on 30 October 1997. The repealed ordinance, which was also introduced by Mr. LEE, contained provisions similar to those of Mr LEE's present bill.
Mr. LEE Cheuk-yan's views

47. Mr. LEE argues that the policy to which the Administration claims the bill relates is not formulated and implemented through existing law. He further contends that the Employment and Labour Relations (Miscellaneous Amendments) Ordinance which repealed the Employees' Right to Representation, Consultation and Collective Bargaining Ordinance did not carry any legal effect or implication of implementing a policy not to provide specific legislation giving employees the rights to representation, consultation and collective bargaining. He is also of the opinion that the bill does not deviate from the policy implication of the Employment and Labour Relations (Miscellaneous Amendments) Ordinance. He does not consider his bill as relating to government policies.

48. He also submits that, in his view, the bill is to implement Article 4 of the Right to Organise and Collective Bargaining Convention 1949. He argues that since such implementation is a matter explicitly provided for under BL 39, the bill should be treated as "relating to constitutional matters" and should not be caught under BL 74.

My opinion

49. I do not accept Mr. LEE's argument that the Employment and Labour Relations (Miscellaneous Amendments) Ordinance does not have any legal effect of implementing a policy. The repeal of the Employees' Right to Representation, Consultation and Collective Bargaining Ordinance as a result of the government's introduction of the Employment and Labour Relations (Miscellaneous Amendments) Bill 1997 clearly demonstrates the existence of a government policy on employees' right to representation, consultation, and collective bargaining. As the implementation of Mr. LEE's bill will have substantive effect on government policies, I am of the opinion that Mr. LEE's bill relates to government policies, which existed before 10 August 1998, the day on which Mr. LEE submitted his bill to the Law Draftsman for the issue of a certificate under Rule 51(2).

50. As for the merits of or reasons for government policies, these are not matters on which I am required to form an opinion.

Conclusion
51. To conclude, I am of the opinion that Mr. LEE's bill relates to public expenditure and government policies, but does not relate to the operation of the government. This bill may not be introduced.

(Mrs Rita FAN)
President
Legislative Council

19 July 1999
Dates on which the Administration and The Hon. LEE Cheuk-yan sent in their views on Mr. LEE's Labour Relations (Rights to Representation, Consultation and Collective Bargaining) Bill

6 November 1998  Mr LEE submitted the captioned bill and sought a ruling from the President, Legislative Council under Rule 51(3) and (4).

6 November 1998  The Administration was requested to give its views on Mr LEE's bill as to whether it related to public expenditure or political structure or the operation of the government or government policies.

16 January 1999  The Administration sent in its views.

19 January 1999  The Administration was requested to provide further particulars on several aspects of its submission.

15 February 1999  The Administration sent in its comments on the specific points raised on 19.1.1999.

26 April 1999  Mr LEE sent in his comments on the Administration's views on his bill.

26 April 1999  Mr LEE's comments were forwarded to the Administration for further comments.

19 May 1999  The President met Mr. LEE Cheuk-yan to discuss the bill.

14 June 1999  The Administration sent in its further comments on Mr LEE's comments contained in his submission dated 26 April 1999.

14 June 1999  The Administration's comments were forwarded to Mr LEE for final comments.

13 July 1999  Mr LEE sent in his comments on the Administration's comments contained in its submission dated 14 June 1999.
Annex II

Articles in the Basic Law and the Rules of Procedure referred to in the Ruling of the President, Legislative Council on the Hon LEE Cheuk-yan's Labour Relations (Right to Representation, Consultation and Collective Bargaining) Bill

Basic Law

Article 39  The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Article 43  The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region.

The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law.
Article 48(4)  To decide on government policies and to issue executive orders.

Article 56  The Executive Council of the Hong Kong Special Administrative Region shall be presided over by the Chief Executive.

Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record.

Article 62  The Government of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

(1) To formulate and implement policies;
(2) To conduct administrative affairs;
(3) To conduct external affairs as authorized by the Central People's Government under this Law;
(4) To draw up and introduce budgets and final accounts;
(5) To draft and introduce bills, motions and subordinate legislation; and
(6) To designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the government.
Article 73  The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

(1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;

(2) To examine and approve budgets introduced by the government;

(3) To approve taxation and public expenditure;

(4) To receive and debate the policy addresses of the Chief Executive;

(5) To raise questions on the work of the government;

(6) To debate any issue concerning public interests;

(7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;

(8) To receive and handle complaints from Hong Kong residents;

(9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
(10) To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

Article 74

Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.

**Rules of Procedure**

31 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.

57(6) An amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

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

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

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

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

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

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

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

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

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

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

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

51(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.
Ruling by the President of the Legislative Council
on the Employment (Amendment) Bill 1999
proposed by Hon. Andrew CHENG Kar-foo

I have been requested by Hon. Andrew CHENG to give a private ruling on his Employment (Amendment) Bill 1999 in accordance with the Rules of Procedure. In this connection, I have sought the views of the Administration on the bill from the point of view of Rule 51(3) and (4) and Mr. CHENG's response to the Administration's views. Both the Administration and Mr. CHENG have further commented on each other's responses, with Mr. CHENG being given the last opportunity to comment. The dates of their submissions are given in Annex I. I have given very careful consideration to the views from both the Administration and Mr. CHENG. This ruling will only refer to those views which I consider are of relevance.

Rule 51(3) and (4) of the Rules of Procedure

2. The Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (HKSAR) were made pursuant to Article 75 of the Basic Law (BL). Rule 51(3) and (4) read as follows-

"51(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."

"51(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."

As the President of the Legislative Council, I am required by BL 72(6) to apply the Rules of Procedure as they stand and as I understand them, taking into account all relevant considerations including views expressed by all parties concerned who have been given reasonable opportunities for doing so and advice from the Counsel to the Legislature.
Basis on which I form an opinion under Rule 51(3) and (4)

3. Rule 51(3) and (4) are made for implementing Article 74 of the BL (BL 74) which states:

"香港特別行政區立法會議員根據本法規定並依照法定程序提出法律草案，凡不涉及公共開支或政治體制或政府運作者，可由立法會議員個別或聯名提出。凡涉及政府政策者，在提出前必須得到行政長官的書面同意。"

(English translation: Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.)

4. In making my ruling, I have to give effect to the meaning of BL 74 when forming an opinion under the two subrules in Rule 51. In ascertaining the meaning of BL 74, I have to bear in mind the purpose of the BL and this article and the ordinary and natural meaning of its provision in its context when read in conjunction with other relevant articles in the BL. To facilitate reference to the various articles mentioned in this ruling, I provide in Annex II the text of such articles.

Purpose of Article 74 of the Basic Law

The Administration's views

5. The main theme of the Administration's submission is that BL 74 should be interpreted in the light that the intention of the BL is that the Hong Kong Special Administration Region (HKSAR) be led by the Chief Executive (CE) together with the executive authorities in order to maintain an "executive-led" government. The executive authorities of the HKSAR are vested with the functions of formulating and implementing policies and the introduction of bills and budgets (BL 62) and the CE is vested with the power to reject bills passed by the Legislative Council (BL 49). It is therefore clear that the power of the executive to introduce bills is an unqualified one. As for the
Legislature, whilst the Legislative Council may question and debate government policies and other matters of public interest under BL 64 and 73(4), (5) and (6), this is not the same as formulating policies or introducing bills to implement policies. Besides, BL 73 does not mention that the Legislative Council has the power and function of making policies.

6. The Administration nevertheless accepts that the HKSAR legislature is vested with its own legislative power, but such power is subject to the conditions or restrictions or procedures imposed by the BL. Whilst BL 74 is an empowering provision which empowers Members to introduce bill, this article at the same time imposes conditions and restrictions on this power.

Mr. Andrew CHENG's views

7. In responding to the Administration's view on BL 74, Mr. CHENG says that BL 74 must be interpreted as intending the smallest possible departure from the spirit of the Joint Declaration. He is of the view that the class of limitation imposed on the legislature by this article is unprecedented, representing a significant departure from past constitutional practices. Any such change should be presumed to intend the least alteration to prior practices in the absence of clear language that unmistakably requires a contrary result. According to his analysis, "the structure of article 74 reveals that the CE may consent to the introduction of bills relating to government policies even when they also relate to public expenditure, political structure, or the operation of the government".

My views

8. When trying to find out the meaning of BL 74, I note that BL 73 stipulates the powers and functions of the Legislative Council. Without BL 74, it may be concluded that Members of the Legislative Council may introduce bills without any constraints. However, BL 74 clearly says that "Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced". Therefore whilst Members of the Council may introduce bills into the Council, their ability to do so is subject to the restrictions stipulated in BL 74.
9. I have also referred to the speech made by Mr. JI Peng-fei, Chairman of the Basic Law Drafting Committee, when he introduced the draft BL to the third session of the 7th National People's Congress of the People's Republic of China on 28 March 1990. In the speech, when he spoke on the relationship between the executive authorities and the legislature, he said that  "行政機關和立法機關之間的關係應該是既互相制衡又互相配合"  (English translation: The executive authorities and the legislature should regulate each other as well as co-ordinate their activities.). Chapter IV of the BL provides for the political structure of the HKSAR. One of the main purposes of this Chapter is to allocate the respective powers and functions of the organs of government in such a way as to provide checks and balances between the executive and the legislature and to provide a framework to allow and facilitate these organs to co-ordinate their activities. In respect of the introduction of bills, BL 62 provides that the executive authorities have the powers and functions to draft and introduce bills, motion and subordinate legislation without qualification. On the other hand, whilst BL 74 says that Members of the Legislative Council may introduce bills, it also says that they may do so in accordance with the provisions of the BL and subject to the restrictions that have been imposed in this article.

10. I have therefore formed the opinion that BL 74 is an enabling article which enables Members of the Legislative Council to introduce bills, but it at the same time imposes conditions and restrictions on such introduction.

**Opinions on specific terms in Rule 51(3) and (4)**

11. The Administration considers that the Employment (Amendment) Bill 1999 proposed by Mr. CHENG "relates to" "government policies" and therefore the introduction of the bill requires the written consent of the CE as stipulated in Rule 51(4). Before I give my opinion in this respect, I would like to set out at this juncture the general approach I will adopt for forming my views on the terms "relate to" and "government policies" in the context of Rule 51(4).

12. As regards the general approach, I am of the view that I would be underestimating the difficulty of the task if I were to attempt to give definitions to these terms. I have taken note of the judgement of a 1985 case in the House of Lords in the United Kingdom in which the Court was examining whether a certain matter was related to a trial on indictment. In the judgement, Lord Bridge said : "If the statutory language is, as here, imprecise, it may well be
impossible to prescribe in the abstract a precise test to determine on which side of the line any case should fall, and therefore, necessary to proceed, … on a case by case basis.". The principle that follows from this approach is that my views on these terms should be taken as guidelines only. They are to be applied on a case by case basis and each case would be examined on its own merits.

"Relate to"

13. When commenting on Mr. CHENG's bill, the Administration says that a bill should be considered to be relating to a matter if it has a direct, indirect, consequential or incidental bearing on the matter. However, Mr. CHENG considers that "a purposive interpretation of article 74 strongly counsels that a bill must directly relate to the four areas addressed by the provision in order for the limitations of the article to apply."

14. In my view, in order for a bill not to be caught by Rule 51(3) and (4), the implementation of the bill must not have substantive effect on one or more than one of the areas prescribed in this Rule.

"Government policies"

15. The Administration has put forward the view that government policies refer not only to decisions or policies made by the CE under BL 48(4) and 56, but also policies being formulated and decisions of the government not to formulate any policy.

16. Mr. CHENG on the other hand holds the view that "government policies" should be given a construction that distinguishes it from the BL's general use of the term "policies". He considers that a policy is a pre-determined course of action taken in order to achieve an objective and government policies exist solely to guide and determine the actions taken by the executive to achieve an end. He considers that policies being formulated are not government policies. He further submits that to attain the status of government policies, they must be decided on by the CE in Council. He also asserts that "once a bill is enacted into law any government policy that previously existed in place of the bill is extinguished ….. once the law takes effect, the Chief Executive will no longer be able to 'decide on' any change in the policy. The existence of the law and the requirement that the Government abide by the law prohibits such a change".
17. I am of the opinion that government policies referred to in BL 74 are those that have been decided by the CE or CE in Council under BL 48(4) and 56. Policies decided by former Governors or Governors in Council prior to the implementation of the BL which are still in force are also included.

18. In my view, the enactment of a bill does not extinguish the government policy which the Administration seeks to implement through legislation. Neither would an Ordinance have the legal effect of forbidding the CE from deciding on a new government policy which is different from an existing policy reflected in legislation. What it would require the CE to do in order to implement that new policy is to introduce an amendment bill or a bill to repeal the relevant legislation. I am therefore of the opinion that policies reflected in legislation are government policies for the purpose of Rule 51(4).

19. Government policies for the purpose of Rule 51(4) should also include -

(a) policies decided by authorised public officers; and

(b) policies promulgated by designated public officers in the Legislative Council or its committees.

20. For the purpose of Rule 51(4), I do not regard policies which are being formulated as government policies.

21. A Member is required to obtain a certificate from the Law Draftsman under Rule 51(2) before he may introduce a bill. I would regard a government policy as being in existence if it was decided on before the day on which the Member submits his bill to the Law Draftsman for the issue of the above-mentioned certificate.

Opinion on Mr. CHENG's bill

22. Having set out my opinion on the terms "relate to" and "government policies", I now come to the bill itself.

23. The object of Mr. CHENG's bill is to impose requirements on the part of the employer to stipulate in writing and to solicit employee's consent to any variation of the terms of the employee's contract of employment and to allow employees to elect to calculate their severance and long service payments from their average wages over 12 months prior to any reduction in wages that
occurred within the 24 months prior to the date when the employee resigned or was dismissed.

24. The Administration is of the view that Mr. CHENG’s bill seeks to change existing government policies on labour relations by proposing to regulate wage reduction matters by law. The existing government policy is that there is no need to regulate by law how employers should handle matters relating to wage reduction. Such matters should be dealt with through direct and voluntary negotiation between employers and employees, instead of through legislation. The Administration says that government's policies on such issues have been clearly promulgated in the speech of the Secretary for Education and Manpower during the debate on the motion "Amending legislation to regulate wage reduction" at the Council meeting on 18 November 1998. The Labour Department has also issued a document called "Guidelines on what to do if wage reductions and retrenchments are unavoidable" to offer advice to employers and employees on how to deal with wage reductions and retrenchments.

25. The Administration also says that the bill seeks to change existing government policies on the calculation of severance payment and long service payment as such calculation has already been provided for in the Employment Ordinance.

26. Mr. CHENG, however, says that although the government claims to have a policy that government encourages employers to enter into frank and sincere discussions with employees regarding wage reductions, the so-called policy, according to Mr. CHENG, is a statement with no teeth - a position involving the lack of government action rather than a policy prescribing action. He is of the view that as government policies must specify a specific course of action that the executive authorities must follow, they require affirmative action and implementation on the part of the executive in order to achieve their stated objective. As the policy that the Administration claims to exist does not prescribe any action or require implementation to be realised, it can only be regarded as government position and not policies.

27. I note that the Labour Department has issued a guideline on wage reduction matters as a result of the discussion by the Labour Advisory Board, which is a tripartite consultation machinery established to deal with policies on employer-employee relationship. It is evident that the Administration has taken action in this particular case to achieve the objective of encouraging negotiation between employers and employees instead of regulating such
negotiation through legislation. This process was promulgated at a meeting of the Legislative Council by the Secretary for Education and Manpower on 18 November 1998.

28. Mr. CHENG’s Bill seeks to change the method by which severance payment and long service payment are calculated. I am satisfied that there already existed a government policy on the method of calculating severance payment and long service payment before Mr. CHENG submitted his bill to the Law Draftsman for the issue of a certificate under Rule 51(2) on 10 November 1998. Such policy is reflected in relevant provisions of the Employment Ordinance.

29. As the implementation of Mr. CHENG's bill will have substantive effect on existing government policies, I am of the opinion that Mr. CHENG's bill relates to government policies and therefore its introduction would require the written consent of the CE.

30. As regards Rule 51(3), the Administration did not consider it necessary to comment on whether the present Bill relates to public expenditure, political structure or the operation of the government. I therefore have not been offered any evidence except Mr CHENG's assertion that his Bill does not relate to the three areas prescribed in Rule 51(3). The need for me to give an opinion under Rule 51(3) therefore does not arise.

(Mrs. Rita FAN)
President
Legislative Council

16 July 1999
Annex I

Dates on which the Administration and Mr Andrew CHENG Kar-foo sent in their views on Mr CHENG's Employment (Amendment) Bill 1999

10 February 1999 Mr CHENG submitted the captioned bill and sought a private ruling from the President, Legislative Council under Rule 51(3) and (4).

11 February 1999 The Administration was requested to give its views on Mr CHENG's bill as to whether it related to public expenditure or political structure or the operation of the government or government policies.

8 March 1999 The Administration sent in its views.

8 March 1999 Mr CHENG was requested to comment on the Administration's views.

24 April 1999 Mr CHENG sent in his comments on the Administration's views on his bill. (A corrigendum was sent in on 26 April 1999)

24 April 1999 Mr CHENG's comments were forwarded to the Administration for comments.

14 June 1999 The Administration sent in its comments on Mr CHENG's comments contained in his submission dated 24 April 1999.

14 June 1999 The Administration's comments were forwarded to Mr CHENG for final comments.

5 July 1999 Mr CHENG sent in his comments on the Administration's comments contained in its submission dated 14 June 1999.
Annex II

Articles in the Basic Law referred to in the Ruling of the President, Legislative Council on the Hon Andrew CHENG Kar-foo's Employment (Amendment) Bill 1999

第 43 條  香港特別行政區行政長官是香港特別行政區的首長，代表香港特別行政區。

香港特別行政區行政長官照本法的規定對中央人民政府和香港特別行政區負責。

Article 43  The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region.

The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law.

第 48(4)條  决定政府政策和發佈行政命令

Article 48(4)  To decide on government policies and to issue executive orders.

第 56 條  香港特別行政區行政會議由行政長官主持。行政長官在作出重要決策、向立法會提交法案、制定附屬法規和解散立法會前，須徵詢行政會議的意見，但人事任免、紀律制裁和緊急情況下採取的措施除外。

行政長官如不採納行政會議多數成員的意見，應將具體理由記錄在案。
Article 56 The Executive Council of the Hong Kong Special Administrative Region shall be presided over by the Chief Executive.

Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record.

Article 62 The Government of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

(1) To formulate and implement policies;
(2) To conduct administrative affairs;
(3) To conduct external affairs as authorized by the Central People's Government under this Law;
(4) To draw up and introduce budgets and final
accounts;

(5) To draft and introduce bills, motions and subordinate legislation; and

(6) To designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the government.

第 73 條 香港特別行政區立法會行使下列職權:

(一) 根據本法規定並依照法定程序制定、修改和廢除法律;

(二) 根據政府的提案，審核、通過財政預算;

(三) 批准稅收和公共開支;

(四) 聽取行政長官的施政報告並進行辯論;

(五) 對政府的工作提出質詢;

(六) 就任何有關公共利益問題進行辯論;

(七) 同意終審法院法官和高等法院首席法官的任免;

(八) 接受香港居民申訴並作出處理;

(九) 如立法會全體議員的四分之一聯合動議，指控行政長官有嚴重違法或瀆職行為而不辭職，經立法會通過進行調查，立法會可委託終審法院首席法官負責組成獨立的調查委員會，並擔任主席。調查委員會負責進行調查，並向立法會提出報告。如該調查委員會認定有足夠證據構成上述指控，立法會以全體議員三分之二多數通過，可提出彈劾案，報請中央人民政府決定;

(十) 在行使上述各項職權時，如有需要，可傳召有關人士出席作證和提供證據.
Article 73 The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

1. To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;

2. To examine and approve budgets introduced by the government;

3. To approve taxation and public expenditure;

4. To receive and debate the policy addresses of the Chief Executive;

5. To raise questions on the work of the government;

6. To debate any issue concerning public interests;

7. To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;

8. To receive and handle complaints from Hong Kong residents;

9. If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and

10. To summon, as required when exercising the
above-mentioned powers and functions, persons concerned to testify or give evidence.

第 74 條　香港特別行政區立法會議員根據本法規定並依照法定程序提出法律草案，凡不涉及公共開支或政治體制或政府運作者，可由立法會議員個別或聯名提出。凡涉及政府政策者，在提出前必須得到行政長官的書面同意。

Article 74　Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.
Appendix 11-D

Legislative Council

致 : 立法會秘書
To : Clerk to the Legislative Council

(傳真號碼 Fax No : 2810 1691)

提交法案
Presentation of Bill

謹按照《議事規則》第 51(1) 条作出預告，本人擬向立法會提交下列條例草案:
In accordance with Rule 51(1) of the Rules of Procedure, I hereby give notice of my intention to present the following bill to the Legislative Council:

(中文名稱) 

(English title)

2. 請於議程內列明該條例草案將於 ______ 年 ______ 月 ______ 日首讀。
请将该法案列入会议议程于 ______ 年 ______ 月 ______ 日初稿

(Date of meeting)

3. □ 事務委員會在下述日期舉行的會議上:
The policy aspects of the above bill have been noted/discussed by the

(Name of Panel) 

(Date(s) of meeting(s))

□ 該條例草案在政策方面的影響並未曾交付立法會任何事務委員會審議。
The policy aspects of the bill have not been referred to a LegCo Panel for discussion.

4. 附加資料(例如: 立法會文件編號 ........... 等): 
Additional information (e.g. LC Paper No.......etc.):

簽署 
Signature:

姓名 
Name:

職位名稱 
Post title:

聯絡人姓名 
Name of contact person:

聯絡人的聯絡資料 
Contact details of contact person:

辦公室電話號碼 
(office tel. no.)

手提電話號碼 
(mobile tel. no.)

傳真號碼 
(fax no.)

電郵地址 
(e-mail address)

日期 
Date:

※ 請將不適用者刪去
Please delete as appropriate.

# 職位名稱
Post title:

Designated public officers, but not Members, are required to state their post titles.

(9/2012)
President's ruling on
Committee Stage Amendments proposed by Members to the
Building Management (Amendment) Bill 2000

Hon CHENG Kai-nam, Hon Albert HO and Hon LEE Wing-tat have respectively proposed amendments in respect of the above Bill at its Committee Stage.

2. The Secretary for Home Affairs (SHA) has been invited to offer his comments on the proposed amendments and the Members concerned have been invited to respond. For easier reading, details of these proposed amendments, SHA's comments on them and the Members' respective responses are summarized in the attached Appendix.

3. The provisions in the Rules of Procedure relating to amendments to bills, which SHA has referred to, are:

(a) Rule 57(4)(a)

An amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

(b) Rule 57(4)(c)

An amendment must not be such as to make the clause which it proposes to amend unintelligible or ungrammatical.

(c) Rule 57(4)(d)

An amendment which is in the opinion of the Chairman (of Committee of the whole Council) frivolous or meaningless may not be moved; and

(d) Rule 57(6)

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

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

4. The main objection of SHA to the proposed amendments concern Rule 57(4)(a), as detailed in the Appendix.
5. For completeness, I should mention Rule 56(2) which provides that any Committee of the whole Council shall have power to make such amendments to a bill as it thinks fit, provided that the amendments, including new clauses and new schedules, are relevant to the subject matter of the bill.

**Opinion of Counsel to the Legislature**

6. Counsel to the Legislature is of the opinion that, in determining what the subject matter of a bill is for the purpose of Rule 57(4)(a) of the Rules of Procedure, the President has to form a view after studying the intended effect of the provisions in the bill and other relevant materials such as the long title and Explanatory Memorandum of the bill and relevant information made available to her, for example Legislative Council Brief on the bill and submissions from the Administration and the Members concerned on whether the CSA contravene any of the Rules of Procedure.

7. According to the Explanatory Memorandum of the Bill, the purpose of the Bill is "to amend the Building Management Ordinance to facilitate better management of buildings through the provisions described" in the Memorandum. The object of the Building Management Ordinance as stated in its long title is "to facilitate the incorporation of owners of flats in buildings or groups of buildings, to provide for the management of buildings or groups of buildings". In the Legislative Council Brief on the Bill, it was stated that the introduction of the Bill was to implement the relevant recommendations in the 1998 public consultation document on "Proposal to improve fire safety in private buildings" and to rectify certain deficiencies in the Building Management Ordinance.

8. In determining the subject matter of a bill of this nature, the President may have to decide between adopting an approach of confining herself to the provisions in the bill for setting the parameter within which amendments could be allowed under Rule 57(4)(a) or another approach of ascertaining the principal objectives intended to be achieved by the provisions in the bill as the subject matter of the bill against which relevance of proposed CSAs to the objectives is tested. Counsel to the Legislature thinks that the latter approach is applicable to most cases except where a bill's objectives are narrowly prescribed by the bill.

9. Counsel to the Legislature thinks it is clear from the Explanatory Memorandum that the purpose of the Bill is to amend the Building Management Ordinance to facilitate better management of buildings. The expression "through the provisions described as follows" appears to serve the purpose of identifying those provisions in the Bill (i.e. the 9 clauses out of the 15 in the Bill) which are for that purpose. The expression is not intended to limit the scope of the Bill to those specific areas covered by the identified
provisions. This may be borne out by the fact that the long title of the Bill is couched in the broadest possible term: to "amend the Building Management Ordinance". This view is consistent with the policy rationale for the introduction of the Bill as stated in the LegCo Brief on the Bill, i.e. to implement the relevant recommendations in the 1998 public consultation document on "Proposal to improve fire safety in private buildings" and to rectify certain deficiencies in the Building Management Ordinance.

**My opinion**

10. I am in full accord with Counsel to the Legislature regarding the approach to be adopted for determining the subject matter of a bill, as stated in paragraph 8, and his analysis in paragraph 9 that the purpose of the Bill is to amend the Building Management Ordinance to facilitate better management of buildings.

11. Having determined what the subject matter of the Bill is, the next question to consider is whether a proposed amendment is within the scope of, and relevant to, that subject matter. This question of relevance often involves a judgement which is made on finely balanced matters. The fundamental principle which I have adhered to is that I would only make a ruling after having given all parties concerned the opportunity to make submissions on the matter and taking in account all relevant materials made available. My concern is a purely procedural one, i.e. whether the substance of a proposed amendment is within the scope of, and relevant to, the subject matter of the Bill. In other words, if an issue raised by a proposed CSA is a substantially new issue which is not related to the purpose of the Bill, it should be considered as not relevant to the subject matter of the Bill within the meaning of Rule 57(4)(a). Moreover, when making a ruling under Rules 56(2) and 57(4), I am not concerned with the merits of the proposed amendment.

**Ruling**

12. Having considered the arguments put forth by SHA and the Members concerned, together with the opinion of Counsel to the Legislature, I rule that:

(a) **Hon CHENG Kai-nam may** move his proposed amendments in respect of new clause 5A, paragraphs (b) to (e) of the substitute clause 14 and the substitute clause 15, as they are relevant to the subject matter of facilitating better management of buildings.

(b) **Hon CHENG Kai-nam may not** move his proposed amendments in respect of new clause 7D, new clause 16A and paragraph (a) of the substitute clause 14, because providing a mechanism by
which an owners corporation may resolve to vary the terms of its deed of mutual covenant is not the subject matter of the Ordinance or of the Bill. To seek, as Mr CHENG does, to provide such a mechanism concerns a substantially new issue which goes beyond the scope of the Bill.

(c) **Hon Albert HO may** move his proposed amendments in respect of new clause 7BA, new clause 13B, and the substitute clause 15, as they are relevant to the subject matter of facilitating better management of buildings.

(d) **Hon Albert HO may not** move his proposed amendments in respect of clause 2, new clause 9A and new clause 17 because the amendments seek to extend the application of the Ordinance to a new type of building i.e. house-type properties which neither the Ordinance nor the Bill covers. They are not relevant to the subject matter of facilitating better management of flatted buildings or groups of flatted buildings covered by the Ordinance, and exceed the scope of the Bill.

(e) **Hon LEE Wing-tat may** move his proposed amendments in respect of clause 3(b), as the intention and the terms of his amendment are not unintelligible or meaningless; the purpose of facilitating the early appointment of a management committee of a corporation after the issuance of an occupation permit or a temporary occupation permit is relevant to the better management of buildings.

(f) **Hon LEE Wing-tat may not** move his proposed new clause 7D and new clause 16A (which are a different way to provide a mechanism for varying deeds of mutual covenant which Hon CHENG Kai-nam proposes - see sub-paragraph (b) above). Same as in Hon CHENG Kai-nam's proposed amendment, to seek to provide such a mechanism concerns a substantially new issue which goes beyond the scope of the Bill.

( Mrs Rita FAN )
President
Legislative Council

21 June 2000
Appendix

Building Management (Amendment) Bill 2000

Summary of Members' proposed Committee Stage amendments, Secretary for Home Affair's (SHA) comments and Members' responses

<table>
<thead>
<tr>
<th>Committee Stage Amendments by</th>
<th>SHA's comments</th>
<th>Members' responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon CHENG Kai-nam</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New clause 5A</td>
<td>Amendment is outside the subject matter of the Bill, and the purported mandatory requirement to establish the fund is meaningless as the proposed clause does not provide details of the requirements or the penalty for non-compliance - contravenes Rule 57(4) of the Rules of Procedure.</td>
<td>The establishment of a contingency fund will help meet non-recurrent expenses for building repairs and improve the management of buildings; this is in line with the Bill's proposal to facilitate better management of buildings. Not providing penalty for non-compliance is in line with the provision in section 20(1) of the Ordinance regarding the mandatory establishment and maintenance of a general fund by an owners corporation.</td>
</tr>
<tr>
<td>New clause 7D, New clause 16A, Para. (a) of the proposed substitute clause 14</td>
<td>Neither the Ordinance nor the Bill provides for a procedure for amending deeds of mutual covenant which are contracts between the parties to the deeds. The amendment is outside the subject matter of the Bill. It also puts a burden on the Lands Tribunal to adjudicate on the variations to the terms of the deeds proposed by the owners and so has a charging effect - contravene Rules 57(4) and 57(6).</td>
<td>The proposal is relevant to the Bill's purpose to facilitate better management of buildings, by helping minority owners overcome difficulties caused by unfair terms in the deeds.</td>
</tr>
<tr>
<td>Committee Stage Amendments by</td>
<td>SHA's comments</td>
<td>Members' responses</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Paras. (b) to (e) of the proposed substitute clause 14 To amend the Third Schedule relating to calculation of a quorum at meetings of an owners corporation.</td>
<td>The amendments are outside the scope of the Bill - contravenes Rule 57(4).</td>
<td>The amendment will make it easier for a quorum to be present for meetings of an owners corporation for making decisions, and is relevant to building management.</td>
</tr>
<tr>
<td>Substitute clause 15 To amend the provisions in the Seventh Schedule concerning the termination of a manager's appointment.</td>
<td>The new clause is outside the scope of the Bill and of the Seventh Schedule. Cross-referencing to the Third Schedule, which is not part of the mandatory terms in deeds of mutual covenant covered in the Seventh schedule, makes the amendment unintelligible and hence not implementable - contravenes Rule 57(4).</td>
<td>The procedure concerning the termination of a manager's appointment relates to building management and is relevant to the Bill. The reference to the Third Schedule is in order, as the Schedule makes it clear that decisions at meetings of a corporation shall be made by a majority of votes of the owners, including the termination of a manager's appointment.</td>
</tr>
</tbody>
</table>

Hon Albert HO

Clause 2
New clause 9A
New clause 17 to add a new Eleventh Schedule To amend the definitions of "owner" and "building" so that the Ordinance also covers house-type properties and their owners, and to make consequential changes for the determination of owner's shares and the calculation of owners. | The amendments seek to extend the application of the Ordinance to house-type developments and are outside the scope of the Ordinance and of the Bill - contravenes Rule 57(4). | The long-title of the Ordinance is wide enough to cover house-type developments. The Administration has adopted too narrow a view in reading the Ordinance. It is fair and equitable to give owners of house-type development a formal mechanism to form owners corporations. |
<table>
<thead>
<tr>
<th>Committee Stage Amendments by</th>
<th>SHA's comments</th>
<th>Members' responses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>New clause 7BA</strong>&lt;br&gt;To provide that owners of undivided shares of the common parts of buildings and who do not pay fees for such under the deed of mutual covenant shall not have voting rights or constitute to a quorum.</td>
<td>The amendment is outside the scope of the Bill which does not cover section 34I of the Ordinance which the Member seeks to amend - contravenes Rule 57(4).</td>
<td>The drafting guidelines issued by the Lands Department relating to deeds of mutual covenants already impose an obligation on the drafting solicitors to ensure that no voting rights should be allocated to undivided shares of the common parts if such shares do not carry the obligation to pay fees. The amendment is in keeping with the principles of the guidelines.</td>
</tr>
<tr>
<td><strong>New clause 13B</strong>&lt;br&gt;To amend the Second Schedule relating to composition of management committees, to require holders of offices in a management committee shall retire together with members of the committee.</td>
<td>The amendment is outside the scope of the Bill - contravenes Rule 57(4).</td>
<td>The amendment addresses a deficiency in the Ordinance and is within scope as it relates to better management.</td>
</tr>
<tr>
<td><strong>New clause 15</strong>&lt;br&gt;To amend the Seventh Schedule relating to the termination of a manager's appointment.</td>
<td>The amendment is outside the scope of the Bill - contravenes Rule 57(4).</td>
<td>The amendment addresses a deficiency in the Ordinance and is within scope. A proposed new clause by the Administration also deals with the same issue.</td>
</tr>
<tr>
<td><strong>Hon LEE Wing-tat</strong>&lt;br&gt;Clause 3(b)&lt;br&gt;To facilitate the early appointment of a management committee of a corporation after the issue of an occupation permit or a temporary occupation permit.</td>
<td>The amendment is unclear because the term &quot;unit&quot; in the amendment is not defined, neither is &quot;occupation of a unit&quot; defined. This makes it unclear how the &quot;40% of the units occupied&quot; is to be worked out under the amendment - contravenes Rule 57(4).</td>
<td>The term &quot;unit&quot; is a commonly used term in everyday language, so are the terms &quot;occupied&quot; and &quot;occupation&quot;. There is no lack of clarity.</td>
</tr>
<tr>
<td>Committee Stage Amendments by</td>
<td>SHA's comments</td>
<td>Members' responses</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>New clause 7D</td>
<td>The amendments are outside the scope of the Ordinance or Bill. By assigning new duties to SHA and the Lands Tribunal, they also have a charging effect - contravene Rules 57(4) and 57(6).</td>
<td>The amendments have the purpose of introducing mandatory terms to the deed of mutual covenants to address deficiencies in the Ordinance, one of which is the lack of a procedure for amending the deeds.</td>
</tr>
<tr>
<td>New clause 16A</td>
<td>To provide a mechanism by which an owners corporation may resolve to vary the terms of its deed of mutual covenant.</td>
<td></td>
</tr>
</tbody>
</table>

- 4 -
President’s ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013

Hon Frederick FUNG, Hon Gary FAN, Hon WONG Yuk-man, Hon Albert CHAN, Hon CHAN Chi-chuen and Hon LEUNG Kwok-hung have respectively given notices to move a total of 762 Committee stage amendments (“CSAs”) to the Schedule to the Appropriation Bill 2013 (“the Bill”) at the Council meeting of 24 April 2013 as follows:

(a) one CSA proposed by Hon Frederick FUNG to reduce the provision for one Head of Expenditure;

(b) seven CSAs proposed by Hon Gary FAN to reduce the provisions for seven Heads of Expenditure;

(c) 81 CSAs proposed by Hon WONG Yuk-man to reduce the provisions for 22 Heads of Expenditure;

(d) 141 CSAs proposed by Hon Albert CHAN to reduce the provisions for 25 Heads of Expenditure;

(e) 154 CSAs proposed by Hon CHAN Chi-chuen to reduce the provisions for 15 Heads of Expenditure; and

(f) 378 CSAs proposed by Hon LEUNG Kwok-hung to reduce the provisions for 44 Heads of Expenditure.

2. In considering whether the CSAs proposed by the six Members are in order under the Rules of Procedure, I invited the Administration to comment on the CSAs and the Members to respond to the Administration’s comments on their individual CSAs. The Administration’s written views on the CSAs proposed to the Bill have been provided to the Members.

The Administration’s comments

3. The Administration’s views on the CSAs proposed to the Bill are in the Appendix. In gist, the Administration raises two questions. First, when some Members' avowed intent for the introduction of numerous amendments is to filibuster the Bill, whether the admissibility of those proposed CSAs should be considered in the context of the President’s...
constitutional power and function to preside over meetings of the Legislative Council (“LegCo”) under Article 72(1) of the Basic Law (“BL 72(1)”). Second, whether the meaning of the term “an amendment” in Rule 57(4)(d) of the Rules of Procedure should include “a series of amendments”. The Administration submits that the answers to these two questions are in the affirmative.

4. The Administration also points out that:

   (a) at least 135 CSAs seeking to reduce by different permutations certain expenditure under a Head of Expenditure would produce mutually conflicting and unintelligible results;

   (b) at least 93 CSAs involving expenditure cuts would have the effect of rendering the relevant departments totally inoperable. These CSAs, if ruled in and endorsed by LegCo, would put public services into total disarray; and

   (c) 51 CSAs appear to refer to sums not included in the Bill or not included under the Heads/Subheads of Expenditure quoted.

5. The Administration invites me to rule out as frivolous or meaningless under Rule 57(4)(d) of the Rules of Procedure all those amendments or series of amendments proposed by Members with the avowed intent of delaying the legislative process. The Administration also contends that all those CSAs falling within the descriptions in paragraph 4 above should be ruled out, so as to ensure the proper exercise and discharge of the powers and functions of LegCo provided under BL 73.

6. The Administration does not have comments on the CSA proposed by Hon Frederick FUNG and those proposed by Hon Gary FAN.

Members’ response

Hon Frederick FUNG’s response

7. Hon Frederick FUNG withdrew his notice for moving the CSA.
Hon WONG Yuk-man’s response

8. Hon WONG Yuk-man withdrew his notice for moving the 20 CSAs falling within the description in paragraph 4(c) above. He has no comment on the Administration’s views.

Hon Albert CHAN’s response

9. Hon Albert CHAN has not responded to the Administration’s views.

Hon CHAN Chi-chuen’s response

10. Hon CHAN Chi-chuen withdrew his notice for moving one of his proposed CSAs falling within the description in paragraph 4(c) above. He has no comment on the Administration’s views.

Hon LEUNG Kwok-hung’s response

11. Thirty CSAs by Hon LEUNG Kwok-hung refer to sums not included in the Bill or the Heads/Subheads of Expenditure quoted. He has asked for my leave for him to revise 15 of his CSAs of this nature to rectify the inaccuracy. He has no comment on the Administration’s views.

My opinion

12. Before forming my opinion on the admissibility of the CSAs, the number of which is unprecedented for an appropriation bill, I have revisited my powers and functions as President of LegCo conferred by the Basic Law and supplemented by the Rules of Procedure. Among other things, I have the constitutional powers and functions to preside over meetings under BL 72(1). It has all along been my understanding that such powers must include the power and function to exercise proper authority or control over meetings, including the orderly, fair and proper conduct of meetings. This understanding, on which I have acted, has been reaffirmed by the Court of Appeal in the case of Leung Kwok Hung v the President of the Legislative Council of the Hong Kong Special Administrative Region (CACV 123 of 2012).

13. One of my other powers and functions as prescribed in the Rules of Procedure is to rule on the admissibility of proposed amendments to a bill. In the exercise of this power, I fully respect the right of Members to participate in the legislative process. In the context of an appropriation bill,
the power of LegCo to examine and approve budgets introduced by the Government under BL 73(2) forms the basis for Members to debate the appropriation bill and the relevant estimates of expenditure which are subject to the Council's examination as part and parcel of the legislative process for enacting the appropriation bill, and to propose amendments to such a bill in accordance with the Rules of Procedure and the relevant practices.

14. Rule 69 of the Rules of Procedure governs amendments that may be proposed by Members to an appropriation bill. Counsel to the Legislature has pointed out to me that this rule does not explicitly limit the number of amendments that may be moved by each Member in respect of each head of expenditure included in an appropriation bill, and there is no past practice that limits the number of amendments moved by each Member in respect of each head of expenditure. Subject to good and cogent reasons to depart from such practice, it appears that a Member may propose multiple amendments to reduce the provision for a specific head to be appropriated in such a bill. Counsel has also advised me that Rule 57 of the Rules of Procedure should apply generally to amendments to bills including appropriation bills. Therefore, in deciding the admissibility of the 740 proposed amendments to the Bill (after Members have withdrawn notice for moving 22 out of the 762 CSAs), I need to form an opinion as to whether they comply with the requirements under both Rules 57 and 69.

15. A substantial number of amendments proposed by three Members fall into series in which each amendment seeks to reduce the appropriation to a particular Head of Expenditure by a sequentially varying amount. Rule 69 does not disallow such amendments. In determining whether amendments proposed in such a manner fall within the description of “frivolous” and “meaningless” under Rule 57(4)(d), I asked myself two questions. First, whether the passage of any one of such amendments in a series would serve any substantive purpose; and second, whether the passage of one such amendment vis-a-vis another in the same series would make any material difference. It appeared to me that the passage of any one of the amendments in question would achieve a substantive result, and that the passage of one such amendment would achieve an effect materially different from that of another in the same series. I therefore could not consider the amendments frivolous or meaningless, either taken individually or collectively.

16. While taking note of the concern expressed by the Administration about the avowed intent of some Members to filibuster by way of proposing numerous CSAs to the Bill, I must stress that the motive of Members proposing amendments has never been a relevant consideration in past
rulings. I must also point out that in my past rulings and those of my predecessors, the merits of the proposed CSAs, including their possible impact on the Government or Government operation, are not factors that have been taken into account.

17. In my view, unless the admission of certain proposed amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law, I should not deprive Members’ right to propose these amendments. At this stage, I am yet to be satisfied that the admission of the proposed CSAs to the Bill by the four Members will give rise to such a situation. Should such a possibility emerge in the course of the proceedings on the Bill, I will not hesitate to exercise my power to ensure the orderly, fair and proper conduct of meetings, including the taking of necessary steps to end the debates, and enabling the proposed CSAs to be voted upon by the Committee of the whole Council.

18. Thirty CSAs submitted by Hon LEUNG Kwok-hung refer to sums not included in the Bill or the Heads/Subheads of Expenditure quoted. As all CSAs to the Bill seek to reduce the provisions for specific Heads or Subheads, the accuracy of the Heads/Subheads quoted is fundamental to the integrity of the proposed CSAs. Hon LEUNG Kwok-hung has asked for my leave for him to revise 15 of his CSAs to rectify the inaccuracy. I do not consider it justified to grant leave as the notice requirement should not be dispensed with unless in very exceptional circumstances.

My ruling

19. I rule that:

(a) the 30 CSAs by Hon LEUNG Kwok-hung falling within the description in paragraph 4(c) above are inadmissible; and

(b) the other 710 CSAs proposed by the five Members are admissible.

(Jasper TSANG Yok-sing)
President
Legislative Council

22 April 2013
Mr Kenneth Chen, SBS
Secretary General
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Secretary General,

Appropriation Bill 2013

Thank you for your letters dated 9, 11, 12, 15 and 16 April 2013, inviting the Administration’s views in the context of Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)’s Rules of Procedure regarding the Committee Stage Amendments (CSAs) proposed to the 2013 Appropriation Bill.

I write to set out the Administration’s views on the aggregate number of 762 CSAs proposed to the Bill, which collectively seek to reduce the provisions for 57 out of the total of 83 expenditure heads covered under the Bill.

The Power and Function of the President to Exercise Proper Authority or Control over the Legislative Process

Without prejudice to the Administration’s position on Article 74 of the Basic Law (BL 74), our views on the proposed CSAs to the Appropriation Bill are set out below.
The question of whether some LegCo Members, whose avowed intention for the introduction of the numerous amendments is to filibuster the Appropriation Bill, may be allowed to move those proposed CSAs, should be considered in the proper context of the President of LegCo's constitutional power and function to preside over meetings of the LegCo under BL 72(1). It has been widely reported in the press that hundreds of CSAs are proposed by certain Members with the sole intention of delaying the passage of the Appropriation Bill.

As decided by the Court of Appeal (CA) in Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region, CACV 123/2012, such power and function of the President of LegCo must, as a matter of interpretation or necessary implication, include the power and function to exercise proper authority or control over the legislative process. The orderly, fair and proper conduct of LegCo proceedings must be within the province of the President. Moreover, the CA also held that the power under BL 72(1) is supplemented by other powers and functions as prescribed in the Rules of Procedure (“RoP”). Whatever may be the effect of those rules interpreted on their own, they must be read subject to the constitutional power and function of the President under BL 72(1) to preside over meetings.

Under Rule 57(4)(d) of the RoP, an amendment which is frivolous or meaningless may not be moved. We note that the President has previously ruled that Rule 57(4)(d) applied only to individual amendments but did not apply to a series of amendments. In his ruling on the amendments proposed by Hon Albert Chan and Hon Wong Yuk-man to the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) dated 18 June 2012, the President said the following in paragraph 9:

“Regarding Mr CHAN’s 59 amendments, each of which is seeking to change respectively the effective date of the proposed resolutions to the first day of the 59 months that follow July 2012, it is not the first time that he proposes amendments in such a manner. Mr CHAN explains that his amendments are to allow Members to choose the most appropriate date for the proposed resolution to take effect. My view is that even if each of these amendments taken individually may serve a particular purpose, it is obvious that when the 59 amendments are taken together, they can be regarded as frivolous and may have the effect of
prolonging Council proceedings more than is necessary for providing a fair choice for Members. I have serious reservation, as on a similar occasion recently, on whether such a series of amendments should be allowed to proceed without being subjected to any restrictions at all. However, unless and until clear rules are provided in our Rules of Procedure to apply the restriction against a frivolous or meaningless amendment under Rule 57(4)(d) also to a series of amendments to motions, I have no option but to allow these 59 amendments to proceed in accordance with past rulings.” (emphasis added)

The above interpretation that Rule 57(4)(d) did not apply to “a series of amendments” was adopted by the President prior to the judgment of the CA in CACV 123/2012. It is submitted that in the light of the latest jurisprudence, there is scope to adopt a purposive interpretation of the term “an amendment” in Rule 57(4)(d) to include “a series of amendments” so that the President may rule out those amendments which, when taken together, can be regarded as frivolous or meaningless.

Further support to the above purposive interpretation of the term “an amendment” can be gained from the general rule of interpretation that “words and expressions in the singular include the plural and words and expressions in the plural include the singular.” (see for reference section 7(2) of the Interpretation and General Clauses Ordinance (Cap 1)).

The CA has held that the effect of an individual rule in the RoP, whatever that may be when interpreted on its own, must be read subject to the constitutional power and function of the President under BL 72(1) to preside over meetings. The Court of First Instance has also held in the same case of Leung Kwok Hung v The President of the Legislative Council [2012] 3 HKLRD 470 at 471 that on a purposive construction of BL 73(1) and 75(2), there is no constitutional right to filibuster. This is confirmed by the CA (at para 44) where the CA has further stated as follows:

“... Indeed there is much to be said for the view that the very continuance of a filibustering exercise would be contrary to the proper exercise and discharge of the powers and functions of the Legislative Council provided under article 73 of the Basic Law, and would constitute an infringement of other legislators' constitutional rights ... to participate in the legislative process in a meaningful manner.” (emphasis added)
Therefore, in order to ensure the proper exercise and discharge of the powers and functions of the LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, it is considered that (in addition to the President’s powers and functions under RoP 57(4)(d) as construed in the light of BL 72(1) above), it is within the constitutional power and function of the President (to preside over meetings) under BL 72(1) and his power under RoP 92 to rule out a CSA which, whether on its own or taken together with other CSAs, is in the opinion of the President (a) frivolous or meaningless or (b) intended or likely to unduly delay the legislative process (ie to filibuster).

The act of proposing amendments is very proximate to the meeting and forms part of the meeting. We are of the view that in making a ruling on a series of amendments which will have adverse effect on the conduct of a meeting, the President is exercising the power given by the Basic Law to preside over meetings. In light of the fact that certain Members have openly admitted that their CSAs are proposed for the purpose of filibustering, the proposed amendments should be scrutinised carefully under RoP 57(4)(d) as part of the proper exercise of the power and function of the President to preside over meeting.

It is submitted that whether an amendment is frivolous or meaningless should also be looked at from the point of its effect on the legislative process where the purpose of an amendment or a series of amendments is intended to delay the legislative process. Previous experience has shown that filibustering has adversely affected the effective and efficient operation of the Legislative Council.

In short, on the basis of (a) RoP 57(4)(d) as construed in the light of BL 72(1) above, and further or in the alternative, (b) the President’s constitutional power and function (to preside over meetings) under BL 72(1) and his power under RoP 92, we would invite the President to rule out the amendments that are frivolous/meaningless and/or intended (or likely) to unduly delay the legislative process relating to the passage of the Appropriation Bill, having regard in particular to the avowed intent of some members to filibuster by way of such amendments. The Financial Secretary has already explained the importance of the early passage of the Bill in his letter of 18 April 2013.
Impact on public expenditure and operation of the Government

Insofar as the proposed amendments seek to reduce the provisions included in the Appropriation Bill 2013 from the relevant Heads of Expenditure, they are similar to those which some LegCo Members proposed in relation to past Appropriation Bills. We maintain our views on BL 74 as set out in the Administration's letter dated 23 March 1999, commenting on similar amendments seeking to reduce provisions to be appropriated.

We would be most grateful if the LegCo President can take into account the views of the Administration when considering the CSAs Members proposed in relation to the Appropriation Bill.

We will revert under separate cover on the Administration's other observations on individual CSAs.

Yours sincerely,

[Signature]

(Professor K C Chan)
Secretary for Financial Services and the Treasury
President’s ruling on Committee stage amendments proposed by 14 Members to the Appropriation Bill 2014

Fourteen Members have respectively given notices to move a total of 1,917 Committee stage amendments (“CSAs”) to the Schedule to the Appropriation Bill 2014 (“the 2014 Bill”) at the Council meeting of 16 April 2014 as follows:

(a) Hon SIN Chung-kai, Hon LEE Cheuk-yan and Hon CHEUNG Kwok-che each proposes one CSA to reduce the provisions for three Heads of Expenditure;

(b) Hon James TO, Dr Hon Fernando CHEUNG and Hon Cyd HO each proposes two CSAs to reduce the provisions for four Heads of Expenditure;

(c) Dr Hon Helena WONG and Hon WU Chi-wai each proposes three CSAs to reduce the provisions for five Heads of Expenditure;

(d) Hon Claudia MO proposes four CSAs to reduce the provisions for three Heads of Expenditure;

(e) Hon Gary FAN proposes 10 CSAs to reduce the provisions for eight Heads of Expenditure;

(f) Hon WONG Yuk-man proposes 120 CSAs to reduce the provisions for 35 Heads of Expenditure;

(g) Hon Albert CHAN proposes 129 CSAs to reduce the provisions for 27 Heads of Expenditure;

(h) Hon CHAN Chi-chuen proposes 132 CSAs to reduce the provisions for 23 Heads of Expenditure; and

(i) Hon LEUNG Kwok-hung proposes 1,507 CSAs to reduce the provisions for 58 Heads of Expenditure.

1 The President adjourned the Council meeting of 16 April 2014 after the motion on the Second Reading of the 2014 Bill was passed. The CSAs to the Bill are to be moved at the Council meeting of 30 April 2014.
2. In considering whether the CSAs proposed by the 14 Members to the 2014 Bill are in order under the Rules of Procedure, I invited the Administration to comment on the CSAs and the Members to respond to the Administration’s comments on their CSAs. The Administration’s written comments on the CSAs have been provided to the Members.

The Administration’s comments

3. The Administration’s views on the proposed CSAs are in Appendix I. The Administration is of the view that:

(a) most of the 1,507 CSAs proposed by one Member seeking to reduce by different permutations certain expenditure under a wide spectrum of Heads of Expenditure are frivolous;

(b) at least 148 CSAs proposed by individual Members, if taken together, would produce mutually conflicting and unintelligible results;

(c) at least 206 CSAs involving expenditure cuts would have the effect of rendering the relevant bureaux and departments totally inoperable. These CSAs, if ruled in and endorsed by the Legislative Council (“LegCo”), would put public services into total disarray;

(d) at least 17 CSAs appear to refer to sums not included in the 2014 Bill or not included under the Heads/Subheads of Expenditure quoted; and

(e) at least nine pairs of CSAs proposed by one Member are identical.

4. Taking into account the proceedings on the Appropriation Bill 2013 (“the 2013 Bill”), the avowed intent of some Members to filibuster by proposing CSAs and the substantial increase in the number of proposed CSAs to the 2014 Bill, the Administration considers that the admission of the CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under Article 73 of the Basic Law (“BL”). Given the importance of the timely passage of the 2014 Bill to ensure the availability of funds to support committed public services, the Administration invites me to exercise my powers under BL 72(1) and Rule
92 of the Rules of Procedure to rule out the CSAs which are frivolous or meaningless or intended or likely to unduly delay the legislative process, in order to ensure the proper exercise and discharge of the powers and functions of LegCo.

Members’ responses

5. Except Hon LEUNG Kwok-hung, the other 13 Members either have no comments on or have not responded to the Administration’s views.

6. Hon LEUNG Kwok-hung contends that the purpose of his moving of the proposed CSAs is to discharge the powers and functions of Members of LegCo under BL 73(1), (2) and (6) to amend, examine, approve and debate appropriation bills and budgets introduced by the government, and that his proposed CSAs mainly target at public officers with poor performance, unnecessary operating expenditures of Government departments, unnecessary posts or new posts, and unnecessary projects or activities. Hon LEUNG Kwok-hung also contends that his proposed CSAs to the 2014 Bill are almost identical to those proposed by him to the 2013 Bill, which were ruled admissible, and are therefore not frivolous or meaningless. He argues that given its constitutional status under BL, LegCo should not be pressurized by the Administration to accept its views but should instead act independently as usual.

My opinion

7. I have noted that among the 1,507 CSAs proposed by Hon LEUNG Kwok-hung, 909 CSAs are grouped into 116 sequences each of which comprises three or more CSAs seeking to reduce the appropriation to a Head of Expenditure for a specific purpose by sequentially varying amounts (“sequential CSAs”) (Appendix II). This is not the first time that a sequence of amendments in such a manner is proposed by individual Members to a bill or a motion. In the past two years, I dealt with such amendments on three occasions.

8. In May 2012, a total of 1,232 CSAs were proposed by one Member to the Legislative Council (Amendment) Bill 2012 which sought to disqualify a person who had resigned as a Member of LegCo from standing for a by-election held within six months of his resignation. These CSAs fell into groups of amendments, each of which represented one class of exception to the disqualification rule provided in the Legislative Council (Amendment) Bill 2012. Among these CSAs, some 720 were drafted in such a way that
the disqualification would not apply if certain specified factors in a sequentially varying degree occurred, for example, if the resigning Member agreed to pay a sequentially varying percentage of the cost of the by-election. All these CSAs were ruled admissible by me under the Rules of Procedure.

9. Shortly thereafter, in June 2012, 167 amendments were proposed to be moved by a Member to a proposed Government resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1) to effect transfer of statutory functions pursuant to the Chief Executive-elect’s proposals to re-organise the Government Secretariat. The same approach was adopted by the Member in 59 of his proposed amendments, each of which sought to change respectively the effective date of the proposed resolution to the first day of the 59 months that followed July 2012. These amendments, as claimed by the Member, were to allow Members to choose the most appropriate date for the proposed re-organisation to take effect. In ruling these amendments admissible, I expressed my view that when taken together, the 59 proposed amendments could be regarded as frivolous and might have the effect of prolonging Council proceedings more than was necessary for providing a fair choice for Members. However, I decided that these proposed amendments should be admitted for debate until the Rules of Procedure make it clear that there should be restrictions against a series of proposed amendments which are frivolous or meaningless.2

10. Last year, six Members proposed a total of 762 CSAs to the 2013 Bill. Again, some 220 CSAs were grouped into 22 sequences with each sequence containing three or more CSAs that sought to reduce the appropriation to a particular Head of Expenditure for a specific purpose by sequentially varying amounts. I considered each of those CSAs and examined their intended effect. I could not conclude that these CSAs were “frivolous” or “meaningless” within the meaning of Rule 57(4)(d) of the Rules of Procedure.3 I also assessed whether the admission of those sequential CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL. My view then was that at that stage, I was yet to be satisfied that there would be such demonstrable effect. The sequential CSAs were therefore ruled admissible.4

---

2 Paragraph 9 of the President’s ruling on 18 June 2012 on the amendments proposed by Hon Albert CHAN and Hon WONG Yuk-man to the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance (Cap. 1).
3 Paragraph 15 of the President’s ruling on 22 April 2013 on Committee stage amendments proposed by six Members to the Appropriation Bill 2013.
4 Paragraph 17 of the President’s ruling on 22 April 2013 on Committee stage amendments proposed by six Members to the Appropriation Bill 2013.
11. This year, 909 sequential CSAs are proposed to the 2014 Bill. Before forming my opinion on the admissibility of these 909 sequential CSAs, I reminded myself that in the first four debates on 134 proposed CSAs to a Head of Expenditure in the 2013 Bill, 105 were sequential CSAs. I noted that in those four debates lasting over 31 hours in total, the proposers of such sequential CSAs hardly explained the difference between the successive amendments in the sequential CSAs and there was no exchange of views among Members on such sequential CSAs. Other than the proposers, an overwhelming majority of Members voted against all sequential CSAs. This convinced me that instead of providing fair and genuine choices for Members, the moving of those sequential CSAs achieved no purpose other than taking up the Council’s time in completing the necessary proceedings.

12. As President, the constitutional powers and functions that I should exercise and discharge are provided in BL 72, which include presiding over meetings, deciding on the agenda, and exercising other powers and functions as prescribed in the Rules of Procedure. Such powers and functions must include the power to exercise proper authority or control over meetings, including ensuring the orderly, fair and proper conduct of meetings and ruling on the admissibility of CSAs. Therefore, I consider it incumbent upon me to ensure that the admission of CSAs is in accordance with the Rules of Procedure and would not prevent LegCo from properly exercising and discharging its powers and functions under BL.

13. The experience of the Council in the disposal of sequential CSAs has convinced me that the Member who proposes to move such sequential CSAs is not inviting the committee of the whole Council to examine any fair and genuine choices of proposed reductions to the respective Heads of Expenditure as part of its functions to discuss the details of a bill under Rule 56 of the Rules of Procedure. The 909 sequential CSAs do not serve any purpose reasonably connected with the function of the committee of the whole Council. In my opinion, the sequential CSAs infringe Rule 57(4)(d) of the Rules of Procedure for being frivolous or meaningless when each of them is considered in the context of the other amendments also being proposed by the same Member in respect of the same head or sub-head of expenditure and the experience of last year’s debates on sequential CSAs to the 2013 Bill.

14. Further, in the light of what transpired in the debates on sequential CSAs to the 2013 Bill as mentioned in paragraph 11 above, I am of the view that the admission of the 909 sequential CSAs to the 2014 Bill would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and
functions under BL. Therefore, they should not be allowed to be moved for this reason as well.

15. I have also examined in detail the 26 pairs of CSAs to the 2014 Bill proposed by Hon LEUNG Kwok-hung, each of which seeks to reduce the appropriation to a Head of Expenditure for a specific purpose with the amounts representing respectively the expenditure for one and six months, or one and twelve months. Given the material difference in the proposed amounts to be reduced within each pair, such CSAs may plausibly be considered as providing fair and genuine choices for Members. I would therefore allow them to be moved.

16. In the light of my decision not to admit the 909 sequential CSAs, if Hon LEUNG Kwok-hung is minded to select not more than two out of each of the 116 sequences of his proposed CSAs to be moved, I would be prepared to give leave to waive notice and to consider the admissibility of his selected CSAs provided that they are submitted to me by 22 April 2014 noon.

17. In reaching the above decisions, my consideration is to strike a proper balance between respecting the right of individual Members to propose amendments and ensuring the efficient conduct of the Council as a law making institution.

18. While noting the Administration’s concerns about the avowed intent of some Members to filibuster by way of proposing numerous CSAs and the possible impact of some CSAs, if passed, on the Government or Government operation, I maintain the view as stated in my previous ruling that the motive of Members proposing amendments and the merits of CSAs are not relevant to the consideration of admissibility of CSAs. However, as I have elaborated in paragraphs 11 to 14 above, I cannot ignore the new developments including the Council’s experience in the disposal of the sequential CSAs to the 2013 Bill when considering the admissibility of the 909 sequential CSAs to the 2014 Bill. I am convinced that the admission of the 909 sequential CSAs to the 2014 Bill would give rise to a situation where LegCo would be prevented from its proper exercise and discharge of its constitutional powers and functions.

19. Twenty CSAs proposed by Hon LEUNG Kwok-hung refer to sums not included in the 2014 Bill or the Heads/Subheads of Expenditure or refer to purposes not specified in the Estimates for the year ending 31 March 2015 (Appendix III). As the accuracy of such information is fundamental to the integrity of the proposed CSAs, these CSAs cannot be moved.
Hon LEUNG Kwok-hung has submitted 28 duplicate CSAs which also cannot be moved (Appendix IV).

My ruling

20. I rule that:

(a) the 957 CSAs proposed by Hon LEUNG Kwok-hung in Appendices II to IV (not attached) are inadmissible; and

(b) the remaining 550 CSAs proposed by Hon LEUNG Kwok-hung and all the 410 CSAs proposed by the other 13 Members are admissible.

(Jasper TSANG Yok-sing)
President
Legislative Council

17 April 2014
Mr Kenneth Chen, SBS
Secretary General
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Secretary General,

Appropriation Bill 2014

Thank you for your letters dated 31 March, 2, 4 and 7 April 2014, inviting the Administration’s views on the proposed Committee Stage Amendments (CSAs) to the Appropriation Bill 2014 against the provisions in Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)’s Rules of Procedure (RoP).

I write to set out the Administration’s views on the aggregate number of 1,917 CSAs proposed to the Bill, which collectively seek to reduce the provisions for 69 out of the total of 83 expenditure heads covered under the Bill.

The Power and Function of the President to Exercise Proper Authority or Control over the Legislative Process

Without prejudice to the Administration’s position on Article 74 of the Basic Law (BL 74), our views on the proposed CSAs to the Appropriation Bill are set out below.
The Court of Appeal has in *Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* (CACV123/2012) confirmed that the LegCo President has the power and function to exercise proper authority or control over the legislative process. It is within the province of the President to ensure the orderly, fair and proper conduct of LegCo proceedings. It was also held that the Members’ right to speak or participate in the legislative process must be read with, and subject to, the power of the President to preside over meetings under BL 72(1).

In his ruling of 22 April 2013 on the CSAs proposed by six Members to the Appropriation Bill 2013, the President held the view that if the admission of certain proposed amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law, he will not hesitate to exercise his power to ensure the orderly, fair and proper conduct of meetings.

For the Appropriation Bill 2014, one Member has proposed some 1,500 CSAs, most of which are similar and interdependent CSAs to cut certain expenditure under a Head of Expenditure by different permutations. The Administration is of the view that most of these amendments, when considered together as a series of amendments to each individual Head or to a wide spectrum of Heads, are *frivolous* and if admitted would have the effect of *prolonging the legislative process* to the extent of preventing LegCo from properly exercising and discharging its powers and functions. That Member is among the few Members who have stated publicly the avowed intention to filibuster and delay the passage of the Appropriation Bill (as is clear from their public statement issued in the past week). The effect of prolonging legislative process was demonstrated in the past when similar CSAs were proposed by the same few Members in the proceedings on the Appropriation Bill 2013.

Many of the CSAs proposed by individual Members, if taken together, would produce *mutually conflicting and unintelligible* results. By way of example, a Member has proposed concurrently to reduce the salary of a Director of Bureau by one month, two months, three months, .... Obviously, if the CSA on a one-month cut is accepted, it would be in conflict with the other CSAs this Member has proposed in this same series. Taken together, these CSAs from the individual Member are frivolous and/or have the intended/likely
effect of unduly delaying the legislative process. Other examples of CSAs involving mutually exclusive permutations are set out below—

(a) 28 CSAs (number 10, 12 – 18, 20, 27, 30, 35, 41, 46, 47, 51, 53, 55, 57, 58, 60, 64, 68, 70, 73, 78, 80 and 83 in Annex A) from three Members, seeking to reduce the honoraria for non-official Members of the Executive Council in different permutations in terms of number of members involved and number of months of expenditure covered;

(b) 12 CSAs (number 349, 352, 359, 363, 365, 368, 374, 377, 382, 393, 402 and 411 in Annex A) from a Member, seeking to reduce the salary expenses for Secretary for Home Affairs by one month to 12 months;

(c) 12 CSAs (number 1204 – 1208, 1212, 1216, 1219, 1225, 1231, 1236 and 1242 in Annex A) from a Member, seeking to reduce the salary expenses for the Secretary for Constitutional and Mainland Affairs by one month to 12 months;

(d) 12 CSAs (number 1210, 1211, 1213, 1217, 1218, 1222, 1226, 1229, 1233, 1237, 1240 and 1244 in Annex A) from a Member, seeking to reduce the salary expenses for the Under Secretary for Constitutional and Mainland Affairs by one month to 12 months;

(e) 12 CSAs (number 637 – 640, 643, 647, 649, 652, 654, 659, 662 and 664 in Annex A) from a Member, seeking to reduce the salary expenses for the Secretary for Justice by one month to 12 months; and

(f) 72 CSAs (number 1645, 1648, 1653, 1657, 1662, 1667, 1674, 1686, 1699, 1708, 1715, 1720, 1724, 1727, 1731, 1737, 1740, 1744, 1745, 1748, 1750, 1754 – 1756, 1764, 1767, 1779, 1780, 1782, 1783, 1785, 1790 – 1793, 1799, 1800, 1804 – 1806, 1808, 1820 – 1822, 1825, 1830, 1831, 1836, 1838 – 1841, 1846, 1850 – 1853, 1855 – 1857, 1861 – 1863, 1865, 1869 – 1874, 1876 and 1877 in Annex A) from a Member, seeking to reduce the salary expenses for various ranks of officers responsible for vehicle registration in the Transport Department by one month to 12 months.
A few Members have proposed multiple CSAs involving expenditure cuts to 69 numbers of the Heads of Expenditure, which would have the effect of rendering the relevant bureaux and departments (e.g. Chief Executive’s Office, Hong Kong Police Force and Education Bureau) totally inoperable. These CSAs, if ruled in and endorsed by LegCo, would put public services into total disarray. As these provisions are essential to the continued operation of the relevant bureaux and departments, these CSAs relate to the “operation of the Government” and hence should not be introduced. Examples of these are set out below –

(a) 100 CSAs (number 695 – 794 in Annex A) from two Members, seeking to reduce either entirely or to one-month operating expenditure a series of major expenditure provisions for the Leisure and Cultural Services Department;

(b) 56 CSAs (number 102 – 119, 125 – 136, 137 – 146 and 228 – 243 in Annex A) from five Members, seeking to reduce either entirely or to $1,000 a series of major expenditure provisions for the Architectural Services Department, Correctional Services Department, Customs and Excise Department and Environmental Protection Department;

(c) 21 CSAs (number 795 – 815 in Annex A) from two Members, seeking to remove entirely the major expenditure provisions for the Economic and Trade Offices;

(d) 19 CSAs (number 816 – 834 in Annex A) from two Members, seeking to reduce either entirely or to $100 the major expenditure provisions for the Marine Department;

(e) 9 CSAs (number 430 – 438 in Annex A) from a Member, seeking to reduce to $10, $100, $1,000 or $10,000 the major expenditure provisions for the Government Logistics Department; and

(f) 1 CSA (number 1544 in Annex A) from a Member, seeking to remove the entire expenditure for the Government Secretariat: Development Bureau (Works Branch) to implement the transformation of Kowloon East into an attractive premier business district under the programme - Energizing Kowloon East.
We also note that some CSAs appear to refer to sums not included in the Appropriation Bill 2014 or not included under the subhead of Expenditure quoted. These include the CSAs to reduce the salary for Director of Housing, the provision for which is not included in the Appropriation Bill, and the CSA to cut the entire provisions for various programmes under Legislative Council Commission from its subhead 000, the provisions for which are included under various subheads in addition to subhead 000. More details are set out in Annex B. Furthermore, we note that 15 pairs of identical CSAs are proposed by the same Member. We consider these duplicate CSAs superfluous, frivolous and having the effect of prolonging Council proceedings. More details are set out in Annex C.

The President may well recall that during the course of proceedings on the Appropriation Bill 2013 (especially during the debates in relation to CSAs), the legislative process was unduly prolonged by filibustering to the extent that the President exercised his power under BL 72(1) to apply Rule 92 of the RoP to set a timetable for the rest of proceedings on the Bill to be completed. Paragraphs 11 and 13 of the President’s ruling on allocation of time for the remaining proceedings on the Appropriation Bill 2013 dated 16 May 2013 reflect how the admission of 710 CSAs to the Appropriation Bill 2013 and the debates that followed had seriously disrupted the proper functioning of the LegCo, and the President considered it appropriate to exercise his power under Bl. 72(1) to ensure the orderly, fair and proper conduct of meetings so that LegCo would not be prevented from properly exercising and discharging its powers and functions under the Basic Law.

We note that the CSAs proposed to the Appropriation Bill 2014 are similar in nature to those proposed to the Appropriation Bill 2013 in terms of the proposing Members as well as their substance, nature and coverage of Expenditure Heads. Taking into account the process during the Committee Stage of the Appropriation Bill 2013, the intention expressed by the same few Members concerned and the substantial increase in the number of proposed CSAs on this occasion, it is reasonable to anticipate that the CSAs would give rise to a similarly, if not more, protracted debating process on the Appropriation Bill 2014 in the Council this year. We therefore consider that the admission of these CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law.
Importance of Timely Passage of Appropriation Bill 2014

It is the responsibility of the Government to exercise the powers and functions conferred on it under Article 62 of the Basic Law. It is also the responsibility of the Government to assure the community that funds would be available in an orderly, predictable and timely manner to support committed public services. This duty to the community would be compromised if LegCo were to allow the passage of the Appropriation Bill to be unduly held back by avowed filibustering attempts from a few individual Members.

In view of the above, in order to ensure the proper exercise and discharge of the powers and functions of the LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, we consider that it is within the constitutional power and function of the President (to preside over meetings) under BL 72(1) and his power under RoP 92 to rule out the CSAs which are in the opinion of the President (a) frivolous or meaningless or (b) intended or likely to unduly delay the legislative process (i.e. to filibuster).

I should be grateful if the President could take the above analysis into account in considering whether to allow the CSAs under the relevant provisions in the Basic Law and the RoP.

Yours sincerely,

( Professor K C Chan )
Secretary for Financial Services and the Treasury
9 April 2014

Clerk to the Legislative Council
(Atth: Mr Thomas Wong)
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Wong,

Appropriation Bill 2014

I refer to the letter dated 9 April 2014 from the Secretary for Financial Services and the Treasury to the Secretary General of the Legislative Council Secretariat on the above subject.

In the light of further study on the Committee Stage Amendments (CSAs), in particular the last batch of 1445 CSAs sent to us in late afternoon on 7 April 2014, we have updated Annexes A and C to the aforesaid letter as follows –

(a) Annex A – textual amendments to the column of “objectives as understood” for eight CSAs (number 93, 700, 717, 726, 789, 794, 820 and 1491); and

(b) Annex C – the number of duplicate CSAs is changed from 15 pairs to 9 pairs, in the light of the job descriptions and titles of the posts concerned.
Please supersede Annexes A and C to the aforesaid letter accordingly.

Yours sincerely,

( Charlix Wong )
for Secretary for Financial Services and the Treasury
**President’s ruling on Committee stage amendments proposed by 17 Members to the Appropriation Bill 2015**

Seventeen Members have respectively given notice to move a total of 3,904 Committee stage amendments (“CSAs”) to the Schedule to the Appropriation Bill 2015 (“the 2015 Bill”) at the Council meeting of 22 April 2015 as follows:

(a) Hon WU Chi-wai proposes one CSA to reduce the provision for one Head of Expenditure;

(b) Dr Hon Helena WONG proposes two CSAs to reduce the provisions for two Heads of Expenditure;

(c) Hon Albert HO proposes three CSAs to reduce the provisions for two Heads of Expenditure;

(d) Hon Emily LAU and Hon CHEUNG Kwok-che each proposes three CSAs to reduce the provisions for three Heads of Expenditure;

(e) Hon James TO proposes four CSAs to reduce the provisions for one Head of Expenditure;

(f) Hon Claudia MO proposes four CSAs to reduce the provisions for three Heads of Expenditure;

(g) Dr Hon Kenneth CHAN and Dr Hon Fernando CHEUNG each proposes four CSAs to reduce the provisions for four Heads of Expenditure;

(h) Dr Hon KWOK Ka-ki proposes six CSAs to reduce the provisions for six Heads of Expenditure;

(i) Hon LEE Cheuk-yan proposes nine CSAs to reduce the provisions for four Heads of Expenditure;

(j) Hon Cyd HO proposes 10 CSAs to reduce the provisions for four Heads of Expenditure;
(k) Hon Gary FAN proposes 11 CSAs to reduce the provisions for 10 Heads of Expenditure;

(l) Hon WONG Yuk-man proposes 100 CSAs to reduce the provisions for 18 Heads of Expenditure;

(m) Hon CHAN Chi-chuen proposes 191 CSAs to reduce the provisions for 35 Heads of Expenditure;

(n) Hon Albert CHAN proposes 200 CSAs to reduce the provisions for 42 Heads of Expenditure; and

(o) Hon LEUNG Kwok-hung proposes 3349 CSAs to reduce the provisions for 80 Heads of Expenditure.

2. In considering whether the CSAs proposed by the 17 Members to the 2015 Bill are in order under the Rules of Procedure (“RoP”), I invited the Administration to comment on the CSAs and the Members to respond to the Administration’s comments on their CSAs. The Administration’s written comments on the CSAs have been provided to the Members.

The Administration’s comments

3. The Administration’s views on the proposed 3904 CSAs to the 2015 Bill are in Appendix I. In gist, the Administration is of the view that all the CSAs should not be admitted for the following reasons –

(a) the CSAs, if admitted, would unduly prolong the legislative process and prevent the Legislative Council (“LegCo”) from properly exercising and discharging its function to examine and approve budgets introduced by the Government under Article 73(2) of the Basic Law (“BL 73(2)“);

(b) the contents of all the 3740 CSAs proposed by Hon LEUNG Kwok-hung, Hon Albert CHAN and Hon CHAN Chi-chuen bear no relationship with their purported goals of filibustering, and none of their purported goals is relevant to the subject matter of the 2015 Bill and hence the proposed CSAs infringe Rule 57(4)(a) of the RoP;
(c) it would be wrong in principle if not wholly unconstitutional for
LegCo to admit and consider 2,371 CSAs the effect of which will
hinder the Government from meeting its obligations to
implement laws passed by the Council under BL 64 or subject
the Government to the potential risk of breaching its contractual
obligations as an Employer;

(d) it would be contradictory for LegCo to consider 28 CSAs which
seek to withhold the funding for the relevant schemes that have
been separately approved by LegCo or the Finance Committee;

(e) 2,843 CSAs proposed by a single Member which seek to reduce
a series of major expenditure provisions across 69
bureaux/departments, if admitted and passed, would seriously
disrupt the operation of the Government. As these CSAs relate
to the operation of the Government, they cannot be introduced
under BL 74; and

(f) 240 sets of CSAs proposed by different Members are identical
and 68 CSAs are technically inaccurate.

4. The Administration also submits that the timely passage of the 2015
Bill is critical as the interim funding secured through the Vote on Account
resolution pending the passage of the 2015 Bill would only be sufficient to
sustain public services for the months of April and May 2015. The
Administration therefore invites me to exercise my powers under BL 72(1)
and the RoP to rule out all the CSAs in the wider public interest.

Members’ responses

5. Except Dr Hon Kenneth CHAN, Dr Hon KWOK Ka-ki and
Hon LEUNG Kwok-hung, the other 14 Members either have no comments on or have not responded to the Administration’s views.

Dr Hon Kenneth CHAN’s response

6. Dr Hon Kenneth CHAN considers that the Administration’s views on
Members’ proposed CSAs have shown its arrogance and complacency by
asking LegCo to do what it says about the CSAs, and its intention to
bulldoze the 2015 Bill through LegCo as fast as it can. He urges me to
remind the Administration that it has no role in how LegCo plans its
proceedings on the 2015 Bill.
Dr Hon KWOK Ka-ki’s response

7. Dr Hon KWOK Ka-ki expresses strong dissatisfaction with the Administration’s comments. He hopes that I can safeguard Members’ right to monitor the Government’s governance, and allow Members to move their CSAs.

Hon LEUNG Kwok-hung’s response

8. Hon LEUNG Kwok-hung disagrees with the Administration’s views on the proposed CSAs for the following reasons –

(a) each of his CSAs is relevant to the 2015 Bill with an objective of targeting at public officers who have performed poorly, unnecessary operating expenditures of Government departments, unnecessary posts or new posts, or unnecessary projects or activities;

(b) the Administration has no grounds to judge whether the CSAs are meaningless until the proposers explain the CSAs in committee of the whole Council;

(c) the Government is accountable to LegCo, even if the passage of a CSA will render it unable to implement laws passed by LegCo under BL 64;

(d) the merits of CSAs and their impact on public services should not be relevant to the consideration of admissibility of the CSAs;

(e) his CSAs are proposed in the light of my ruling on the CSAs to the Appropriation Bill 2014 (“the 2014 Bill”) to provide fair and genuine choices for Members; and

(f) notwithstanding his proposing of a voluminous number of CSAs, I may control the time for debate in the exercise of my power under BL 72(1) to ensure that LegCo will not be prevented from its proper exercise and discharge of its constitutional functions.

9. In gist, Hon LEUNG Kwok-hung submits that his proposed CSAs are not frivolous or meaningless.
10. Under BL 73(2), LegCo has the power and function to examine and approve budgets introduced by the Government. Proposing amendments to and debate on an appropriation bill and the relevant estimates of expenditure which are subject to the Council’s examination are part and parcel of the legislative process for enacting the bill.

11. The legislative process for the examination, deliberation and enactment of an appropriation bill is set out in Rules 67 to 70 of the RoP. Following the presentation of an appropriation bill and the estimates containing the details of expenditure for the relevant financial year by the Financial Secretary to the Council under Rule 52(2) of the RoP, the Second Reading debate on the bill is adjourned and the estimates of expenditure are referred by me to the Finance Committee for examination before consideration of the bill in committee of the whole Council pursuant to Rule 71(11) of the RoP. The Finance Committee holds a series of special meetings and Members raise written questions seeking information on details of public expenditure.

12. Under Rule 69 of the RoP, Members may move amendments to any head of expenditure contained in the appropriation bill to reduce the sums allotted thereto in respect of any subhead/item therein, provided that the amendments comply with the prescribed form. The proposer of an amendment to reduce the appropriation to a particular head of expenditure is not required by the RoP to set out the objective to be achieved by reducing the proposed amount. Over the years, however, the Council has established the practice for the proposer to expressly state the objective of his/her amendment in giving notice, to facilitate Members to focus their deliberation on the proposed amendment in committee of the whole Council. This notwithstanding, the passage of a proposed amendment has the effect of only reducing the amount of appropriation to the specified head of expenditure, and the Administration is not mandated to implement the objective of the amendment as intended by the proposer.

13. This is the third successive year in which a large number of CSAs are proposed by a few Members to an appropriation bill. The total number of CSAs proposed to such a bill has risen from 762 in 2013 to 1,917 in 2014 and further to 3,904 this year. Before deciding on the admissibility of the voluminous number of CSAs to the 2015 Bill, it is incumbent upon me to first review the Council’s experience in the disposal of the proposed amendments in the past two years.
14. In 2013, I ruled admissible a total of 220 sequential CSAs to the Appropriation Bill 2013 (“the 2013 Bill”), each of which sought to reduce the appropriation to a particular Head of Expenditure for a specific purpose by a sequentially varying amount. I did not consider them to be frivolous or meaningless under Rule 57(4)(d) of the RoP. In my view then, the passage of any one of such amendments in a series would serve a substantive purpose and the passage of one such amendment vis-a-vis another in the same series would make a material difference\(^1\). I categorically stated in my ruling that I should not deprive Members’ right to propose certain amendments unless the admission of those amendments would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL\(^2\).

15. The Council’s experience, however, convinced me that the moving of sequential CSAs achieved no purpose other than taking up the Council’s time in completing the necessary proceedings. In the long debates lasting 67 hours on the proposed amendments to the 2013 Bill in committee of the whole Council, the proposers hardly explained the difference between the successive amendments in the sequential CSAs, and there was no exchange of views among Members on those CSAs. All the sequential CSAs were voted down by an overwhelming majority of Members.

16. In the light of the Council’s experience in the disposal of the sequential CSAs to the 2013 Bill, I considered that the Member proposing the sequential CSAs was not inviting committee of the whole Council to examine any fair and genuine choices of proposed reductions to the respective Heads of Expenditure. The moving of such CSAs was not reasonably connected with the functions of committee of the whole Council to discuss the details of a bill under Rule 56 of the RoP. I also formed the view that the admission of the sequential CSAs would give rise to a situation where LegCo would be prevented from its proper exercise and discharge of its constitutional powers and functions under BL. Therefore, I ruled all the 909 sequential CSAs to the 2014 Bill proposed by Hon LEUNG Kwok-hung to be infringing Rule 57(4)(d) of the RoP for being frivolous or meaningless\(^3\).

\(^1\) Paragraph 15 of the President’s ruling on Committee stage amendments proposed by six Members to the Appropriation Bill 2013 dated 22 April 2013.
\(^2\) Ibid, paragraph 17.
\(^3\) Paragraphs 13 and 14 of the President’s ruling on Committee stage amendments proposed by 14 Members to the Appropriation Bill 2014 dated 17 April 2014.
17. I noted then that Hon LEUNG Kwok-hung also proposed 26 pairs of CSAs each of which sought to reduce the appropriation to a Head of Expenditure for a specific purpose with the amounts representing the expenditure for one and six months, or one and 12 months. I allowed such CSAs to be moved on the assumption that they might be considered as providing fair and genuine choices for Members. Given my decision to rule inadmissible all the 909 sequential CSAs, I waived the notice requirement and allowed Hon LEUNG Kwok-hung to select two CSAs out of each sequence, totaling 232 CSAs, which I subsequently admitted.

18. However, the subsequent experience during the protracted debates on the proposed amendments to the 2014 Bill, which lasted 83 hours in committee of the whole Council, convinced me that the moving of the CSAs in pair, same as the sequential CSAs, also achieved no purpose other than taking up the Council’s time in completing the necessary proceedings. During this time, I observed little exchange of views among Members on those CSAs in pair. While providing broad-brush reasons for proposing reduced appropriation to a particular Head of Expenditure for a specific purpose, the proposer of such CSAs rarely articulated the reasons for proposing two amendments with the same objective and only with a difference in the amount to be reduced. The few Members who participated in the debates on the proposed amendments also did not articulate how the CSAs in pair had provided fair and genuine choices for Members. Like the sequential CSAs to the 2013 Bill, all the CSAs in pair to the 2014 Bill were voted down by an overwhelming majority of Members.

19. This year, out of the 3,904 proposed CSAs, Hon LEUNG Kwok-hung proposed a total of 3,349 CSAs. Five CSAs proposed by Hon LEUNG Kwok-hung refer to sums not included in the 2015 Bill or the Heads of Expenditure or refer to purposes not specified in the Estimates for the year ending 31 March 2016 (Appendix II). As the accuracy of such information is fundamental to the integrity of the proposed CSAs, these CSAs cannot be moved. Another two CSAs proposed by Hon LEUNG Kwok-hung have no material difference, and the one slightly lesser in the proposed reduced amount should not be moved.

20. Among the remaining 3,342 CSAs proposed by Hon LEUNG Kwok-hung, 3,280 fall into 1,640 pairs, each of which seeks to reduce the appropriation to a Head of Expenditure for a specific purpose with the amounts representing respectively the expenditure for six and 12 months, or three and six months (Appendix II). Hon LEUNG Kwok-hung has

---

evidently taken advantage of my admission of his proposed CSAs in pair to the 2014 Bill and proposes CSAs of the same form in a voluminous number to the 2015 Bill. His avowed intent is to force the Administration to accede to his demands with a filibuster.

21. While the motive of Members proposing the CSAs is not relevant to my consideration of admissibility of the CSAs, the impact of the admission of certain CSAs on LegCo in its efficient conduct as a law making institution is definitely relevant. As President, one of the constitutional powers and functions that I should exercise and discharge under BL 72 is to preside over meetings to ensure the orderly, efficient and fair disposition of LegCo’s business. It is incumbent upon me to ensure that the admission of CSAs is in accordance with BL and the RoP. In the exercise of my powers and functions under BL and the RoP, I fully respect Members’ right to participate in the legislative process, and this right, as affirmed by the Court of Appeal, must be read with, and subject to, the power of the President to preside over meetings under BL 72(1).

22. It is incumbent upon LegCo to complete examining and voting on an appropriation bill within a reasonable time at the start of the financial year in order to discharge its power and function under BL 73(2), given that a Vote on Account resolution moved by the Administration under the Public Finance Ordinance (Cap. 2) and passed by this Council would roughly be sufficient to meet about two months’ Government recurrent expenditure.

23. My assessment is that were the above-mentioned 3280 CSAs proposed to the 2015 Bill allowed to be moved, they would take up considerable time of the Council for completing the necessary proceedings. In addition to the time required for debate on these CSAs, considerable time will be spent by the Council to vote on these CSAs.

---

5 Paragraph 22 of the judgment of the Court of Final Appeal on LEUNG Kwok-hung v The President of the Legislative Council FACV 1/2014 (on appeal from CACV 123/2012). In paragraph 52 of the judgment of the Court of Appeal on LEUNG Kwok-hung v The President of the Legislative Council (CACV 123 of 2012), the Court held that the “orderly, fair and proper conduct of proceedings must be within the province of the President.”

6 Paragraph 45 of the judgment of the Court of Appeal on LEUNG Kwok-hung v The President of the Legislative Council (CACV 123 of 2012). In paragraph 25 of the judgment of the Court of Final Appeal on LEUNG Kwok-hung v The President of the Legislative Council, the Court held that “art. 73(1) does not confer on a member of LegCo a constitutional right to participate in its legislative processes by speaking. We agree with the conclusion reached by the Court of Appeal on this point and with Hartmann J in Leung Kwok Hung v President of Legislative Council who said: ‘The powers and functions described in art. 73 are not given to members of LegCo as individuals but to LegCo itself sitting as a legislative body.’”
24. As borne out by the Council’s experience, the moving of the CSAs in pair does not connect with the function of the committee of the whole Council under Rule 56 of the RoP. These CSAs do not provide any fair and genuine choices of proposed reductions to the respective Heads of Expenditure for examination by Members in committee of the whole Council. In my opinion, the 3,280 CSAs to the 2015 Bill infringe Rule 57(4)(d) of the RoP for being frivolous or meaningless. The admission of such CSAs would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL. I could not allow these CSAs to be moved.

25. In making the decision, I have duly considered the constitutional powers and functions of LegCo to examine and approve budgets under BL, the time-critical nature of an appropriation bill, the right of Members to participate in the legislative process and the Council’s experience in the disposal of the CSAs to the 2013 Bill and the 2014 Bill. I have struck a proper balance between respecting the right of individual Members to propose amendments and ensuring the efficient conduct of the Council as a law making institution.

26. I note the Administration’s concerns about the possible impact of some CSAs, if passed, on Government operation or Government’s fulfillment of certain legal or contractual obligations, or ongoing programmes or schemes previously approved by the Legislature. The 2015 Bill in its entirety is subject to approval by the Council. I do not accept that it would be “wrong in principle if not wholly unconstitutional” as suggested by the Administration for the Council to deal with CSAs that, if passed, would have the effect of hindering the Government from meeting its obligations under BL 64 to implement laws passed by the Council. Nor would I accept that it would be inappropriate for the Council to deliberate CSAs that, if passed, would subject the Government to the potential risk of breaching its statutory or contractual obligations as an Employer. The merits of CSAs are not relevant to my consideration of admissibility of CSAs.

27. Moreover, I could not agree with the Administration’s understanding of Rule 57(4)(a) of the RoP. This rule requires a proposed amendment to be relevant to the subject matter of the bill and the subject matter of the clause to which it relates. It does not concern the relevancy of the purported goal of the proposer of an amendment to the subject matter of the bill.
28. I note that there is disagreement between the Legislature and the Executive Authority on the interpretation of BL 74. It is incumbent upon me as President to apply the Council’s view that BL 74 does not apply to my consideration of admissibility of proposed CSAs to bills in accordance with the RoP. I have made my decision on the admissibility of the CSAs to the 2015 Bill in the exercise of my powers and functions in accordance with BL 72 and the RoP.

**My ruling**

29. I rule that:

(a) the 3,286 CSAs in Appendix II (not attached), proposed by Hon LEUNG Kwok-hung, are inadmissible; and

(b) the remaining 63 CSAs proposed by Hon LEUNG Kwok-hung and the 555 CSAs proposed by the other 16 Members are admissible.

(Jasper TSANG Yok-sing)
President
Legislative Council

20 April 2015
17 April 2015

Mr Kenneth Chen, SBS
Secretary General
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Secretary General,

Appropriation Bill 2015

Thank you for your letters dated 2, 10 and 13 April 2015 inviting the Government’s views on the proposed Committee Stage Amendments (CSAs) to the Appropriation Bill 2015 ("the 2015 Bill") against the provisions in Rules 57(4), 57(6) and 69 of the Legislative Council (LegCo)’s Rules of Procedure (RoP).

Responsibilities of the Government and Legislative Council

2. It is the responsibility of the Government to exercise the powers and functions conferred on it under Article 62 of the Basic Law (BL 62). It is also the responsibility of the Government to assure the community that funds would be available in an orderly, predictable and timely manner to support committed public services. This duty to the community, which we are sure is also shared by LegCo, would be compromised if the passage of the Appropriation Bill is unduly held back by avowed filibustering attempts through an unreasonably large number of frivolous or vexatious CSAs.
3. In order to ensure the proper exercise and discharge of the powers and functions of LegCo provided under BL 73, in particular the orderly, fair and proper conduct of proceedings, it would be, in our view, within the constitutional power and function of the President of LegCo (to preside over meetings) under BL 72(1) and his power under the Rules of Procedure of the Legislative Council (RoP) to rule out CSAs which are in the opinion of the President frivolous or meaningless, or intended or likely to unduly delay the legislative process (i.e. to filibuster), or has the effect of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law.

4. In addition, it would be within the constitutional competence of the LegCo President to take a robust approach to rule the above CSAs inadmissible under the relevant provisions of the LegCo RoP, having regard to the principles laid down by the Court of Final Appeal in Leung Kwok Hung v The President of the Legislative Council of the HKSAR FACV No 1 of 2014. In particular -

'... the courts will recognize the exclusive authority of the legislature in managing its own internal processes in the conduct of its business, in particular its legislative processes. The corollary is the proposition that the courts will not intervene to rule on the regularity or irregularity of the internal process of the legislature but will leave it to determine exclusively for itself matters of this kind ("the non-intervention principle")' (at paragraph 28) and

'... the court will exercise jurisdiction to determine the existence of a power, privilege or immunity of LegCo. We also arrived at the conclusion that the courts will exercise jurisdiction to determine the existence of a power, privilege or immunity of the President of LegCo. We arrived at this conclusion in the light, not only of art 73(1), but also of the provisions of art 72 of the BL and the important powers and functions which it confers on the President, particularly the power to "preside over meetings". The courts, however, will not exercise jurisdiction to determine the occasion or the manner of exercise of any such powers, privileges or immunities either by LegCo or the President.' (at paragraph 43).

Whilst the CFA decision and above principles are laid down in the context of the President's power to set limits to and terminate a debate (paragraph 46 of the judgment), they are, in our view, similarly applicable in the interpretation and application of the relevant Rules in the RoP in respect of filibustering cases i.e. there is the avowed intention of the Member(s) concerned to filibuster for purposes irrelevant to the subject matter, as in the present case of the 2015 Bill.
5. In short, the principle of non-intervention as outlined above would lend support to the President's power and function to take a robust approach in the present case in determining the admissibility of the proposed CSAs under the relevant Rules in the RoP. This would be within the constitutional competence of the President under BL 72(1) (to preside over meetings) and BL 72(6) (to exercise other powers and functions as prescribed in the rules of procedure of the LegCo). We consider that it would be in the wider public interest for the President to do so.

Government's views on the 3,904 CSAs

6. Having examined the 3,904 CSAs across 80 (of 83) Heads of Expenditure under the 2015 Bill, the Government is of the firm and clear view that the CSAs are of the same nature as described in paragraphs 3 to 5 above and therefore should not be admitted. Our reasons are set out below.

(A) Preventing LegCo from properly exercising and discharging its function “to examine and approve budgets introduced by the government” under BL 73(2)

7. Based on LegCo’s experience in handling the 1,192 CSAs proposed to the 2014 Appropriation Bill (“2014 Bill”), voting alone on the 3,904 CSAs to the 2015 Bill, if admitted, would require 12 days spanning across four weeks, assuming LegCo meets ten hours a day and three days a week on the subject. Admitting the CSAs in question would unduly prolong the legislative process and clearly undermine the performance of the powers and functions of LegCo under BL 73(2).

8. Without prejudice to the Government’s position on BL 74, we note that the President had already ruled on 22 April 2013 that CSAs which would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under the Basic Law should not be allowed to be moved. We further note that the President ruled on 17 April 2014 not to admit 909 sequential CSAs on the following grounds –

(a) the sequential CSAs would not serve any purpose reasonably connected with the function of the committee of the whole Council, hence infringing RoP 57(4) for being frivolous or meaningless. In paragraph 13 of the ruling, the President stated that “[t]he 909 sequential CSAs do not serve any purpose reasonably connected with the function of the committee of the whole Council. In my opinion, the
sequential CSAs infringe Rule 57(4)(d) of the Rules of Procedure for being frivolous or meaningless when each of them is considered in the context of the other amendments also being proposed by the same Member in respect of the same head or sub-head of expenditure and the experience of last year’s debates on sequential CSAs to the 2013 Bill”; and

(b) as demonstrated from the committee stage deliberations on the Appropriation Bill in 2013 (“2013 Bill”), these CSAs were hardly explained and achieved no purpose other than taking up the Council’s time in completing the necessary proceedings. In paragraph 14 of the ruling on the 2014 Bill, the President stated that “in the light of what transpired in the debates on sequential CSAs to the 2013 Bill .... the admission of the 909 sequential CSAs to the 2014 Bill would have the demonstrable effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions under BL”.

9. The Government is of the view that the same situation will occur in relation to debates on the 2015 Bill, and the same principles should be applied to the 3,904 CSAs proposed to the 2015 Bill, including 3,349 from a single Member, as they would have the same effect of prolonging and delaying the LegCo proceedings on the Appropriation Bill and would prevent LegCo from properly exercising and discharging its powers and functions under BL 73. The overriding majority of the proposed CSAs are presented in different forms of sequences. They would not achieve any purpose reasonably connected with the function of the committee of the whole Council other than taking up or prolonging the Council’s time in examining and approving the budget, and are in breach of RoP 57(4)(d) for being “frivolous or meaningless”. For consistency in the application of the President’s rulings, the following proposed CSAs should not be allowed -

(a) 30 CSAs (Annex A1) seeking to reduce the full-year and half-year honorarium for one to 15 non-official Executive Council members; and

(b) 3,254 CSAs, presented as 1,627 pairs, seeking to cut the full-year and half-year provisions, or the half-year and quarterly provisions, for a random mix of expenditure figures under 78 Heads of Expenditure (Annex A2).
10. In item (b) of paragraph 9 above, we note that the total of 1,192 admitted CSAs are seeking to reduce a random mix of expenditure provisions by different permutations across 69 Heads of Expenditure under the 2014 Bill. Of this total, some 280 are similar CSAs proposing both full-year and half-year cuts to the same expenditure provisions. Same as the President's observation made in paragraph 11 of the ruling on proposed CSAs to the 2014 Bill, we note that the debate of the committee of the whole Council on the 2014 Bill proved beyond doubt that the non-targeted CSAs presented in such patterns were frivolous and meaningless – the proposers had hardly given any clear explanation of or justification for the differences between reducing the full-year and reducing the half-year provisions in each of the CSA pairs. There was hardly any substantial exchange of views or deliberations specifically on the differences amongst these CSAs within each of the Heads of Expenditure. These proposed CSAs (both the total number and number of Heads affected have substantially increased this year) should therefore be ruled out in the same way as those sequential CSAs disallowed last year. In our view, they all have the effect of prolonging the legislative process to the extent of preventing LegCo from properly exercising and discharging its powers and functions.

(B) Avowed intention of filibustering for purposes irrelevant to the subject matter of the Appropriation Bill 2015

11. Hon Leung Kwok-hung has moved 3,349 CSAs, Hon Albert Chan 200 CSAs and Hon Chan Chi-chuen 191 CSAs. At a media briefing held on 14 April, the three Members admitted that the CSAs were tactics to filibuster the passage of the 2015 Bill, and were intended to exert pressure on the Government to implement universal retirement protection, review the Comprehensive Social Security System, disburse a cash grant of $10,000 per head, legislate for maximum working hours, and withdraw the plan on the Third Runway system. Extracts of their comments as reported in various papers are in Annex B. The first four purported goals involve fundamental policy changes and substantial increases in government expenditure clearly straddling beyond the year 2015-16; none of these is relevant to the Appropriation Bill for 2015-16. The last purported goal on the Third Runway is also irrelevant because the Third Runway would not be financed through the appropriations for 2015-16. In any event, the contents of the CSAs bear no relationship with the
purported goals of the filibustering moves. They serve no purpose other than delaying the passage of the 2015 Bill. This is essentially a repeat of the tactic deployed in respect of the 2014 Bill which proved to have led to no consequences other than delaying proceeding in LegCo. It is noted that in his ruling on CSAs proposed to the 2014 Bill, the President stated that while the motive and the merits of CSAs were not relevant to the consideration of admissibility of CSAs, he could not ignore the new developments including the Council’s experience in the disposal of the sequential CSAs when considering the admissibility of sequential CSAs (paragraph 18 of the ruling). The experience of the similar debates in the past shows that the admission of the proposed sequential CSAs would give rise to a situation where LegCo would be prevented from its proper exercise and discharge of its constitutional powers and functions. We invite the President to rule out the CSAs moved by the three Members in this context.

12. We also submit that the avowed intention and irrelevance of the purported goals of Members for moving the proposed CSAs should be taken into account by the President when considering admissibility under Rule 57(4)(a) of the RoP. In this context the CSAs moved by the three Members are irrelevant to the 2015 Bill and infringe Rule 57(4)(a) of the RoP.

(C) Hindering the Government from discharging its obligation to “implement laws passed by the Council” under BL 64 and from fulfilling contractual obligations

13. 2,371 CSAs seek to cut in entirety or by the half-year provision the Government’s statutory contribution to the Mandatory Provident Fund, pension payments for retired civil servants and judicial officers, and the salaries and allowances for the public servants under various Heads of Expenditure. Specifically -

(a) 2,020 CSAs seek to cut the personal emoluments (including salaries, allowances and job-related allowances) either for the relevant Bureaux or Departments and/or for specific individuals or categories of directorate or non-directorate civil service or non-civil service posts under various Heads of Expenditure (Annex C1);
(b) 339 CSAs seek to cut personnel related expenses (including Mandatory Provident Fund contribution, Civil Service Provident Fund contribution and Disturbance allowance) (Annex C2); and

(c) 12 CSAs seek to cut pension-related provisions, including public and judicial service pension benefits and compensation, contract gratuities, surviving spouses’ and children’s pensions and widows’ and orphans’ pensions, volunteer and defence force pensions (Annex C3).

14. It would be **wrong in principle if not wholly unconstitutional** for LegCo to admit and consider CSAs that would have the effect of hindering the Government from meeting its obligation under BL 64 “to implement laws passed by the Council”. It would also be inappropriate for LegCo to admit and consider CSAs that would subject the Government to the potential risk of breaching its statutory and contractual obligations as an Employer.

**D) Curtailing social security and other fundamental public services in such a way as to contradict earlier decisions of LegCo and FC**

15. 28 CSAs seek to wipe out in entirety or by the half-year provision the funding for Comprehensive Social Security Assistance Scheme, the Social Security Allowance Scheme (including the Old Age Living Allowance), the Public Transport Fare Concession Scheme for the Elderly and Eligible persons with Disabilities, subvention for rehabuses, legal aid costs and purchase of water etc. Annex D is relevant. If admitted and endorsed, these CSAs would effectively curtail the operation of these schemes, much to the detriment of all the needy individuals and families. These proposed CSAs would not be consistent with the earlier deliberations of LegCo and FC on these schemes. Unless LegCo or FC agreement has been reached to undo the schemes concerned, as a matter of principle, it would be **contradictory** for LegCo to consider CSAs to the Appropriation Bill that would withhold funding for the schemes that have been separately approved by LegCo/FC.
(E) Affecting public expenditure and the operation of the Government

16. 2,843 CSAs (Annex E) from a single Member seek to reduce a series of major expenditure provisions across 69 bureaux/departments (including the Education Bureau, Social Welfare Department, Immigration Department, Transport Department, Water Supplies Department, Fire Services Department and Leisure and Cultural Services Department, etc.), including full-year subvention provisions for all aided primary and secondary schools, Hospital Authority, all University Grants Committee-funded institutions and all non-governmental organisations. If admitted and endorsed, these CSAs would have the material effect of putting public services into total disarray and seriously disrupting the operation of the Government. Given that these provisions are essential to the continued operation of the relevant bureaux and departments, these CSAs relate to the “operation of the Government” and should not be introduced.

17. In line with the Government’s established position on BL 74, as set out in our letter of 23 March 1999 to LegCo, we would reiterate that CSAs to the Appropriation Bill relating to public expenditure and the operation of the Government cannot be introduced.

(F) Duplicative, unintelligible or wrong

18. We note that around 240 sets of identical CSAs are proposed by different Members and that 68 CSAs are technically inaccurate. As accuracy is fundamental to the integrity of the proposed CSAs, we submit that these should be ruled out. More details are set out in Annex F1 and Annex F2.

Timely Passage of Appropriation Bill 2015

19. The timely passage of the Appropriation Bill is critical. Scheduled payments due in early June 2015 would be affected if the Appropriation Bill could not be passed by LegCo by mid May of 2015. The interim funding secured through the Vote on Account Resolution pending the passage of the 2015 Bill would only be sufficient to sustain public services for the months of April and May 2015.
20. We should be grateful if the President could take the above views and analysis into account in considering whether to allow the proposed CSAs under the relevant provisions of the Basic Law and the RoP.

Yours sincerely,

(Professor K C Chan)
Secretary for Financial Services and the Treasury
Appendix 12-A

Extract from the Finance Committee Procedure

Procedure of Special Meetings to Examine the Estimates of Expenditure

49. The Financial Secretary formally presents the annual Estimates of Expenditure to the Council at the meeting at which the Appropriation Bill is read the first time and provides advance copies of the Estimates of Expenditure to members a few days before that meeting. The President may then refer the Estimates of Expenditure to the Committee for its examination at special meetings before consideration of the Appropriation Bill in a committee of the whole Council [Rule 67 and 71(11)]. The purpose of the examination is to ensure that the provision sought is no more than is necessary for the execution of approved policies.

50. Prior to the special meetings, members may raise questions on the Estimates of Expenditure for written replies from Controlling Officers, through their respective Directors of Bureau as appropriate. Directors of Bureau and Controlling Officers will deal with any supplementary questions arising from these written replies either orally at the special meetings or in writing afterwards. (FCR(2003-04)17)

51. The Committee normally holds the special meetings in public over three full days after the First Reading of the Appropriation Bill. Directors of Bureau and Controlling Officers without a Director of Bureau appear in different sessions of these meetings. Directors of Bureau will attend with their key Controlling Officers. Directors of Bureau and Controlling Officers without a Director of Bureau may make a short introduction to highlight their policy areas, the priorities for the year ahead and the requested resources. (FCR(2003-04)17)

52. Members then ask questions on points made during the introduction, the written replies to members’ initial questions and the Estimates of Expenditure. The Directors of Bureau and Controlling Officers in attendance answer members’ questions and provide supplementary information in writing after the meetings, if necessary. (FCR(2003-04)17)

53. After the special meetings, the Chairman shall present a report on the proceedings of the meetings to the Council.
References


Audit Ordinance (Cap. 122.).

Basel Evangelical Missionary Society Incorporation Ordinance (Cap. 1002).


Canadian Code for Ministers and Public Office Holders.

Cheng Kar Shun and Another v Li Fung Ying and Others [2011] 2 HKLRD 555.

Cheng Yin Fung v Legislative Council, CACV 378/2008.


Citibank (Hong Kong) Limited (Merger) Ordinance (Cap. 1177).

Commissions of Inquiry Ordinance (Cap. 86).

Commissioner for Administrative Complaints Ordinance (Cap. 397)

Companies Ordinance (Cap. 622).

Competition Ordinance (Cap. 619)


Copyright Ordinance (Cap. 528).

Defamation Ordinance (Cap. 21)
Dentists Registration Ordinance (Cap. 156)


Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541D).

Electoral Affairs Commission Ordinance (Cap. 541).


Exchange Fund Ordinance (Cap. 66).

Glory Success Transportation Limited v Secretary for Justice, HCAL 93/2006.

Government Gazette (GN 155/2014).


Hong Kong Bill of Rights Ordinance (Cap. 383).

Hong Kong Export Credit Insurance Corporation Ordinance (Cap. 1115).

Hong Kong Reunification Bill.


Housing Ordinance (Cap. 283).

Insurance Companies Ordinance (Cap. 41).

Interpretation and General Clauses Ordinance (Cap. 1).

Ji, Pengfei. Address at the Third Session of the Seventh National People's Congress, 28 March 1990.


Jury Ordinance (Cap. 3).

Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Legislative Council (Powers and Privileges) Ordinance, Administrative Instructions for Regulating Admittance and Conduct of Persons (Cap. 382 sub.leg. A)

Legislative Council Commission Ordinance (Cap. 443).

Legislative Council Ordinance (Cap. 542).

Legislation Publication Ordinance (Cap. 614).

Letters Patent.


*Leung Kwok Hung v The President of the Legislative Council of the Hong Kong Special Administrative Region* [2007] 1 HKLRD 387.


Mandatory Provident Fund Scheme Ordinance (Cap. 485).

Marine Fish (Marketing) Ordinance (Cap. 291).

Members' Standards of Office Act 1986 (Ontario).

Motor Vehicles (First Registration Tax) Ordinance (Cap. 330).

Oaths and Declarations Ordinance (Cap. 11).

Official Languages Ordinance (Cap. 5).

Personal Data (Privacy) Ordinance (Cap. 486).

Pharmacy and Poisons Ordinance (Cap. 138).

Places of Public Entertainment Ordinance (Cap. 172).


Private Bills Ordinance (Cap. 69).

Public Finance Ordinance (Cap. 2).

Public Revenue Protection Ordinance (Cap. 120)

Registered Trustees Incorporation Ordinance (Cap. 306).

Royal Instructions.

Rules of United States House of Representatives (114th Congress).

Securities and Futures Ordinance (Cap. 571).

Standing Orders of the House of Commons, United Kingdom.

Standing Orders of the House of Representatives, New Zealand.

UK Supreme Court Act 1981.
General Index

Access to information 13.32, 13.49, 16.51 – 16.60

Adjournment
  debate 1.20 – 1.21, 6.44, 7.97, 10.68 – 10.85, 13.113
  of the Council 1.17, 2.62
  of debate 1.17, 10.15 – 10.16 (see Motions, types – dilatory motions)
  of the proceedings of the committee of the whole Council 10.15, 10.17
    (see Motions, types – dilatory motions)
  of the proceedings of the Finance Committee (see Finance Committee,
    proceedings)

Administrative Instructions for Regulating Admittance and conduct of Persons
2.28, 4.51, 13.7, 16.18, 16.21

Advisory Guidelines on Members' conduct 3.46 – 3.54

Affirmation (see Oath)

Agenda of the Council 2.84, 7.35 – 7.36

Amendment to Annex II of the Basic Law 2.38, 2.46 – 2.49

Anticipation rule (see Rule of anticipation)

Archives (see Legislative Council Archives)

Appropriation Bill 6.30 – 6.31, 7.3, 12.5 – 12.6 (also see Estimates)
  amendments to 11.122 – 11.129, 12.45 – 12.46, 12.55 – 12.61,
  examination by Finance Committee 12.47 – 12.52
  introduction of 7.3, 12.33 – 12.43
  scheduling of Council meetings 12.42
  procedure in the committee of the whole Council 12.54 – 12.62
  refusal to pass 12.64
  second reading debate on 11.79, 12.53
  third reading 11.109, 12.63

Attendance, Members’ 3.43, 15.37

Attire 8.44 – 8.48

Behaviour at Council meetings when not speaking (see Members)

Bills, amendments to
  charges upon the revenue 11.132 – 11.133
  form of amendments 11.113
  frivolous or meaningless 11.122 – 11.129
  notice 11.112
  restrictions 11.114 – 11.133
  relevance 11.115 – 11.119
  unintelligible 11.121

Bills, classification of 11.8 – 11.12
  Government bills 7.78 – 7.80, 11.11, 11.65 – 11.66
  Members' bills (see Members' Bills)

Bills, form
  commencement date of 11.23
  enacting formula 11.21
  explanatory memorandum 11.29
  language of 11.24
  saving provision for private bills 11.30
structure of 11.25 – 11.28
preamble 11.22
title 11.14 – 11.17
title, long 11.18 – 11.20
title, short 11.23
Bills, private (see Members' Bills)

Bills, proceedings on
committal or recommittal of 1.14, 11.94 – 11.96, 11.107
first reading 11.74 – 11.75
gazettal and presentation of 11.64 – 11.71
introduction of Government bills 6.22, 7.78 – 7.80, 11.65 – 11.66
introduction of Members' bills 6.23, 7.88 – 7.89, 11.67 – 11.68
notice 2.83, 11.64
notice of amendment 11.112
promulgation 11.138
reconsideration of 1.41, 1.49, 2.6, 5.5, 5.75 – 5.78, 10.99, 11.71, 11.138, 11.150
referral to House Committee 11.80
refusal to pass an important bill 5.6, 5.79 – 5.80
report to the Council 11.105 – 11.106, 11.108
resumption of the second reading debate 11.92 – 11.93
scrutiny of 5.92, 7.4
second reading 11.76 – 11.79
third reading 11.109 – 11.111
withdrawal or postponement 7.105, 11.134 – 11.137

Bills Committees 1.25, 1.48, 2.24, 6.12, 6.26, 6.55
consideration of a bill by 11.87
queuing system for 11.83 – 11.86

Broadcasting of proceedings 16.22

Budget
 Appropriation Bill and revenue proposals 12.5 – 12.12
(also see Appropriation Bill; Estimates)
approval of 2.10 – 2.11, 12.1
consultation 12.31
cycle (see Financial Procedure)
debate 6.29 – 6.31, 7.3, 12.53
meetings 12.42 – 12.46 (also see Appropriation Bill)
refusal to pass a budget 5.79 – 5.80, 12.64 – 12.65

Business of the Council
cycle 7.2 – 7.5
order of 7.37 – 7.40
scheduling of 8.33
standing over of 7.9
time orders 8.34 – 8.35

By-elections (see Elections of Members of the Legislative Council)
Capital Works Reserve Fund (see Financial Procedure)
Censure of Member 3.110 – 3.122, 3.123
Chairman of the House Committee  2.79, 4.11, 5.94, 11.91
Chairman of The Legislative Council Commission (see President of the Legislative Council)
Charges upon the revenue, "charging effect"
   2.8 – 2.9, 2.10, 10.45 – 10.56, 11.49, 11.132 – 11.133, 12.13, 12.78
   (also see Bills, amendments to)
Chief Executive
   addresses and statements  5.3, 5.12 – 5.14, 5.15 – 5.27, 5.50 – 5.53, 16.66
   (also see Policy Address)
   attendance at committee meetings  5.54 – 5.59
   motion of impeachment of (see Motions, for a purpose with legislative effect)
   Question and Answer Session  5.41- 5.49
   reference to the conduct of  5.70 – 5.74
Clerk to committees  1.55, 2.85, 4.39
Clerk to the Legislative Council  1.26, 1.35, 2.81 – 2.85, 4.17 – 4.18, 4.20, 4.23, 11.28, 16.52, 16.56, 16.60
Closing of debate  (see Debate)
COMAC (Office of the Commissioner for Administrative Complaints)  15.10, 15.14 – 15.15
Committees, inquiries
   evidence and documents  14.45 – 14.52
   internal deliberations  14.44
   practice and procedure  14.18 – 14.22
   preparation for  14.14 – 14.15
   reports  14.53 – 14.59
   reports, minority  14.58
   terms of reference  13.43, 14.5, 14.13, 14.21
   witnesses  14.33 – 14.43, 14.61 – 14.64
   work plan  14.23
Committees, system
   development of  1.25, 6.1, 6.3 – 6.16, 13.25 – 13.27
   formation  13.35 – 13.44
   membership of  13.45 – 13.68
   nature of the practice and procedure of committees  13.8 – 13.32
   powers and functions of  6.19 – 6.56, 13.3 – 13.7
   chairman and deputy chairman of  13.69 – 13.95
   subcommittees  6.17
Committees, types  6.17 – 6.18
   Bills Committee (see Bills Committees)
   Committee of the whole Council  (see Committee of the whole Council)
   Committee on Access to the Legislature's Documents and Records  13.32, 16.56 – 16.57
   Committee on Rules of Procedure  1.38, 1.50, 6.57, 13.28 – 13.29
   Committee on Members' Interests  (see Committee on Members' Interests)
   Finance Committee (see Finance Committee)
   House Committee (see House Committee)
   Investigation Committee (see Investigation Committee)
Panels (see Panels)
Public Accounts Committee (see Public Accounts Committee)
Select committees (see Select committees)
Standing committees 1.56, 6.4, 13.9

Committee on Members' Interests
functions of 3.91 – 3.93, 6.7, 6.11, 13.20
procedure for handling complaints 1.56, 4.79 – 4.80, 13.21

Committee of the whole Council
Chairman of 2.70, 2.80, 7.11, 7.29 – 7.30, 11.94, 11.105, 12.13, 12.54, 14.40
committal of a bill to 11.94 – 11.96
functions of 6.28, 7.12
proceeding of 11.97 – 11.104
quorum of 7.15 – 7.21
speaking in 7.13, 8.25 – 8.37

Committee proceedings
adjournment 13.141 – 13.145
admission of the public 16.18 – 16.19
disorderly conduct 8.73 – 8.75, 13.89 – 13.92
duty visits 13.152 – 13.154
election of chairman and deputy chairman 13.69 – 13.75
meeting time 13.76 – 13.81
minutes and reports 13.156 – 13.160
motions 13.115 – 13.120
motions at panel meetings 13.117 – 13.120
notice and agenda of meetings 13.82 – 13.88
provision of papers 13.101 – 13.106
practice and procedures 13.8 – 13.9, 13.33 – 13.34
public hearings and deputations 16.4 – 16.13
quorum 13.107 – 13.112
reports to the Council 7.65 – 7.66, 13.158 – 13.159
reports to the House Committee 13.160
rules of order 8.73 – 8.75
voting rights of chairman 13.96 – 13.100

Confidence motions (see Motions for exercising a view and not intended to have legislative effect)
Conflict of interest (see Members' interests)
Constituencies 3.6 – 3.14
functional constituencies 1.25, 2.46 – 2.49, 2.51 – 2.53
geographical constituencies 1.25, 2.44, 2.46, 2.51
Counsel to the Legislature 1.26, 1.35, 2.86 – 2.88
Debate 1.14, 1.17 – 1.18, 8.4
closing of 8.28 – 8.32
content of speeches 8.38 – 8.42
interruptions 8.11 – 8.15
number of times of speaking 8.22 – 8.24
process of 10.64 – 10.67
speaking order 8.5 – 8.10
speaking time 1.31, 8.16 – 8.21, 11.147
Decorum 8.1 – 8.2
Deputy President of the Legislative Council 1.25
Disciplinary actions 8.60 – 8.72
Disorderly behaviour in the precincts of the Chamber 2.28
Disorderly conduct at Council and committee meetings 1.18, 8.60 – 8.75, 16.14, 
16.18 – 16.19
Display of objects at Council meetings 8.52 – 8.58
Disqualification of Members from office (see Members)
Dissolution of the Council 2.65
Divisions 7.124
Dress code (see Attire)
Duty Roster Members 15.21 – 15.24, 15.30 – 15.34
Election Committee 2.42
Elections of Members of the Legislative Council
  general elections and by-elections 3.20 – 3.21
  qualifications 3.17 – 3.19
Elucidation, seeking 8.12 (also see Debate, interruptions)
Establishment Subcommittee (see Finance Committee)
Estimates
  amendment to heads of expenditure (see Appropriation Bill)
  Budget (see Budget)
  changes to the approved 12.6 – 12.9, 12.70 – 12.82
  examination of (see Finance Committee)
  funds (see Financial procedure)
  written questions 12.48 – 12.49
Freedom from arrest 2.16, 2.29, 2.31
Freedom of speech 2.16, 2.29 – 2.30, 14.69
Finance Committee 1.24, 1.56, 3.36 – 3.37, 6.6, 6.34, 6.57
  Establishment Subcommittee 3.38, 12.80 – 12.81
  examination of the Estimates 12.47 – 12.52
  function of 12.71
  practice and procedure 13.10 – 13.15
  Public Works Subcommittee 3.38, 12.82 – 12.92
  subcommittees 12.79 -12.82, 13.60
Finance Committee, proceedings
  adjournment of proceedings 13.141 – 13.145
  agenda items 12.76, 13.85 – 13.88
  curtailment of discussion 13.93 – 13.95
  financial proposals, submission and re-submission 12.76, 12.93
  motions at Finance Committee meetings 12.77 – 12.78, 13.121 – 13.140
  voting 13.151
Financial Procedure
  block allocations 12.87 – 12.89
  Capital Works Reserve Fund 12.83 – 12.92
charges upon public revenue (see Charges upon the revenue, "charging effect")
fiscal reserves 12.21 – 12.28
funds established by the Legislative Council 12.19
government control of finances 12.14 – 12.17
resource allocation exercise 12.30
Public Works Programme 12.82, 12.85

Green Paper on The Further Development of Representative Government in Hong Kong 1.22

Guide for Reimbursement of Operating Expenses for Members of the Legislative Council 3.90, 4.66 – 4.80

Hansard (see Official Records of proceedings of the Council)
History of formation of HKSAR Legislature 2.39 – 2.54

House Committee
consideration of legislative proposals by 11.80 – 11.86, 11.88 -11.91, 11.142 – 11.145
Mode of operation 13.162 – 13.166
Parliamentary Liaison Subcommittee 13.170
relationship with other committees 1.38, 1.40, 6.12, 6.25, 6.41 – 6.47, 6.49 – 6.51, 6.56, 6.58
role of 1.52, 5.94, 6.26 – 6.27, 11.77, 13.162, 14.10 – 14.11, 15.40
setting-up of 1.25, 1.48, 6.12, 11.78, 13.8


Immunities of Members (see Powers and privileges)

Interruptions (see Debate)
Investigation Committee 1.58, 3.117 – 3.120, 6.15, 13.30
Joint Declaration 1.23, 12.83
Judicial appointments and removals 2.13, 5.9, 6.49 – 6.51
Legal Adviser of the Legislative Council Secretariat (see Counsel to the Legislature)
Legislative Council Archives 16.42 – 16.50

Legislative Council Commission, The
Chairman and deputy chairman of 4.11 – 4.13, 4.29
committees of 4.34 – 4.38, 4.67
establishment of 4.1, 4.6 – 4.10
financial arrangements for 4.21 – 4.28
functions and powers of 4.14 – 4.20
legal position of 4.55 – 4.56
meetings of 4.29 – 4.33
membership of 4.11 – 4.12

Legislative Council Library 4.48, 4.68, 14.59, 16.32 – 16.41
Legislative Council Secretariat 1.26, 4.6, 4.39 – 4.42 (also see OMELCO Secretariat)

Legislative process 1.15, 6.25 – 6.28, 7.3 – 7.4, 7.78 – 7.80 (also see Bills, proceedings on; Bills Committees; Committee of the whole Council)
Legislative proposals
  types  6.22 – 6.24, 11.3 – 11.6  (also see Bills; Subsidiary legislation)
  pre-legislative scrutiny  11.38 – 11.41, 11.140 – 11.141
Meetings of the Council
  adjournment of  (see Adjournment of the Council)
  admission of the public  16.18 – 16.19
  agenda (see Agenda of the Council)
  disorderly conduct of members of the public attending meeting  16.14
  display of objects (see Display of objects at Council meetings)
  language used at  7.34, 12.52
  order of business (see Order of business of the Council)
  records of  4.17 – 4.18, 7.130 – 7.134
  scheduling of  2.59, 2.61, 7.6 – 7.10
  suspension of  2.62, 7.7
  withdrawal of Members for disorderly conduct  8.66 – 8.72
Media
  access to precincts  2.28, 4.52 – 4.54, 16.18 – 16.21
Members
  addressing a Member  3.40 – 3.42
  behaviour at Council meetings when not speaking  8.43 – 8.51
  cessation of office  3.94 – 3.95
  complaints against  15.36 – 15.39
  disqualification of  3.96 – 3.122
  exemption from attending court proceedings as a witness  2.16, 2.33 – 2.34
  exemption from jury service  2.16, 2.32
  immunities and rights  2.8, 2.15 – 2.16, 2.29 – 2.32, 14.8
  interferences with  2.35
  qualifications of  3.17 – 3.19
  remuneration and reimbursements  3.90, 4.57 – 4.80
  responsibilities and conduct  3.43 – 3.54
  sanctions  3.91 – 3.93, 3.123
  term of office  3.22 – 3.24
Members' bills
  as a private bill  11.8 – 11.10, 11.67 – 11.68
  compliance with Article 74 of the Basic Law  11.11 – 11.12, 11.42 – 11.62
  form of  (see Bills, form)
  procedures for  7.88 – 7.89
  pending scrutiny by a Bills Committee  11.84
  voting method  7.113 – 7.114
Members' interests
  conflict of interests  3.63
  investigation of breaches  3.91 – 3.93
  pecuniary interests  3.79 – 3.89
  registration and disclosure of  1.25, 3.55 – 3.78
Minutes of proceedings of the Council  7.130 – 7.131, 11.150
Motion of Thanks  5.28 – 5.40, 6.40, 7.3
Motions
  application of Article 74 of the Basic Law to general 2.83, 10.3 – 10.6
Motions, for a purpose with legislative effect 7.90 – 7.92
  for disqualifying a Member from office 1.41, 3.110 – 3.112, 3.114 – 3.116, 10.99
  for impeachment of the Chief Executive 1.41, 5.60 – 5.66
  for making or amending subsidiary legislation and other instruments 7.81 – 7.87
  for providing a specific procedure (see Resolutions of the Council)
  for reconsidering a bill returned by the Chief Executive (See Bills, proceedings on)
  for speaking on subsidiary legislation and other instruments 7.63 – 7.66, 7.81 – 7.87, 10.96 – 10.98
Motions, for expressing a view and not intended to have legislative effect
  for expressing non-confidence 5.68
  on a matter of public interest 7.93 – 7.97, 8.17 – 8.18, 10.68 – 10.72, 10.86 – 10.92
  to take note of committee reports 10.93 – 10.95
  to take note of Government consultation papers 10.93 – 10.95
  to take note of reports of House Committee on subsidiary legislation 10.96 – 10.98
Motions, proceedings
  debate on (see Debate)
  notice requirements 10.20 – 10.26
  order of debate on 7.104, 10.101
  restrictions 10.31 – 10.62
Motions, types
  dilatory motions 10.9 – 10.11, 10.15 – 10.19
  subsidiary motions 10.9 – 10.19
  substantive motions 10.8
  procedural motions 10.99
National People's Congress
  Decisions of 1.2, 2.39
  Standing Committee of 1.4, 1.42, 2.38, 2.46, 2.51, 3.3 – 3.4
Negative vetting procedure (see Subsidiary legislation)
Notice for business in the Council
  for bills and amendments to bills 2.83, 11.64, 11.112
  for motions and amendments 10.20 – 10.26
  manner of giving notice of motions and amendments 10.27 – 10.30
Oath (or affirmation)
  manner and form of 3.31 – 3.33
  taking of 2.67, 3.34 – 3.39, 7.41
Obituary speeches 7.38, 7.42
Observance of silence 7.43 – 7.44
Offensive and unparliamentary expressions 8.42, 8.62 – 8.64, 16.13
Officers of the Council 2.28, 2.89 – 2.90
Official languages 7.34
Official Records of proceedings of the Council 2.81, 2.85, 4.17 – 4.18, 7.130 – 7.134
Ombudsman, The 15.15 – 15.16
OMELCO committees 1.25, 1.47 – 1.48, 6.8 – 6.13, 11.78
OMELCO Consensus 1.25
OMELCO Office 6.53, 15.9
OMELCO Secretariat 4.3 – 4.8
Oral question (see Questions)
Order of business of the Council 1.18, 3.107, 5.13, 5.27, 5.51, 7.37 – 7.40, 9.6
Ordinance, enactment of 2.4 – 2.7
Panels
  historical background 1.25, 1.48, 2.24, 6.13, 6.27, 16.4 – 16.7
  functions of 6.38, 6.40 – 6.43, 6.45 – 6.46, 6.52, 6.54, 6.57, 13.175, 14.10
  joint panel meetings 13.179 – 13.180
  mode of operation 13.176 – 13.178
Papers
  presentation of 6.27, 7.60 – 7.61
  Speaking on 7.62 – 7.66
Pecuniary interests (see Members’ interests)
Personal explanations 7.75 – 7.77
Petitions 1.14, 1.16 – 1.18, 1.21, 7.48 – 7.59, 13.23, 14.7, 15.5
Points of order 8.11 (see Debate – interruptions)
Policy Address 1.21, 5.15 – 5.27, 7.3, 12.29, 12.32, 16.68
Positive vetting procedure (see Subordinate legislation)
Powers and functions of the Legislative Council 2.3 – 2.14, 5.2 – 5.11
Powers and privileges
  of the Legislative Council 1.24, 1.44, 2.15 – 2.36, 6.9
  complaints against Members 15.36
  power to summon witnesses and send for documents 2.21 – 2.27, 13.24 (also see Committee, inquiries)
  privileges of Members (see Freedom from arrest; Freedom of speech)
Precincts of the Chamber 2.28, 4.50 – 4.54, 13.149, 16.20, 16.21
Precedence of Members 2.66 – 2.67, 13.73 – 13.74
President of the Legislative Council 1.33
  announcements 7.45 – 7.47
  as Chairman of the Legislative Council Commission 2.72
  election of 1.25, 2.73 – 2.75
  powers and functions of 2.23, 2.68 – 2.72, 5.11, 7.35 – 7.36, 13.17, 13.45, 13.49 – 13.54
  presiding over meetings 7.29 – 7.33, 8.59
  rulings of 1.12, 1.33 – 1.36, 2.71
  term of office 2.76
  voting right 2.77, 7.125
President’s deputy 1.33, 2.79 – 2.80, 7.30 – 7.32
Press (see Media)
Private rights 1.16, 11.8
Privileges of the Legislative Council (see Powers and Privileges)
Prorogation of the Council 2.40, 2.63 – 2.64, 13.132
Public Accounts Committee 1.22, 1.56, 4.28, 6.7, 6.36, 6.57, 14.2
Director of Audit's reports 12.95 – 12.99, 12.110 – 12.111
procedures 12.100 – 12.104, 13.9, 13.16 – 13.19
reports 12.106 – 12.107
Government minutes and progress reports 12.108 – 12.109
role of 12.94
Public hearings 16.8 – 16.14
Public Works Programme (see Financial Procedure)
Public engagement
reporting by the media 16.20 – 16.21
website and social media 16.23 – 16.30
Public officers
designation of 5.10, 5.81 – 5.82, 11.57, 11.99, 14.65
speaking time 8.21
number of times speaking 8.23 – 8.24
role of 5.83 – 5.85
Public Revenue Protection Orders 7.3
Public Works Subcommittee (see Finance Committee)
Questions 2.12, 5.81, 7.67, 9.1, 9.4 – 9.5
admissibility of 7.99 – 7.103, 9.43 – 9.44
allocation of question slots 9.10, 9.14 – 9.20, 9.21
number of questions permitted to be asked 7.68 – 7.69, 9.6 – 9.9
oral questions 7.68 – 7.70, 9.17, 9.23
Question Time 7.70, 9.55 – 9.63
restrictions on the content of questions 9.21, 9.22, 9.26 – 9.42
supplementary and follow-up questions 9.60 – 9.63
withdrawal of 9.54
written questions 7.68 – 7.69, 9.18, 9.23 (also see Estimates, written questions)
written replies 9.65
urgent questions 7.71, 9.48 – 9.49, 9.64
Question and Answer Sessions (see Chief Executive)
Quorum 1.49, 2.62
of the Council 7.14, 7.22 – 7.28
of a committee of the whole Council 7.15
calling for 7.16 – 7.21
Recess 2.60
Records of Council meetings (see Meetings of the Council)
Redress system 15.4
historical background 15.5 – 15.12
matters outside the scope of 15.17 – 15.18
matters within the scope of 15.13 – 15.15
procedure for handling complaints and representations 15.21 – 15.24, 15.25 – 15.39
relationship with Panels 15.31 – 15.32, 16.4 – 16.5
References to practices in other legislatures 1.11 – 1.15, 1.18, 1.19, 1.21, 1.29, 1.30, 1.34
Resolutions of the Council
for providing a specific procedure 1.45 – 1.46
Vote on Account Resolution (see Vote on Account)
Revenue proposals 12.10 – 12.12
Rule of anticipation 1.18, 7.98 – 7.105, 9.50, 10.62
Rules of Procedure
making of 1.28, 1.37
provisions in 1.49 – 1.51
purpose of 1.31
Seating in the Chamber and conference rooms 3.34 – 3.39
Secretary General of the Legislative Council Secretariat (see Clerk to the Legislative Council)
Select Committees (also see Committees, inquiries; Committees proceedings)
appointment of 1.57, 6.5, 6.28, 14.6 – 14.13
committal of bills to 11.92, 11.94 – 11.96, 11.106 – 11.107
petitions referred to 7.57 – 7.59, 13.22, 13.38, 13.40
power and function 13.22 – 13.24, 14.8 – 14.9
practice and procedure 1.57, 11.150, 13.9, 13.23, 14.18 – 14.22
quorum 14.28
terms of reference 13.42 – 13.43
voting 14.29
Sessions 2.56 – 2.58
Standing Orders (of the pre-1997 Legislature) 1.6, 1.8, 1.17 – 1.27, 1.47 – 1.48, 11.10, 12.13, 12.39, 13.9, 14.6 – 14.7, 15.5, 16.2, 16.18
Standing Orders and Rules (of the pre-1997 Legislature) 1.13 – 1.16
Statements made by public officers 5.53, 7.72 – 7.74
Speaking
in committee of the whole Council 8.25 – 8.37
interruptions (see Debate)
manner of 8.4 – 8.10, 8.42, 8.65
on papers 7.62
on subsidiary legislation 7.63 – 7.64
on reports of Bills Committee 7.65 – 7.66
time (see Debate)
Subcommittees of the Council (see Committees, system)
Subcommittee on Members' Remuneration and Operating Expenses Reimbursement 4.61, 13.171
Sub judice 14.68 – 14.71, 15.17
Subordinate legislation (see Subsidiary Legislation)
Subsidiary Legislation 1.42, 11.6, 16.7
commencement notice of 11.35 – 11.37
form of 11.31
motions on 7.81 – 7.87
nature of   11.139
proceedings in the Council   11.146 – 11.147
publication and numbering   11.32 – 11.34
scrutiny of (positive & negative vetting)   5.93, 6.24, 6.25 – 6.27, 7.82 – 7.84,
11.139 – 11.147
withdrawal of   11.148 – 11.149
Summoning of witnesses (see Powers and privileges; Committees, inquiries)
Supplementary Appropriation Bill   6.35, 12.9
Suspension of meetings (see Meetings of the Council)
Suspension of rules   1.46
Tabling of papers and reports   7.38, 7.60 – 7.61
Speaking on   7.62 – 7.66
Term of office of the Council   2.55 – 2.58
Time orders (see Business of the Council)
UMELCO Office   15.6 – 15.8  (also see OMELCO Office)
Unparliamentary language  (see Offensive and unparliamentary expressions)
Valedictory speeches   7.109 – 7.112
Voting in committee of the whole Council   7.127, 13.146
Voting in committees   7.128 – 7.129
  division   13.148 – 13.151
  majority vote   13.147
Voting in the Council
  consent by no dissenting voice   7.126
  disallowance of votes   3.55
  electronic voting   4.46, 7.124
  majority vote   7.121 – 7.124
  voting method   3.15 – 3.16, 7.113 – 7.114
  voting requirements under the Basic Law   7.113 – 7.119
Vote on Account   6.32 – 6.33, 12.66 – 12.69 (also see Resolutions of the Council)
# Index of Reference to the Basic Law of the HKSAR

<table>
<thead>
<tr>
<th>Article No.</th>
<th>Paragraph No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10.57</td>
</tr>
<tr>
<td>5</td>
<td>10.57</td>
</tr>
<tr>
<td>8</td>
<td>1.1, 1.28, 6.21, 11.3</td>
</tr>
<tr>
<td>9</td>
<td>7.34</td>
</tr>
<tr>
<td>12</td>
<td>10.57</td>
</tr>
<tr>
<td>17</td>
<td>1.37, 2.7, 10.57</td>
</tr>
<tr>
<td>24</td>
<td>3.75</td>
</tr>
<tr>
<td>43</td>
<td>2.1</td>
</tr>
<tr>
<td>45</td>
<td>2.46</td>
</tr>
<tr>
<td>48</td>
<td>2.10, 2.21, 5.4 – 5.10, 5.55, 5.59, 10.32, 10.34, 11.13, 11.43, 11.57, 11.138, 12.4, 12.34, 14.12</td>
</tr>
<tr>
<td>49</td>
<td>1.41, 1.49, 2.6, 5.4 – 5.5, 5.75 – 5.78, 7.116, 10.5, 11.71, 11.138, 11.150</td>
</tr>
<tr>
<td>50</td>
<td>1.49, 2.6, 5.4 – 5.6, 5.8, 5.75 – 5.78, 5.79 – 5.80, 6.30, 11.11, 11.71, 12.4, 12.64</td>
</tr>
<tr>
<td>51</td>
<td>5.8, 5.79 – 5.80, 6.30, 12.4, 12.65</td>
</tr>
<tr>
<td>52</td>
<td>1.49, 2.6, 5.4 – 5.6, 5.8, 5.75, 7.116, 12.4, 12.65</td>
</tr>
<tr>
<td>54</td>
<td>6.25</td>
</tr>
<tr>
<td>55</td>
<td>6.28</td>
</tr>
<tr>
<td>56</td>
<td>2.4, 5.4 – 5.5, 11.5, 11.57, 12.34</td>
</tr>
<tr>
<td>57</td>
<td>10.57</td>
</tr>
<tr>
<td>58</td>
<td>12.111</td>
</tr>
<tr>
<td>59</td>
<td>2.1</td>
</tr>
<tr>
<td>60</td>
<td>2.1, 8.24</td>
</tr>
<tr>
<td>62</td>
<td>2.4, 2.10, 5.5 – 5.6, 5.8, 5.10, 5.81 – 5.87, 6.29, 7.37, 8.24, 9.5, 11.5, 11.45, 12.4</td>
</tr>
<tr>
<td>64</td>
<td>2.12, 5.3, 5.4 – 5.8, 5.15, 6.38 – 6.39, 7.67, 9.1, 9.5, 10.3, 11.138, 12.4</td>
</tr>
<tr>
<td>66</td>
<td>1.2, 2.1, 11.1</td>
</tr>
<tr>
<td>67</td>
<td>3.17</td>
</tr>
<tr>
<td>68</td>
<td>1.2, 2.37 – 2.38, 2.46, 3.3, 7.113, 11.62</td>
</tr>
<tr>
<td>69</td>
<td>1.2, 2.55, 3.22</td>
</tr>
<tr>
<td>70</td>
<td>2.65</td>
</tr>
<tr>
<td>71</td>
<td>2.68</td>
</tr>
<tr>
<td>72</td>
<td>1.33, 2.69 – 2.70, 5.5, 5.7, 5.11, 7.6, 7.10, 7.29, 7.35, 7.37, 7.39, 8.29 – 8.32, 8.59, 11.11, 11.129</td>
</tr>
<tr>
<td>73</td>
<td>2.2 – 2.14, 5.3 – 5.7, 6.19, 8.32, 8.59, 9.1, 11.1, 13.4, 14.12, 15.17</td>
</tr>
<tr>
<td>73(1)</td>
<td>2.4 – 2.5, 5.5, 8.31 – 8.32, 10.57, 11.1, 11.4, 11.63, 13.5 – 13.6</td>
</tr>
<tr>
<td>73(2)</td>
<td>2.10 – 2.11, 5.8, 6.29 – 6.38, 12.1, 12.4, 13.6</td>
</tr>
<tr>
<td>73(3)</td>
<td>2.10 – 2.11, 5.8, 6.29 – 6.38, 12.1, 12.4, 13.6</td>
</tr>
<tr>
<td>73(4)</td>
<td>2.12, 5.3, 5.15, 5.19, 5.27, 5.29, 6.39 – 6.40, 6.43, 13.6</td>
</tr>
<tr>
<td>73(5)</td>
<td>2.12, 5.3, 6.39, 7.67, 9.4, 9.24, 9.55, 13.6</td>
</tr>
<tr>
<td>73(6)</td>
<td>2.12, 5.3, 6.39, 7.93, 10.2, 10.57, 13.6</td>
</tr>
<tr>
<td>Article No.</td>
<td>Paragraph No.</td>
</tr>
<tr>
<td>------------</td>
<td>---------------</td>
</tr>
<tr>
<td>73(7)</td>
<td>2.13, 5.9, 13.6</td>
</tr>
<tr>
<td>73(8)</td>
<td>2.12, 13.6, 15.3 – 15.4</td>
</tr>
<tr>
<td>73(9)</td>
<td>1.41, 1.49, 2.12, 5.60 – 5.66, 5.68, 5.71, 7.91, 7.117, 8.40, 13.6</td>
</tr>
<tr>
<td>73(10)</td>
<td>2.14, 2.21 – 2.27, 5.10, 5.58, 13.6, 14.12</td>
</tr>
<tr>
<td>75</td>
<td>1.5, 1.28, 1.37 – 1.39, 1.49, 2.2, 7.14, 7.15, 7.22 – 7.28, 7.91, 7.120, 11.43, 13.4, 13.108</td>
</tr>
<tr>
<td>76</td>
<td>5.5, 11.21</td>
</tr>
<tr>
<td>77</td>
<td>2.29, 8.71</td>
</tr>
<tr>
<td>78</td>
<td>2.31, 8.71</td>
</tr>
<tr>
<td>80</td>
<td>2.1</td>
</tr>
<tr>
<td>88</td>
<td>5.9</td>
</tr>
<tr>
<td>89</td>
<td>5.9</td>
</tr>
<tr>
<td>90</td>
<td>5.9, 6.50 – 6.51</td>
</tr>
<tr>
<td>104</td>
<td>3.25, 3.27 – 3.28, 3.112, 3.115, 7.41</td>
</tr>
<tr>
<td>107</td>
<td>12.11, 12.21</td>
</tr>
<tr>
<td>159</td>
<td>1.49, 7.87, 7.113</td>
</tr>
<tr>
<td>160</td>
<td>11.8</td>
</tr>
<tr>
<td>Annex I</td>
<td>1.49, 2.42, 2.46 – 2.49, 2.51 – 2.53, 7.24, 7.119, 11.62</td>
</tr>
</tbody>
</table>
## Index of Reference to the Rules of Procedure of the Legislative Council of the HKSAR

<table>
<thead>
<tr>
<th>Rule No.</th>
<th>Paragraph No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2.67, 3.27 – 3.28, 3.32, 5.84, 7.41, 8.23</td>
</tr>
<tr>
<td>1A</td>
<td>2.67, 9.57, 10.98</td>
</tr>
<tr>
<td>2</td>
<td>4.40, 7.34</td>
</tr>
<tr>
<td>3</td>
<td>1.33, 2.70, 2.79 – 2.80, 5.73 – 5.84, 7.11, 7.29 – 7.33, 8.23</td>
</tr>
<tr>
<td>4</td>
<td>2.76</td>
</tr>
<tr>
<td>5</td>
<td>2.76, 2.79 – 2.80</td>
</tr>
<tr>
<td>6</td>
<td>2.81 – 2.85, 4.17 – 4.18, 4.39, 7.130, 13.32, 13.155, 16.60</td>
</tr>
<tr>
<td>7</td>
<td>2.86 – 2.88, 2.90</td>
</tr>
<tr>
<td>8</td>
<td>2.84, 5.10, 5.12 – 5.13, 5.19, 5.27, 5.42 – 5.49, 5.51 – 5.52, 5.55 – 5.58, 5.84, 7.38, 8.23, 9.3</td>
</tr>
<tr>
<td>9</td>
<td>5.83, 9.5, 12.76, 13.85</td>
</tr>
<tr>
<td>10</td>
<td>5.84 – 5.85, 8.23</td>
</tr>
<tr>
<td>11</td>
<td>1.43, 2.56, 7.2</td>
</tr>
<tr>
<td>12</td>
<td>3.27 – 3.28</td>
</tr>
<tr>
<td>13</td>
<td>5.19, 5.21, 5.28, 5.30 – 5.31, 6.40, 7.38</td>
</tr>
<tr>
<td>14</td>
<td>2.59, 2.84, 5.10, 5.13, 7.6 – 7.7</td>
</tr>
<tr>
<td>15</td>
<td>2.84, 7.10</td>
</tr>
<tr>
<td>16</td>
<td>2.80, 5.73, 6.44, 7.32, 7.36, 7.38, 7.43 – 7.44, 7.94, 7.97, 8.19 – 8.20 – 8.21, 10.2, 10.6, 10.59, 10.72 – 10.85, 10.87</td>
</tr>
<tr>
<td>17</td>
<td>1.49, 2.62, 5.84, 7.14 – 7.28, 8.23</td>
</tr>
<tr>
<td>18</td>
<td>2.62, 3.55, 3.107, 5.10, 5.13, 5.27, 5.51, 7.9, 7.11, 7.35, 7.37 – 7.40, 7.42, 7.47, 7.73, 7.92, 7.104, 10.1, 10.101, 11.146</td>
</tr>
<tr>
<td>19</td>
<td>5.51, 7.35</td>
</tr>
<tr>
<td>20</td>
<td>5.84, 6.48, 7.39, 7.54 – 7.59, 8.23, 13.23, 13.43</td>
</tr>
<tr>
<td>21</td>
<td>6.27, 7.60 – 7.66, 7.81, 7.85, 8.16, 11.87, 13.159</td>
</tr>
<tr>
<td>23</td>
<td>5.25, 5.27, 5.81, 7.60 – 7.71, 9.9, 9.11, 9.48, 13.162</td>
</tr>
<tr>
<td>25</td>
<td>5.27, 5.49, 9.26 – 9.29, 9.45, 9.60</td>
</tr>
</tbody>
</table>

(1)(a) 9.30  
(1)(b) 9.31  
(1)(c) 9.32  
(1)(d) 9.33 – 9.34  
(1)(f) 5.70 – 5.74, 9.35  
(1)(g) 2.13, 9.36, 14.69  
(1)(h) 9.37  
(1)(i) 9.38  
(1)(j) 9.39  
(1)(k) 9.40  
(1)(l) 9.41  
(2) 9.22 – 9.23, 9.44  
(3) 7.98 – 7.103, 9.50
<table>
<thead>
<tr>
<th>Rule No.</th>
<th>Paragraph No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>5.27, 9.3</td>
</tr>
<tr>
<td>28</td>
<td>5.52, 7.73 - 7.74</td>
</tr>
<tr>
<td>28A</td>
<td>3.107, 7.75 – 7.77</td>
</tr>
<tr>
<td>29</td>
<td>1.42, 7.82, 7.90, 10.11, 10.65, 11.34, 12.78, 13.122</td>
</tr>
<tr>
<td>(1)</td>
<td>3.100, 3.115, 5.69, 10.20 – 10.23, 11.34, 14.14</td>
</tr>
<tr>
<td>(2)</td>
<td>7.82 – 7.85, 10.8, 10.24, 11.145</td>
</tr>
<tr>
<td>(3)</td>
<td>7.82, 10.25, 11.143</td>
</tr>
<tr>
<td>(4)</td>
<td>10.24 – 10.25</td>
</tr>
<tr>
<td>(6)</td>
<td>10.22, 10.63</td>
</tr>
<tr>
<td>31</td>
<td>2.9, 7.90, 7.98, 10.45 – 10.56, 10.62, 11.49, 11.132 – 11.133, 12.13, 12.78, 13.122</td>
</tr>
<tr>
<td>33</td>
<td>5.64, 7.85, 8.10, 12.78, 13.122</td>
</tr>
<tr>
<td>34</td>
<td>10.63, 10.65, 11.113, 12.78, 13.122</td>
</tr>
<tr>
<td>35</td>
<td>7.126, 10.29, 12.78, 13.122</td>
</tr>
<tr>
<td>36</td>
<td>5.64, 8.4, 8.8, 8.14 – 8.16, 8.19, 8.21, 8.61, 8.65, 13.141</td>
</tr>
<tr>
<td>37</td>
<td>3.54, 3.106, 5.69, 6.41, 8.17 – 8.19, 10.2, 10.67, 10.95, 13.141, 13.162</td>
</tr>
<tr>
<td>38</td>
<td>3.54, 3.106, 7.13, 7.85, 8.16, 8.22 – 8.24, 8.25 – 8.27, 8.61, 11.99, 13.141</td>
</tr>
<tr>
<td>39</td>
<td>5.52, 8.11 – 8.12, 8.65, 13.141</td>
</tr>
<tr>
<td>41</td>
<td>8.67</td>
</tr>
<tr>
<td>(1)</td>
<td>8.38</td>
</tr>
<tr>
<td>(2)</td>
<td>2.13, 3.105, 3.121, 8.41, 14.69</td>
</tr>
<tr>
<td>(3)</td>
<td>7.107</td>
</tr>
<tr>
<td>(4)</td>
<td>8.42</td>
</tr>
<tr>
<td>(5)</td>
<td>3.105, 3.121, 8.39</td>
</tr>
<tr>
<td>(6)</td>
<td>8.40</td>
</tr>
<tr>
<td>(7)</td>
<td>3.105, 3.121, 5.70 – 5.74, 9.39</td>
</tr>
<tr>
<td>(8)</td>
<td>2.13</td>
</tr>
<tr>
<td>42</td>
<td>8.1, 8.43, 8.44 – 8.51, 8.65, 8.67, 13.141</td>
</tr>
<tr>
<td>43</td>
<td>2.13, 13.113, 13.141, 14.69</td>
</tr>
<tr>
<td>44</td>
<td>2.30, 2.71, 8.59, 8.73 – 8.75, 13.89, 13.90, 14.40</td>
</tr>
<tr>
<td>45</td>
<td>3.43, 8.35, 8.46, 8.52, 8.60 – 8.62, 8.65 – 8.72, 8.73 – 8.75, 11.99, 13.89 – 13.90, 14.40</td>
</tr>
<tr>
<td>46</td>
<td>1.49, 5.64 – 5.66, 5.69, 7.114 – 7.119, 7.123 – 7.125, 13.147</td>
</tr>
<tr>
<td>47</td>
<td>1.45, 7.124</td>
</tr>
<tr>
<td>48</td>
<td>3.34, 7.124</td>
</tr>
<tr>
<td>49</td>
<td>1.45, 7.124, 8.19, 10.99, 11.8</td>
</tr>
<tr>
<td>Rule No.</td>
<td>Paragraph No.</td>
</tr>
<tr>
<td>---------</td>
<td>----------------</td>
</tr>
<tr>
<td>49D</td>
<td>7.60, 7.63 – 7.64, 7.85, 10.26, 13.37</td>
</tr>
<tr>
<td>49E</td>
<td>7.63 – 7.64, 7.85 – 7.86, 8.22, 10.5 – 10.6, 10.26, 10.96 – 10.98</td>
</tr>
<tr>
<td>50</td>
<td>11.2, 11.67</td>
</tr>
<tr>
<td></td>
<td>(1) 11.13</td>
</tr>
<tr>
<td></td>
<td>(2) 11.14 – 11.17, 11.23</td>
</tr>
<tr>
<td></td>
<td>(3) 11.18 – 11.20</td>
</tr>
<tr>
<td></td>
<td>(4) 11.24, 11.64</td>
</tr>
<tr>
<td></td>
<td>(5) 11.21 – 11.22</td>
</tr>
<tr>
<td></td>
<td>(6) 11.25 – 11.28</td>
</tr>
<tr>
<td></td>
<td>(7) 11.29</td>
</tr>
<tr>
<td></td>
<td>(8) 11.8, 11.30, 11.67 – 11.68</td>
</tr>
<tr>
<td>51</td>
<td>11.2</td>
</tr>
<tr>
<td></td>
<td>(1) 7.102, 11.13, 11.67</td>
</tr>
<tr>
<td></td>
<td>(2) 11.13, 11.67</td>
</tr>
<tr>
<td></td>
<td>(3) 1.49, 10.31, 11.12, 11.44 – 11.56, 11.62, 11.67</td>
</tr>
<tr>
<td></td>
<td>(4) 1.49, 10.31, 11.12, 11.44 – 11.48, 11.57 – 11.61, 11.67</td>
</tr>
<tr>
<td></td>
<td>(5) 11.24</td>
</tr>
<tr>
<td></td>
<td>(6) 11.68</td>
</tr>
<tr>
<td></td>
<td>(7) 5.80, 7.105</td>
</tr>
<tr>
<td></td>
<td>(7A) 12.64</td>
</tr>
<tr>
<td></td>
<td>(8) 11.68</td>
</tr>
<tr>
<td></td>
<td>(9) 11.69</td>
</tr>
<tr>
<td>52</td>
<td>11.66 – 11.68, 11.74, 11.134</td>
</tr>
<tr>
<td>53</td>
<td>7.78, 7.130, 10.4, 11.75, 11.150, 11.74</td>
</tr>
<tr>
<td>54</td>
<td>11.83</td>
</tr>
<tr>
<td></td>
<td>(1) 6.23, 11.76, 11.150</td>
</tr>
<tr>
<td></td>
<td>(2) 7.88, 11.76, 11.150</td>
</tr>
<tr>
<td></td>
<td>(3) 7.78, 10.11, 11.76</td>
</tr>
<tr>
<td></td>
<td>(4) 6.25, 7.78, 7.80, 10.99, 11.77 – 11.79</td>
</tr>
<tr>
<td></td>
<td>(5) 7.103, 11.88 – 11.91</td>
</tr>
<tr>
<td></td>
<td>(5A) 11.91</td>
</tr>
<tr>
<td></td>
<td>(6) 10.11</td>
</tr>
<tr>
<td></td>
<td>(7) 7.65, 8.16, 8.22, 11.92 – 11.93</td>
</tr>
<tr>
<td></td>
<td>(8) 11.92</td>
</tr>
<tr>
<td>55</td>
<td>6.28, 7.12, 7.78, 8.26, 11.92, 11.94 – 11.95</td>
</tr>
<tr>
<td>56</td>
<td>7.12, 11.95 – 11.96, 11.115</td>
</tr>
<tr>
<td>57</td>
<td>7.12, 8.26, 8.37, 10.11, 11.97, 11.112, 11.114</td>
</tr>
<tr>
<td></td>
<td>(2) 10.13, 11.112</td>
</tr>
<tr>
<td></td>
<td>(3) 11.112</td>
</tr>
<tr>
<td></td>
<td>(4)(a) 11.115 – 11.119</td>
</tr>
<tr>
<td></td>
<td>(4)(b) 11.120</td>
</tr>
<tr>
<td></td>
<td>(4)(c) 11.121</td>
</tr>
<tr>
<td></td>
<td>(4)(d) 8.37, 11.122 – 11.129</td>
</tr>
<tr>
<td></td>
<td>(4)(e) 11.130</td>
</tr>
<tr>
<td>Rule No.</td>
<td>Paragraph No.</td>
</tr>
<tr>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>(5)</td>
<td>11.131</td>
</tr>
<tr>
<td>58</td>
<td>1.46, 7.78, 7.126, 8.31, 10.11, 11.14, 11.16, 11.20, 11.97, 11.99 – 11.107, 11.113</td>
</tr>
<tr>
<td>59</td>
<td>11.105, 11.150</td>
</tr>
<tr>
<td>60</td>
<td>1.57, 11.106, 13.22</td>
</tr>
<tr>
<td>61</td>
<td>1.57, 11.106, 11.150, 13.22</td>
</tr>
<tr>
<td>63</td>
<td>7.78, 10.11, 11.110 – 11.111</td>
</tr>
<tr>
<td>64</td>
<td>7.66, 11.93, 11.134 – 11.136</td>
</tr>
<tr>
<td>65</td>
<td>11.13, 11.111</td>
</tr>
<tr>
<td>66</td>
<td>1.49, 5.77 – 5.78, 7.116, 10.5, 10.99, 11.71, 11.150</td>
</tr>
<tr>
<td>67</td>
<td>6.29 – 6.31, 12.6, 12.53, 13.14</td>
</tr>
<tr>
<td>68</td>
<td>12.54, 12.60 – 12.62</td>
</tr>
<tr>
<td>69</td>
<td>12.54 – 12.59, 12.62</td>
</tr>
<tr>
<td>70</td>
<td>12.63</td>
</tr>
<tr>
<td>71</td>
<td>1.55, 5.84, 6.31, 6.34, 7.6, 8.23, 11.79, 12.47, 12.71, 12.79, 13.14 – 13.15, 13.37, 13.146</td>
</tr>
<tr>
<td>72</td>
<td>1.55, 6.36, 13.16, 13.45, 13.50, 13.110, 13.146, 13.158</td>
</tr>
<tr>
<td>73</td>
<td>1.55, 3.62 – 3.63, 3.92, 3.120, 4.79 – 4.80, 13.20, 13.45, 13.50, 13.110, 13.146, 13.158</td>
</tr>
<tr>
<td>74A</td>
<td>13.32, 13.45, 13.110, 13.146, 13.158, 16.56</td>
</tr>
<tr>
<td>78</td>
<td>6.51, 11.95, 13.36, 13.50, 13.158, 14.15 – 14.16, 14.28</td>
</tr>
<tr>
<td>79A</td>
<td>7.128, 14.29</td>
</tr>
<tr>
<td>79B</td>
<td>13.76</td>
</tr>
<tr>
<td>80</td>
<td>1.44, 2.24, 13.26</td>
</tr>
<tr>
<td>81</td>
<td>2.25, 14.60</td>
</tr>
<tr>
<td>83</td>
<td>3.62, 3.64, 3.70, 3.91</td>
</tr>
<tr>
<td>83AA</td>
<td>3.63, 3.71, 3.91, 4.79 – 4.80, 15.36</td>
</tr>
<tr>
<td>86</td>
<td>2.28, 16.18</td>
</tr>
<tr>
<td>87</td>
<td>2.28, 13.92</td>
</tr>
<tr>
<td>Rule No.</td>
<td>Paragraph No.</td>
</tr>
<tr>
<td>---------</td>
<td>---------------</td>
</tr>
<tr>
<td>88</td>
<td>2.28</td>
</tr>
<tr>
<td>89</td>
<td>2.33 – 2.34, 7.126</td>
</tr>
<tr>
<td>90</td>
<td>2.26, 7.126</td>
</tr>
<tr>
<td>91</td>
<td>1.46, 7.40, 10.99</td>
</tr>
<tr>
<td>92</td>
<td>1.34, 2.71, 8.28 – 8.37, 11.122</td>
</tr>
<tr>
<td>93</td>
<td>2.13, 9.16</td>
</tr>
<tr>
<td>Schedule 1</td>
<td>2.76</td>
</tr>
<tr>
<td>Schedule 2</td>
<td>16.58</td>
</tr>
</tbody>
</table>
# Index of Reference to the House Rules of the Legislative Council of the HKSAR

<table>
<thead>
<tr>
<th>Rule No.</th>
<th>Paragraph No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2.67, 3.32</td>
</tr>
<tr>
<td>1A</td>
<td>2.73 – 2.75</td>
</tr>
<tr>
<td>2</td>
<td>7.62</td>
</tr>
<tr>
<td>3</td>
<td>8.19, 14.31</td>
</tr>
<tr>
<td>4</td>
<td>5.45, 5.47 – 5.49</td>
</tr>
<tr>
<td>5</td>
<td>9.17, 9.21</td>
</tr>
<tr>
<td>6</td>
<td>9.26, 9.33 – 9.34</td>
</tr>
<tr>
<td>8</td>
<td>9.26, 9.60 – 9.61</td>
</tr>
<tr>
<td>9</td>
<td>9.63</td>
</tr>
<tr>
<td>9A</td>
<td>7.70, 9.59, 9.64</td>
</tr>
<tr>
<td>10</td>
<td>9.48, 13.162</td>
</tr>
<tr>
<td>11</td>
<td>9.10</td>
</tr>
<tr>
<td>12</td>
<td>9.58</td>
</tr>
<tr>
<td>13</td>
<td>5.69, 6.42, 6.44, 7.93, 7.94, 10.2, 10.72, 10.86 – 10.87, 13.162</td>
</tr>
<tr>
<td>14</td>
<td>5.69, 6.42, 7.93, 10.2, 10.72, 10.88 – 10.92</td>
</tr>
<tr>
<td>14A</td>
<td>6.43, 6.57, 10.93 – 10.95</td>
</tr>
<tr>
<td>15</td>
<td>7.95, 10.72, 10.101</td>
</tr>
<tr>
<td>16</td>
<td>10.70</td>
</tr>
<tr>
<td>17</td>
<td>5.69, 8.17 – 8.20, 10.11, 10.19, 10.67, 13.162</td>
</tr>
<tr>
<td>18</td>
<td>8.20, 10.81, 10.83</td>
</tr>
<tr>
<td>19</td>
<td>10.99</td>
</tr>
<tr>
<td>19A</td>
<td>10.30</td>
</tr>
<tr>
<td>21</td>
<td>8.16, 11.81, 11.84, 11.86, 11.87, 11.143, 13.46, 13.61, 13.65</td>
</tr>
<tr>
<td>23</td>
<td>13.66, 13.68</td>
</tr>
<tr>
<td>24A</td>
<td>13.78, 13.82, 13.120</td>
</tr>
<tr>
<td>25</td>
<td>13.156 – 13.157</td>
</tr>
<tr>
<td>27</td>
<td>14.44</td>
</tr>
<tr>
<td>28</td>
<td>13.79</td>
</tr>
<tr>
<td>29</td>
<td>13.152</td>
</tr>
<tr>
<td>29A</td>
<td>13.153</td>
</tr>
<tr>
<td>30</td>
<td>5.95</td>
</tr>
<tr>
<td>31</td>
<td>13.176</td>
</tr>
<tr>
<td>32</td>
<td>16.15</td>
</tr>
<tr>
<td>33</td>
<td>13.170</td>
</tr>
<tr>
<td>34</td>
<td>13.162, 13.170</td>
</tr>
<tr>
<td>Rule No.</td>
<td>Paragraph No.</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Appendix I</td>
<td>2.73 – 2.75</td>
</tr>
<tr>
<td>Appendix IV</td>
<td>2.66, 13.72</td>
</tr>
<tr>
<td>Appendix VI</td>
<td>13.154</td>
</tr>
</tbody>
</table>