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**Paper for the House Committee meeting
on 23 April 2004**

Committee on Rules of Procedure

**Calling of emergency meetings
and operation of the Legislative Council and its committees
during the prorogation of the Council**

Purpose

This paper informs the House Committee (HC) of the views of the Committee on Rules of Procedure (CRoP) regarding the calling of emergency meetings and the operation of the Legislative Council (LegCo) and its committees during the prorogation of the Council, and seeks HC's endorsement of CRoP's recommendation that the constitutional issues pertaining to prorogation be referred to the Panel on Constitutional Affairs for consideration.

Background

2. Article 69 of the Basic Law provides that, starting from the second term, each term of office of LegCo shall be four years. It is silent on whether there can be gaps between consecutive terms of LegCo. The current term (i.e. the second term) of the Council lasts for four years; it commenced on 1 October 2000 and will end on 30 September 2004. Under the Legislative Council Ordinance (LCO) (Cap. 542), the Chief Executive (CE) may prorogue the Council before the end of the second LegCo term to enable the general election of Members for the third LegCo term to take place. Prorogation is an arrangement whereby LegCo ceases to transact any formal business during the period leading up to an upcoming election, although the Council continues to exist and all serving Council Members are still in office. The purpose is to ensure that incumbent Council Members will not have an unfair advantage over other candidates in the election.

3. On 16 February 2004, CE appointed in the Gazette 22 July 2004 as the date from which the second term of the Council shall stand prorogued. The Gazette also gave notice that CE had specified 12 September 2004 as the date for holding the general election to elect members for the third term of the office of the Council.

Operation of LegCo and its committees during prorogation

4. Article 72(5) of the Basic Law empowers the President of LegCo “To call emergency sessions on the request of the Chief Executive”. Rule 15 of the Rules of Procedure (RoP) (Meetings for Urgent Business) provides that the President shall, at the request of CE, call emergency meetings of the Council, and that RoP shall apply to such meetings.

5. RoP are silent on the status of bills committees and select committees when the Council is prorogued. Section 9(4) of LCO and Rule 11(4) of RoP provide that the consideration of any bill or other business of the Council is to lapse at the end of a term of office or on a dissolution of the Council. Rule 78(5) provides that at the end of a term every select committee of the Council shall be dissolved.

6. In considering whether LegCo and its committees should continue to operate during prorogation, CRoP has made reference to the practices and arrangements in overseas territories for the operation of their legislatures and committees during prorogation, and consulted the Administration. Taking into account these practices and arrangements, the Administration’s views and the related statutory requirements, CRoP is of the view that:

- (a) although the status of any bills committees or select committees will not be affected by the prorogation because the Council’s term has not yet ended, in accordance with the legal provisions, the Council and its committees should cease to operate during the prorogation of the Council and should not normally carry on with the work on any bills committees or select committees; and
- (b) although the Council and its committees cease to operate during prorogation, where the President calls emergency Council meetings as requested by CE under Article 72(5) of the Basic Law, the Council should be able to authorize its committees to continue their operation if need be. For instance, if there is a bill which has to be dealt with at emergency Council meetings to complete its legislative procedure, the bills committee concerned may continue to operate.

Calling of emergency Council meetings during prorogation

7. CROp has studied whether Rule 15 of RoP should be amended to specifically provide for the calling of emergency Council meetings during the Council's prorogation. In considering the matter, CROp has asked the Administration the actions that CE will take if he sees a need to request the President to call an emergency Council meeting during prorogation. For example, whether CE will rescind his previous order which prorogued the Council. The Administration's response is that under Rule 15(3) of RoP, RoP shall apply to an emergency Council meeting held under Rule 15(1). Given that the President's power to call emergency sessions at CE's request is derived from Article 72(5) of the Basic Law, it will, as a matter of law, override the order of prorogation made under section 6(3) of LCO. The first sentence of Rule 15(1) reflects this constitutional power. Rule 15(3), in so far as it purports to apply RoP to such meetings, will similarly override the order of prorogation.

8. CROp notes that by virtue of Article 72(5) of the Basic Law, the President has the power and function to convene emergency Council meetings at CE's request and the Basic Law has not imposed any restriction on such power and function. Such power and function are reflected in Rule 15(1) of RoP. CROp considers that, as the Council's term of office has not yet ended during prorogation, Rule 15(1) will apply in such circumstance. In other words, during the prorogation of the Council, the President shall, at CE's request, call emergency Council meetings by virtue of Rule 15(1) of RoP. Seen in this light, and taking into account the Administration's view on the matter, CROp considers that it is not necessary to amend Rule 15 of RoP to specifically provide for the calling of emergency Council meetings during prorogation.

Constitutional issues pertaining to prorogation

9. In the course of examining the issues relating to the prorogation of the Council, some CROp members noted that prior to the reunification, the commencement and ending dates of a LegCo session were specified by the Governor because he was the constitutional representative of the British monarch and was responsible for making laws, while LegCo only played a role of advising the Governor. However, the Basic Law now empowers LegCo to make laws and transact business on its own. These members consider that there are no valid grounds for requiring that the commencement and ending dates of a LegCo session be specified by CE. Since Article 72(3) of the Basic Law provides that one of the powers and functions of the President of LegCo is to decide on the time of meetings, the commencement and ending dates of a LegCo session can likewise be determined by the President.

10. These members have also pointed out that, whilst the Basic Law does not provide for the prorogation of LegCo by CE before the end of a term of office of LegCo, LCO has made such provisions. These members consider that, to tie in with the Basic Law, LCO should be amended to transfer to the President the power to prorogue the Council. They also suggest that consideration should also be given to whether the operation of the Council and its committees, which has been terminated during prorogation, can resume only when emergency Council meetings are called at CE's request.

11. As the above views and suggestions relate to constitutional matters, CRoP recommends that they be referred to the Panel on Constitutional Affairs for consideration.

Advice sought

12. Members are invited to note CRoP's views regarding the calling of emergency meetings and the operation of LegCo and its committees during the prorogation of the Council, and to endorse CRoP's recommendation that the constitutional issues pertaining to prorogation be referred to the Panel on Constitutional Affairs for consideration.

Legislative Council Secretariat

20 April 2004